

320.5 Spouse or Divorced Spouse Defined

The term "spouse" means a legal or a de facto (deemed) wife or husband of an employee annuitant. The term "spouse" in this chapter does not include a divorced spouse unless a specific reference is made to include a divorced spouse.

320.5.1 Legal Spouse Defined

The applicant must either:

- A. Be the spouse of an annuitant under the laws of the state of the employee's domicile at the time the spouse files an application; or
- B. Have the same rights as a spouse to share in the distribution of the employee's intestate (without a will) personal property under the laws of the state of the employee's domicile at the time the spouse files an application.

320.5.2 De Facto (Deemed) Spouse Eligibility Requirements

A spouse may qualify as a de facto (deemed) spouse even if the marriage to the employee is invalid due to an impediment. The impediment may result from a prior undissolved marriage of the employee or a defect in the procedure of the employee's purported marriage to the applicant.

For a person to qualify as a defacto (deemed) spouse, the following requirements must be met:

- A. There was a marriage ceremony; and
- B. The spouse went through the ceremony in good faith, not knowing of the impediment at that time. The spouse must submit a statement that she married the employee in good faith; and
- C. The spouse was living in the same household with the employee at the time the spouse's application was filed (see FOM-I-935); and
- D. At the time the spouse files the application, there is no other person who has the status of spouse, based on a valid marriage or inheritance rights under state law, who is or was entitled to a spouse's benefit at the Social Security Administration based on the employee's wage record.

A defacto or deemed spouse's entitlement ends when the deemed spouse marries someone other than the employee, or when a legal spouse becomes entitled to an annuity.

NOTE: If a spouse annuity is paid to a deemed spouse and it is later found that there is a legal spouse entitled to SS Act benefits based on the employee's wage record, refer the case to RAS.

320.5.3 Divorced Spouse Defined

The term "divorced spouse" means the former legal spouse (wife or husband) of an employee annuitant who is finally divorced from the employee, who had been married to the employee for a period of at least 10 consecutive years immediately before the date the divorce became final.

There are no provisions in the RRA for paying a divorced spouse annuity based on having a minor or disabled child of the employee in-care. An annuity is not payable before an employee annuitant attains age 62 or before the divorced spouse applicant attains age 62. Effective August 17, 2007, it is no longer necessary for the employee to retire before a divorced spouse annuity is payable.

The term "spouse" in this chapter does not include a divorced spouse unless a specific reference is made to include a divorced spouse.

320.6 Full Retirement Age for a Spouse Annuity Based on Age or Divorced Spouse Annuity

The term *Full Retirement Age* (FRA) means the age at which the spouse of an employee with less than 360 months of railroad service can receive a full annuity (not reduced for early retirement).

(Exception - FRA could affect some spouse 60/30 age reduced annuities (ABDs are before 1-1-12002 - see FOM-I-320.12 for details).

The term *Full Retirement Age* (FRA) also means the age at which the divorced spouse can receive a full annuity (not reduced for early retirement), regardless of the employee's total years of railroad service.

Full Retirement Age also affects the spouse annuity or divorced spouse annuity deductions due to earnings as described in RCM 5.7, regardless of the employee's total years of railroad service.

FRA for the spouse or divorced spouse is age 65 if the person was born before January 2, 1938. The FRA for persons born after January 1, 1938, will gradually increase over a 20-year period to age 67, as illustrated in the following chart. FRA is attained the first day of the month in which that age is attained.

Determining Spouse Full Retirement Age			
If spouses were born:	then their FRA is:	If spouses were born:	then their FRA is:

Before 1-2-1938	65	1-2-1955 thru 1-1-1956	66 and 2 months
1-2-1938 thru 1-1-1939	65 and 2 months	1-2-1956 thru 1-1-1957	66 and 4 months
1-2-1939 thru 1-1-1940	65 and 4 months	1-2-1957 thru 1-1-1958	66 and 6 months
1-2-1940 thru 1-1-1941	65 and 6 months	1-2-1958 thru 1-1-1959	66 and 8 months
1-2-1941 thru 1-1-1942	65 and 8 months	1-2-1959 thru 1-1-1960	66 and 10 months
1-2-1942 thru 1-1-1943	65 and 10 months	1-2-1960 and later	67
1-2-1943 thru 1-1-1955	66		

320.7 Cessation of Service and Relinquishment of Rights Requirement

320.7.1 Employee

An employee disability annuitant under *Full Retirement Age* must relinquish whatever rights (s)he may have to return to work for any railroad before a spouse annuity may be paid.

Certain disabled employees may not wish to relinquish their rights because of possible adverse effects on their benefits from the railroad. If the employee does not relinquish rights, a statement should be submitted as explained in FOM-I-330.71B.

The date of the relinquishment of rights will not affect the retroactivity of the spouse ABD. If the employee does not wish to relinquish his rights and the spouse is otherwise eligible, a spouse application can still be taken in order to protect the spouse's filing date for retroactivity purposes. However, the case must be coded for manual review, as the annuity cannot be paid until the employee relinquishes his rights. The field office should not enter a SPAR rate in these cases.

320.7.2 Spouse or Divorced Spouse

The spouse or divorced spouse must have ceased all railroad service and must have relinquished all rights to return to the railroad service.

Before 12-1-1988, the spouse or divorced spouse was also required to cease employment and relinquish employment rights with a last pre-retirement, non-railroad (LPE) employer.

320.8 Application Requirement

The spouse or divorced spouse must file an application for a spouse annuity. The application requirements at initial entitlement are explained in FOM-I-110. A spouse

may have to make a decision whether to file for a reduced annuity (see FOM-I-320.10 or a full annuity based on a child-in-care (see FOM-I-320.14).

The new application requirements when post-entitlement events occur (i.e. divorce or re-marriage) are explained in FOM-I-320.50-59.

320.8.1 Eligible for More Than One RR Act Annuity

If the spouse or divorced spouse is eligible for another annuity under the Railroad Retirement Act, refer to FOM-I-120.5.

320.8.2 Retroactive Annuities

The retroactive periods are described in FOM-I-112.10. If the eligibility requirements were met any time during the retroactive period of the application, they are considered to have been met on the filing date.

A retroactive reduced annuity may not be paid if the application is filed 9-1-1983 or later, because the reduced annuity may not begin before the month the application is filed.

320.9 Insured Status Requirement for Tier 1 Component

Employees must have an SSA *Fully Insured Status* based on combined SSA wages and railroad earnings to qualify their spouse or divorced spouse for a Tier 1 component.

The Quarter of Coverage (QC) requirement for *Fully Insured Status* for employees born after 1928 is 40 QCs. Therefore, if employees have at least 120 months of railroad service, they are assumed to have at least 40 quarters of coverage.

If employees have less than 120 months of railroad service, but at least 60 months of railroad service after 1995, their SSA wages must provide the additional quarters of coverage needed for an SSA *Fully Insured Status* to qualify their spouse or divorced spouse for the Tier 1 component. Refer to RCM 5.6.5 for more information about a *Fully Insured Status*.

320.10 General Requirements for Spouse Annuity Based on Age

The spouse age requirement depends on the employee's annuity beginning date (ABD), the employee's years of service and the employee's age. This is summarized in the following charts.

320.10.1 Spouse Age Requirements When Employee Age and Service Annuity has at Least 360 Months of Railroad Service

If the employee is retired based on age and service:	and the employee retired at:	with an employee ABD:	the spouse annuity can begin the first full month the spouse is age 60. The spouse Tier 1 will:	The Tier 2 will:
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and attained age 60 and acquired 360 months of railroad service before July 1984,	age 60 or later,	July 1, 1974, or later,	not have an age reduction. Note: For these cases, the spouse annuity did not begin before January 1, 1975.	not have an age reduction.
and either attained age 60 or acquired 360 months of railroad service in July 1984 through December 2001,	age 62 or later,	July 1, 1984, or later,	not have an age reduction.	not have an age reduction.
and either attained age 60 or acquired 360 months of railroad service in July 1984 through December 2001,	age 60 through age 61	July 1, 1984 through December 31, 2001	have an age reduction based on the employee's age reduction until both the spouse and the employee have attained age 62. The spouse will then have an age reduction for the number of months the spouse is under FRA when both the spouse and the employee are age 62.	not have an age reduction.
and attained age 60 and acquired 360 months of railroad service at any time,	age 60 or later	January 2002 or later	not have an age reduction	not have an age reduction.

320.10.2 Spouse Age Requirements When Employee Disability Annuitant has at Least 360 Months of Railroad Service

If the employee is retired based on disability with an ABD:	and the employee has attained:	the spouse annuity can begin the first full month the spouse is age 60. The spouse Tier 1 will:	The Tier 2 will:
Before July 1, 1984,	age 60,	not have an age reduction.	not have an age reduction
July 1, 1984, or later,	age 60,	have an age reduction depending on the spouse ABD. <ul style="list-style-type: none"> • If the spouse annuity begins before January 2002, and begins before the spouse FRA, the spouse Tier 1 will have an age reduction. (The spouse is deemed age 62 on the spouse ABD.) • If the spouse annuity begins January 1, 2002, or later, the spouse Tier 1 will not have an age reduction.* * The employee may have 360 SM on the EMPLOYEE SERVICE AND EARNINGS TOTALS (EDMID103) screen on EDM, but his disability annuity was based on less than 360 SM. The spouse will not qualify for the full age spouse annuity unless the employee chooses to use additional SM to attain 360. See FOM1 207.12.6 for handling these cases.	not have an age reduction

320.10.3 Spouse Age Requirements When Employee Age and Service Annuitant or Employee Disability Annuitant has 60 - 359 Months of Railroad Service

If the employee retired:	and the employee has attained	the spouse annuity can begin the first full month the spouse are age 62. The spouse Tier 1 will have an age reduction if the spouse retires:	The spouse Tier 2 will have an age reduction if the spouse retires at the RRB before attaining:
before 1975 based on at least 120 months of railroad service,	age 65,	at RRB before attaining FRA.	age 65.
in 1975, or later, based on at least 120 months of railroad service, including some railroad service before August 12, 1983,	age 62,	at RRB before attaining FRA.	age 65.
in 1975, or later, based on at least 120 months of railroad service and no railroad service before August 12, 1983,	age 62,	at RRB before attaining FRA.	FRA.
January 2002 or later, based on 60-119 months of railroad service with at least 60 months of railroad service after 1995, and had some railroad service before August 12, 1983,	age 62,	at RRB or SSA before attaining FRA. (The employee must have an <i>SS Act Insured Status</i> to qualify the spouse for a Tier 1 benefit.)	age 65.
January 2002 or later, based on 60-119 months railroad with at least 60 months of railroad service after 1995, and did not have railroad service before August 12, 1983,	age 62,	at RRB or SSA before attaining FRA. (The employee must have an <i>SS Act Insured Status</i> to qualify the spouse for a Tier 1 benefit.)	FRA.

320.10.4 Additional Requirements for Male Spouse Annuity

In addition to the spouse requirements in sections FOM-I-320.10.1-3 above, the following applies to a male spouse:

A. One-Half Support

Before March 1, 1977, a male spouse had to be at least 50% dependent on the female employee's income, for the 12 months prior to the employee's ABD, for the male spouse to qualify for a spouse annuity (Tier 1 and Tier 2) or to be included in the employee's O/M computation. See RCM 4.7.28 and 4.7.41 for details of evidence that was required.

A male spouse does not need to be dependent on or receive one half support from the female employee in order to qualify for a spouse annuity effective March 1, 1977.

B. Annuity Based on Child-in-Care

- Before May 1, 1983, a male spouse annuity was not payable based on a child of the employee being in his care.
- Effective May 1, 1983, a male spouse under FRA may qualify for a Tier 1 component only of a spouse annuity based on a child of the employee being in his care.
- Effective September 1, 2010, a male spouse under FRA may qualify for both the Tier 1 and Tier 2 components of a spouse annuity based on a child of the employee being in his care.

320.11 Current Amount of Spouse Annuity Age Reduction

320.11.1 Spouse of Employee Who Has 120-359 Months Service

In general, if the employee has less than 360 months of railroad service, and the spouse is entitled based on age, the age reduction factor for a reduced spouse Tier 1 and Tier 2 components are 1/144 for the first 36 months the spouse is under Full Retirement Age (FRA) and 1/240 for each additional month the spouse is under FRA on the ABD.

320.11.2 Spouse of Employee Who Has Less Than 120 Months Service

If the employee has less than 120 months of railroad service but has 60-119 months of railroad service with at least 60 months of railroad service after 1995, the spouse Tier 1 and Tier 2 components are reduced by 1/144 for the first 36 months the spouse is under *FRA* and by 1/240 for each additional month the spouse is under *FRA* on the RRA spouse ABD, or, if earlier, the spouse's social security benefit date of entitlement.

320.11.3 Spouse of 60/30 Employee

Currently, the spouse Tier 1 and Tier 2 components do not have an age reduction if the employee has at least 360 months of railroad service. However, if the employee age and service annuity ABD is before age 62 and before January 1, 2002, refer to FOM-I-320.12.

320.12 Spouse Tier 1 Age Reductions Before 1-1-2002

320.12.1 Spouse of Age and Service Employee

If the employee either attained age 60 or acquired 360 months of railroad service between July 1984 and December 2001 and the employee age and service annuity ABD is before age 62 and before January 1, 2002, the spouse Tier 1 had an age reduction.

A. Adjustment Before Age and Service Employee and Spouse Attain Age 62

The spouse (with or without a child-in-care) received a Tier 1 component based on 1/2 of the employee's age reduced Tier 1 component until both the employee and the spouse attained age 62 for a full month.

B. Age 62 Recalc When Both the Employee and Spouse are Age 62

When both the employee and spouse are age 62 for a full month, the spouse entitled based on child-in-care received an unreduced Tier 1 component. The spouse entitled based on age received a Tier 1 component reduced by 1/144 for the first 36 months the spouse is under FRA plus 1/240 for each additional month the spouse is under FRA on the effective date of the adjustment. If the employee attained age 60 or acquired 30 years of service between July 1, 1984 and December 31, 1986, the spouse age reduction factor was then divided by 2. Otherwise, the full age reduction factor applied.

320.12.2 Spouses of Disabled Employee

If the employee was a disability annuitant with at least 360 months of railroad service and an ABD after June 30, 1984, and the spouse was entitled based on child-in-care, there was no spouse Tier 1 component age reduction. If the spouse was entitled based on age, the spouse Tier 1 component age reduction depended on the spouse ABD.

A. Spouse ABD Before January 2002

If the spouse annuity began before January 2002, and began before the spouse FRA, the spouse Tier 1 component was reduced by 1/144 for the first 36 months under FRA plus 1/240 for each additional month the spouse was under FRA on the ABD. However, a spouse age 60-61 $11/12$ was deemed to be age 62 on the spouse ABD. The age reduction months were counted from deemed age 62 until the FRA month for that spouse.

B. Spouse ABD January 2002 or Later

If the spouse annuity began January 1, 2002 or later, the spouse Tier 1 component did not have an age reduction.

320.12.3 Age Reductions for Annuity Initially Paid Before October 1981

The age reduction factor for a reduced spouse RR formula annuity initially paid prior to October 1981, is 1/180 for every month the spouse is under age 65 on the ABD (or date of annuity increase if prior to 1-1978). See RCM 8.8, G-353a.1 instructions and RCM 9.1 for details on proration of age reduction in effect before October 1981.

320.13 Spouse Annuity Marriage Requirements

320.13.1 Duration of Marriage

The applicant must meet the definition of “spouse” in FOM-I-320.5 and meet one of the following “duration of marriage” conditions:

1. Be married to the employee for a period of at least one year immediately prior to the annuity beginning date. The ABD would be the first day of the month in which the anniversary occurs. For example, if the marriage occurred on 3-29-2004, the anniversary falls on 3-29-2005. The ABD can be as early as 3-1-2005. However, the application may be filed as early as 3 months before the earliest ABD. In the above example, the date of filing could be as early as 12-1-2004.

The requirement to be married to the employee for a period of at least one year immediately preceding the day on which the spouse annuity application is filed need be met only once. Certain types of prior entitlements allow the one-year requirement to be waived for a subsequent eligibility.

Type 1 - A spouse met the one-year requirement to previously receive a spouse annuity, and that annuity terminated due to divorce. If that spouse remarries the same railroad employee, and meets the other requirements for a spouse annuity, the one-year marriage requirement is waived for that subsequent spouse annuity.

Type 2 - A divorced spouse annuitant, previously married to the employee annuitant ten years, remarried the same employee. The one-year requirement is waived for the second marriage. If all other eligibility requirements are met, the annuity beginning date may be the month of the subsequent marriage: the month after the month the divorced spouse annuity terminates.

NOTE: If a claimant currently married less than one year to the employee, but previously married at least one year to that employee, DID NOT previously receive a spouse annuity (potentially entitled), the claim must be denied for failure to meet the one-year marriage requirement; or,

2. Be the natural mother or father of the employee's child. This requirement is met if a live child was born to the employee and the spouse. Such a child need not still survive. The ABD cannot be earlier than the first full month the spouse meets this requirement; or,
3. Have been eligible for a widow(er)'s, parent's, or disabled child's insurance annuity on any account under the RR Act in the month before the month of marriage to the employee.

Eligibility to a surviving divorced spouse, surviving divorced young mother/father or remarried widow(er) annuity in the month before the month of marriage to the employee, DOES NOT fulfill the marriage requirement.

Under this requirement, the term "eligible" means that the spouse received or would have been entitled to an annuity if an application had been filed and (s)he had attained the required age. It is not necessary for the spouse to have filed a survivor application or to have attained age 60 before the month of marriage to be eligible for a spouse annuity from the first day of the month of the current marriage.

In both examples below, the one year marriage requirement is waived.

EXAMPLE #1: The young widow of a deceased RR employee would be eligible for a widow's annuity if she were age 60. Before she attains age 60, she marries a disabled RR annuitant who has attained age 62 and has a young child. She is eligible for a spouse annuity from the month of her remarriage based on having the EE's child in her care because she was eligible for a widow's annuity in the month before her remarriage.

EXAMPLE #2: The widow of a deceased RR employee will be eligible for a widow's annuity in August 1980, the month she attains age 60. In June 1980, she marries a retired RR employee who is receiving a 60/30 annuity. She is eligible for a spouse annuity from 8-1-1980 since she was eligible for a widow's annuity in the month before her remarriage.

320.13.2 Living With

Prior to August 12, 1983, all spouse applicants had to be "living with" the employee as of the spouse annuity application filing date. Effective August 12, 1983, the 1983 RR Act Amendments eliminated "living-with" as an eligibility requirement for a legal spouse.

Living-with is still a requirement for a deemed spouse applicant. This concept means:

1. The spouse and employee must have been members of the same household; or
2. The spouse must have been receiving regular contributions (See RCM 4.6.25) toward support from the employee; or
3. The employee must have been under a court order to contribute to the spouse's support. A spouse's annuity could not, by virtue of the retroactive feature of a court order for support, begin earlier than the first of the month in which the court order is dated, because in spite of the retroactive feature, the spouse could not actually meet all the qualifications of a "spouse" until the order was entered.

320.14 Requirements for Spouse Annuity Based on Child-in-Care

320.14.1 Eligibility Requirements

A spouse under FRA may qualify for a spouse Tier 1 and Tier 2 if he or she, individually or jointly with the employee, has the employee's child-in-care. The child must meet the conditions of both A and B below.

See FOM1 320.10.4 B for details on when a child-in-care annuity may be paid to a male spouse.

A. Relationship and Dependency

The child must:

1. Be the employee's natural, legally adopted, equitably adopted, stepchild, or, under certain conditions, a grandchild whose parents are deceased or disabled, as explained in RCM 4.4; and,
2. Be dependent on the employee, as explained in RCM 4.7; and
3. Be unmarried. A child who is widowed or divorced when the spouse applies for a child-based annuity is considered unmarried. However if the initial entitlement based on having a child-in-care terminates due to the child's marriage, the spouse cannot later become re-entitled to an annuity based on that child's unmarried status. If the marriage was annulled, refer the case to your attorney-advisor.

B. Minor Child or Disabled Child

The child must be either:

1. under age 18; or,
2. have a permanent disability that began before the child attained age 22 and which prevents any kind of regular employment. Note: If the spouse was previously entitled based on having a disabled child in his/her care and the annuity terminated due to the child's recovery, it is possible to become entitled again if the child meets the re-entitlement requirements as explained in DCM 3.10.10. If the re-entitlement requirements are met more than 7 years after the termination of the previous annuity, the spouse will be entitled to tier 1 only. In such cases, the APPLE application must be marked for manual review.

320.14.2 Definition of Child-in-Care

The child must be in the spouse's care. A child is in the spouse's care if the spouse exercises parental control over, and is responsible for, the welfare and care of the child. A child who is permanently disabled, but mentally competent, is considered to be "in

care" if the spouse performs personal services. The RRB will make the final determination regarding the personal services performed and whether or not they constitute the child being in the spouse's care (see RCM 4.7.95).

320.14.3 First Full Month Requirement

Section 103 of P.L. 98-76 amended the RRA to make the annuity beginning dates under the RRA conform to those under the SSA. Since SSA has the full month of entitlement rule for child-in-care, the RRB also applies this rule. For applications filed after August 1981, a spouse born September 2, 1919, or later is not eligible for Tier 1 in any month before the first full month throughout which the entitled child is in care. If filing on the basis of a disabled child, the child must have been in the spouse's care and disabled for every day of an entire month for the spouse to be first entitled.

320.14.4 Nancy Johnson Cases -

In August 1993, Board Order 93-108 approved payment of retroactive Tier 1 benefits to spouse, widow and widower annuitants who, during the period January 1, 1986, through July 31, 1992, were entitled to an annuity based on having a minor child between ages 16 and 18 in care, and that benefit was terminated solely because the minor child attained age 16. The Tier 1 component does not retroact prior to January 1, 1986. This Board Order applies to both female spouse annuitants and male spouse annuitants. These are called "Nancy Johnson" cases.

From May 1, 1983, through December 31, 1985, the child must have been under age 16 to qualify a male spouse for an annuity. From August 1981 through December 31, 1985, the child must have been under age 16 to qualify a female spouse for Tier 1 and the child must have been under age 18 to qualify a female spouse to Tier 2.

320.14.5 Age Reduction for Spouse With Child-in-Care

In general, the spouse Tier 1 component does not have an age reduction if the spouse has the employee's child-in-care. Before RRSIA, an exception applied when the employee has at least 360 months of railroad service and has an age and service annuity ABD before age 62 and before January 1, 2002. The spouse Tier 1 component age reduction is described in FOM-I-320.12.

320.15 General Requirements for Divorced Spouse Annuity

The divorced spouse annuity cannot begin before the employee annuity unless the divorced spouse meets the requirements in FOM1 111.12 for an independently entitled divorced spouse annuity. Regardless of the employee's total railroad service months, the divorced spouse annuity cannot begin before the employee meets the age requirement in the chart below.

The type of SS Act insured status makes a difference in employee 60/30 cases and employee disability cases.

If, based on combined railroad and SSA earnings, the employee has:	and the employee is receiving an RRA employee annuity and is at least:	the divorced spouse annuity can begin:	The annuity will have an age reduction if the divorce spouse ABD is:
an SS Act Fully Insured Status (40 Quarters of Coverage for those born after 1928),	age 62 for a full month,	the first full month the divorced spouse is age 62.	before the divorced spouse attains FRA.
An SS Act Disability Insured Status (disability freeze),	age 62,	the first full month the divorced spouse is age 62.	before the divorced spouse attains FRA.

320.16 Divorced Spouse Marriage Requirements

320.16.1 The 10-Year Marriage Requirement for Divorced Spouse

The divorced spouse must have been married to the EE for a period of at least 10 years immediately before the date the divorce became final. The 10-year marriage requirement is met when the final decree of divorce is dated on or after the 10th anniversary of the applicant's and the employee's marriage.

Example, if the date of marriage is June 23, 1956 and the date of divorce is June 22, 1966, the divorced spouse applicant is not eligible.

The 10-year period of marriage must immediately precede the divorce. However, the 10-year requirement may be met if the period of marriage was interrupted by a previous divorce, provided the employee and spouse remarried in the same year or in the calendar year immediately following the year in which the divorce took place. If the remarriage does not occur in the prescribed time, two periods of marriage cannot be "added together" to produce 10 years. Example: The employee and spouse were married on April 9, 1950, and divorced on June 8, 1957. They remarried on July 15, 1958, but were again divorced on November 3, 1960. The 10-year marriage requirement is met because they remarried before the end of the calendar year following the year the divorce took place. When this requirement is met, the time period during which the couple was divorced is counted as if they had been married.

If the employee and spouse in this example remarried in 1959, the 10-year marriage requirement would not be met. The divorced spouse then could qualify only if the second marriage lasted 10-years before the divorce. The first 7 years of marriage cannot be added to a subsequent period to produce 10 years.

If the 10-year marriage requirement is not met by the most recent period of marriage the divorced spouse may be eligible based on a previous 10-year period of marriage.

Example: The employee and spouse were married on April 9, 1950, and divorced on June 8, 1973. They remarried August 9, 1979, and were again divorced July 15, 1980. The divorced spouse may qualify based on the first 10-year marriage, because the employee and divorced spouse were married 10 years immediately before the divorce.

320.16.2 Divorce Decrees

If a divorce decree is signed one date and “entered” on another date, it is effective on the date it is “entered.” A divorce is deemed to exist throughout the month in which it is “entered.”

EXAMPLE: The divorce decree was “entered” on June 17, 1983 and the divorced spouse meets all other requirements for entitlement to a divorced spouse annuity. The ABD can be as early as June 1, 1983.

For further information about divorce decrees and foreign divorces, see RCM 4.3.

A. Types of Final Divorce Decrees

A final divorce completely dissolves a marriage and restores the parties to the status of single persons. These can also be referred to as:

1. absolute divorce, or
2. divorce a vinculo matrimonii

Some divorce decrees contain the Latin phrase “nunc pro tunc”(then for now) and two dates. This is an entry made now for something previously done and has a retroactive effect. For example, a judge may issue a “nunc pro tunc” order to correct a trial record made earlier. The correction would be considered effective from the date of the original record rather than the date of the correction. Headquarters must make a determination as to the correct date of divorce in cases where the final divorce decree has the phrase “nunc pro tunc.”

B. Actions that are not Divorces for Entitlement Purposes:

The following legal actions are not considered to be final divorce decrees for entitlement purposes:

1. a legal separation,
2. qualified or preliminary divorce,
3. divorce from bed or board,
4. divorce a mensa et thoro,
5. interlocutory decree, or
6. decree nisi

C. Allegations

Do not accept the applicant's allegation that the marriage was legally terminated as a result of separation of parties, abandonment, or limited divorce as sufficient for entitlement unless specifically covered by the laws of the State in which the divorce took place.

D. Annulments

Annulment decrees should be referred to P&S. A decree of annulment usually constitutes a judicial declaration that a purported marriage is:

1. void (legally non-existent from its beginning) or
2. serves to terminate a voidable marriage (a defective marriage which is valid unless and until declared void by a court action).

However, in some places, a decree of annulment may serve to terminate a valid marriage (although such action is usually called a divorce).

320.16.3 When A Divorce Decree Can Be Used As Proof Of Marriage

A final decree of divorce presupposes that the marriage terminated by the divorce was a valid one. Thus, in most cases, proof of the divorce also constitutes evidence of the validity of the divorced spouse's marriage to the employee. Additional development of proof of marriage would only be required when:

1. Development is necessary to establish the validity of the divorce decree itself; or,
2. Information in file, in the divorce decree, etc., raises a reasonable doubt of the validity of the marriage; or,
3. The divorce decree does not contain sufficient information to determine that the marriage lasted at least 10 years.

If any of these exceptions apply, proof of marriage must be obtained.

320.16.4 Divorced Spouse Must Be Unmarried

A divorced spouse annuity is not payable for any month in which the divorced spouse is married. However, divorced spouses can be entitled (or re-entitled) to divorced spouse annuities even though they remarry after the divorce from the employee, provided that:

1. All other requirements are met; and
2. The later marriage terminated by death, divorce or annulment.

This provision applies even though the divorced spouses can qualify for SS benefits on the later spouses' wage records; no matter how many times they remarried, provided all marriages have ended; and regardless of when the marriage(s) took place or ended in relation to this provision. Entitlement cannot, however, be established for any month(s) prior to the month in which the later marriage ended.

320.17 Divorced Spouse Annuity Age Reduction

320.17.1 Tier 1 Component

Divorced spouse entitlement is limited to the Tier 1 component, which is the amount of the SS formula spouse's benefit. No Tier 2 component is payable.

320.17.2 Age Reduction When Employee Has at Least 120 Months Service -When No Previous Entitlement to Spouse Reduced Age

The age reduction factor for a reduced divorced spouse annuity is 1/144 for the first 36 months the divorced spouse is under FRA and 1/240 for each additional month the divorced spouse is under FRA on the RRA divorced spouse ABD.

320.17.3 Age Reduction When Employee Has Less Than 120 Months Service - When No Previous Entitlement to Spouse Reduced Age

If the employee has less than 120 months of railroad service but has 60-119 Months of Railroad Service with at least 60 Months of railroad service After 1995, the divorced spouse annuity is reduced by 1/144 for the first 36 months the divorced spouse is under FRA and by 1/240 for each additional month the divorced spouse is under FRA on the RRA divorced spouse ABD, or, if earlier, the divorced spouse's social security benefit date of entitlement.

320.17.4 Age Reduction When There was Previous Entitlement to Spouse Reduced Age Annuity

Effective August 12, 1983, or later, when the divorced spouse was previously entitled to a spouse annuity that was reduced for age, the age reduction factor from the previous spouse annuity is used as the age reduction factor of the divorced spouse annuity. This rule applies even when there is a gap in entitlement between the spouse annuity and divorced spouse annuity.

Prior to August 12, 1983, the divorced spouse annuity age reduction was always calculated based on the ABD of the divorced spouse annuity.

320.17.5 Divorced Spouse Previously Entitled to a Reduced 60/30 Annuity Under '83 Amendments

If the divorced spouse was previously entitled to a spouse reduced 60/30 annuity under the '83 Amendments, the age reduction that applied to the spouse does not carry over

to the divorced spouse annuity. The age reduction, if any, of the divorced spouse annuity is based on the number of months the divorced spouse is under FRA on the annuity beginning date of the divorced spouse annuity.

320.18 Divorced Spouse RIB/DIB Entitlement

Divorced spouses must not be entitled to their own RIB or DIB, based on a PIA which is equal to or greater than one-half of the employee's PIA-1. Use the MBR PIA based on the divorced spouse's own earnings record to determine if this provision applies. Do not use the amount of the RIB or DIB currently payable. If the RIB or DIB PIA equal or exceeds 50% of the employee's PIA1, the divorced spouse annuity application must be denied.

EXAMPLE: The employee's Tier 1 PIA is \$620.40. The divorced spouse is entitled to an RIB of \$262.50 based on a PIA of \$350.00. Because her PIA (\$350.00) is greater than one-half of the employee's PIA (\$310.20), she is not eligible for a divorced spouse annuity.

Even though a divorced spouse may be entitled to an annuity because her RIB/DIB PIA does not equal or exceed one-half of the employee's Tier I PIA, she may be entitled to a zero rate annuity. This may occur when a divorced spouse's annuity is reduced for age, and her SS benefit amount reduces Tier 1 to zero.

In some cases, the divorced spouse may wish to wait until Full Retirement Age to file, since Tier 1 will then exceed the SS benefit. RBD will ask you to contact a divorced spouse with a zero rate reduced annuity, who would receive an annuity if the divorced spouse annuity began at Full Retirement Age. The divorced spouse may wish to cancel the reduced annuity application.

EXAMPLE: One-half of the employee's PIA is \$310.20. The divorced spouse's annuity Tier 1 is \$232.60 at age 62. The divorced spouse's DIB PIA and benefit is \$296.70. She is entitled to a divorced spouse annuity, because her DIB PIA is less than one-half of the employee's PIA. However, her annuity rate is zero, because the SS benefit (\$296.70) exceeds her tier I (\$232.60). If the divorced spouse ABD were at Full Retirement Age (FRA) 65, she would be entitled to the difference between the unreduced Tier 1 and her SS benefit.

Also note that the divorced spouse who is not eligible for an annuity because of this requirement may be eligible for a surviving divorced spouse's annuity when the employee dies. A surviving divorced spouse's RIB/DIB PIA may be equal to 100% of the employee's death PIA. A divorced spouse who has a RIB/DIB greater than 50% but less than 100% of the employee's PIA should be advised to contact the RRB when the employee dies.

320.19 Other Reductions to Spouse and Divorced Spouse Annuities

320.19.1 Reduction for Public Service Pension

Refer to FOM-I-120.40 for all public service pension information.

320.19.2 Reduction for Worker's Compensation Or Public Disability Benefit

Tier 1 of a spouse or divorced spouse annuity may be reduced if the reduction for worker's compensation or a public disability benefit applies to the employee's disability annuity. The reduction is first applied to the spouse or divorced spouse tier I, then to tier I of the employee's disability annuity. See FOM-I-120.35 for more information.

320.19.3 Reduction for Earnings

A spouse or divorced spouse annuity may be reduced for earnings as explained in FOM-I-1120 and FOM-I-1121.

320.19.4 Eligibility for Another Railroad Retirement Act Annuity

If the spouse or divorced spouse is eligible for another annuity under the Railroad Retirement Act, refer to FOM-I-120.5.

320.20 Development of Spouse Annuity Applications

320.20.1 Development Policy for Spouse Annuities

It is the RRB's policy to solicit an application whenever it is determined that a spouse may be eligible for an annuity upon filing. Both manual and mechanical means are used to develop such claims as explained in the following section.

320.20.2 Forms and Evidence Requirements for Spouse Annuity

Evidence	When Required
Application Form AA-3	Always.
Self-Employment and Substantial Service Questionnaire (Form AA-4)	Required when a spouse has been self-employed during the 6 months preceding the annuity beginning date.

Application for Substitution of Payee (AA-5)	Required if a substitute payee is to be appointed for a spouse.
Employee's Certification (G-346)	Required in all cases except when the spouse's application filing date is less than 90 days from the voucher date of the employee's initial award.
Age of Spouse	When spouse entitlement is based on age.
Marriage	Always, (Prior to 6-1-1958 documentary evidence was not required, spouse's statement was acceptable if verified by employee's Form G-346.)
Public Service Pension Questionnaire (G-208)	When AA-3 indicates spouse is receiving or will receive a public service pension. It is not necessary to secure form G-208 if the application is taken on APPLE. The form must be obtained if the application is taken on a paper AA-3.
Living-With (Members of Same Household)	If filing as a deemed spouse. The employee and deemed (defacto) spouse should reside at the same address.
Termination of Prior Marriage	If reasonable doubt whether prior marriage of either employee or spouse was ended.
AA-19a, Application for determination of Child Disability	If a spouse is under FRA (or age 60 in a 60/30 case) and the only child-in-care has attained age 18 and is alleged to be disabled.
Proof of Public Service Pension Rate	Required to document G-208, with rate effective date, if a reduction for a public service pension (PSP) applies, and the estimated spouse Tier 1 after all reductions is greater than zero.

Proof of Public Service Pension Eligibility Date and Starting Date	Required if a spouse may be exempt from PSP reduction because the PSP eligibility was earlier than 12-1-1982, but the pension began after 11-30-1982. Proof is also required if a reduction exemption is claimed based on dependency and the eligibility is before 7-1-1983, but the PSP began after 6-30-1983. See FOM1 120.40.3 for a complete list of exemptions.
Statement Regarding Contributions and Support (G-134)	Required if spouse claims exemption from PSP reduction based on dependency.
Child-in-Care	Only when a spouse under FRA (or under age 60 in a 60/30 case) is applying for an annuity on the basis of having a child-in-care.
Proof of Child's Age, Marital Status and Relationship to Employee	If child-in-care necessary to qualify spouse under FRA (or under age 60 in 60/30 case) for unreduced annuity. The proofs required are explained in RCM Part 4. It is preferable to get such proofs for the youngest unmarried child under age 18.
Notice of Protection of Filing Date for Social Security Benefits (RR-8)	Submit with the Form AA-3 only if a spouse is eligible for social security benefits, or will be eligible within 3 months, and wishes to use the filing date of the Form AA-3 as the filing date of an application for social security benefits.
Employee's Certification of Termination of Service and Relinquishment of Rights (G-88)	Required when a spouse files if the employee did not previously relinquish his rights and no G-346 is submitted or item 8 of the G-346 was crossed out. Do not solicit for a divorced spouse application
Earnings Information Request (G-19F)	Required if a spouse had pre-retirement non-railroad employment earnings and the ABD is in a prior year or the ABD is in the current year and the applicant has ceased the non-railroad work after the month of the ABD.

320.20.3 RL-100 Program

Form RL-100 is a computer-prepared card notice addressed to the employee annuitant stating that the spouse may be eligible for benefits and how the spouse can get such benefits.

The cases are selected and the cards prepared when:

1. Spouse attains age 59 years 9 months if employee annuitant is at least age 60, has 30 years of service; or
2. Spouse attains age 61 years 9 months if employee annuitant is at least age 62; or
3. Disabled employee annuitant attains age 59 years 9 months and (s)he has 30 years of service and the spouse is at least age 59 years 9 months, or
4. Disabled employee annuitant attains age 61 years 9 months if spouse is at least age 62.

320.20.4 Manual Release of RL-100

At the time a suspended employee annuity is reinstated, RBD will prepare an RL-100 notice if the annuity was in suspense on the G-96 cut-off date in the month the case would have been selected by the computer for preparation of an RL-100.

Enter the employee's name, address, and claim number, the servicing field office address and, in the upper left corner just below the form number the month of eligibility. If the employee must relinquish rights before the spouse can receive an annuity, also enter "R of R needed." Release the card in a window envelope to the employee.

320.20.5 When Direct Development Is Required

RBD will develop a claim by direct correspondence when the applicant lives outside the U.S., Canada or Mexico. Correspondence requesting proofs should contain information about where evidence may usually be obtained.

320.20.6 Establishing Minor Child's Disability

A determination on the alleged disability of a minor child in the spouse's care is not required until the child attains age 18 (or age 16 if child-in-care of a male spouse). When the child is the applicable age, the field office will develop the required AA-19a application and proofs to establish the spouse eligibility based on a disabled child-in-care and/or to establish the child's Medicare entitlement.

320.20.7 When Employee will not Submit a Required Form G-346

When a Form G-346 is required and the employee is physically unable to complete a Form G-346 or refuses to submit a Form G-346, the field office is to secure a statement from the spouse explaining that to the Spouse's knowledge, neither the Employee nor the Spouse have filed for or secured a divorce.

NOTE: If neither a Form G-346 nor statement can be secured, refer the case to P&S-RAC. P&S-RAC will make a final determination (e.g., acceptance or denial) based on the circumstances of each case.

320.20.8 Spouse Annuity under the Retirement O/M

To qualify for an increase in a spouse annuity under the O/M or for a spouse to be included in the computation of the employee's annuity under the O/M as an IPI the spouse must meet the qualifying requirements of the SS Act for entitlement to a wife's, or husband's benefit. See RCM 8.3.22.

Note: If the employee's annuity is increased under the "Spouse Election" procedure, refer to RCM 1.3, Appendix C.

320.25 Development of Divorced Spouse Annuity Applications

320.25.1 Development Policy for Divorced Spouse Annuities

The RRB does not solicit divorced spouse applications. The divorced spouse must initiate the annuity application.

There are no provisions in the RRA for paying a divorced spouse annuity based on having the employee's minor or disabled child-in-care. A divorced spouse may be independently entitled to an annuity before the employee retires, if the divorced spouse meets the requirements in [FOM1 111.12](#) for an Independently Entitled Divorced Spouse (IED) annuity. Furthermore, see [FOM1 320.25.4](#) which details the change in law allowing IEDs and the associated steps when taking an application for an IED annuity.

320.25.2 Forms and Evidence Requirements for Divorced Spouse Annuity

Evidence	When Required
Application Form AA-3	Always.
Application for Substitution of Payee (AA-5)	Required if a substitute payee is to be appointed for a spouse.
Age of Spouse	When spouse entitlement is based on age.

Marriage	Always, (Prior to 6-1-1958 documentary evidence was not required, spouse's statement was acceptable if verified by employee's Form G-346.)
Divorce	Always. The evidence should indicate that the duration of the marriage was at least 10 consecutive years.
Self-Employment and Substantial Service Questionnaire (Form AA-4)	Required when a divorced spouse has been self-employed during the last 6 months preceding the annuity beginning date.
Public Service Pension Questionnaire (G-208)	When AA-3 indicates spouse is receiving or will receive a public service pension. It is not necessary to secure form G-208 if the application is taken on APPLE. The form must be obtained if the application is taken on a paper AA-3.
Proof of Public Service Pension Rate	Required to document G-208, with rate effective date, if a reduction for a public service pension (PSP) applies, and the estimated spouse Tier 1 after all reductions is greater than zero.
Proof of Public Service Pension Eligibility Date and Starting Date	Required if a spouse may be exempt from PSP reduction because the PSP eligibility was earlier than 12-1-1982, but the pension began after 11-30-1982. Proof is also required if a reduction exemption is claimed based on dependency and the eligibility is before 7-1-1983, but the PSP began after 6-30-1983. See FOM1 120.40.3 for a complete list of exemptions
Statement Regarding Contributions and Support (G-134)	Required if spouse claims exemption from PSP reduction based on dependency.
Termination of Prior Marriage	If reasonable doubt whether prior marriage of either employee or spouse was ended.

Proof of Other Marriage Termination	Required when a divorced spouse was remarried between her divorce from the employee and her filing as “unmarried” for a divorced spouse annuity.
Notice of Protection of Filing Date for Social Security Benefits (RR-8)	Submit with the Form AA-3 only if a spouse is eligible for social security benefits, or will be eligible within 3 months, and wishes to use the filing date of the Form AA-3 as the filing date of an application for social security benefits.

320.25.3 Divorced Spouse Annuities and the Retirement O/M

The divorced spouse's annuity rate may never be increased under the O/M to an amount that exceeds his/her RR formula Tier 1 rate. The divorced spouse is not included in the family group when computing the Retirement O/M family maximum. See RCM 8.3.21.

320.25.4 Independently Entitled Divorced Spouse (IEDS) Annuities

Effective August 17, 2007, it is possible to pay a divorced spouse before the employee is entitled to an annuity. In order to pay this independent annuity to the divorced spouse, the employee must be eligible for an annuity. When taking the application, determine the following:

1.	Is the employee eligible for an age and service annuity? Check EDM to make sure the employee has 120 months of service, or 60 months after 1995. See the EMPLOYEE SERVICE AND EARNINGS TOTALS (EDMID103) and/or the CREDITABLE YEARLY TOTALS W SSA (EDMID104) screen. Develop lag service if necessary for eligibility.
2.	Are the employee and the divorced spouse age 62 for a full month? The divorced spouse will have to present proof of age for the employee as well as her/himself. If proof of age for the employee can't be obtained, the application will have to be denied.
3.	Have the employee and the divorced spouse been divorced for 2 full years? The first ABD for an IEDS is August 17, 2007. Therefore, the date of divorce for that ABD can be no later than August 16, 2005. If the date of divorce is later, the earliest ABD is the first day of the month two full years after the divorce. This rule is in addition to normal rules that apply to determining the ABD.

Enter the application in APPLE as usual. The following entitlement exceptions will apply:

- The employee will not have to be entitled to an annuity.
- The employee will not have to quit work in the railroad industry.
- The employee will not have to relinquish rights in order for the divorced spouse to receive an annuity.
- Normal retroactivity will apply to these annuities with the exception that no independently entitled divorced spouse award will retroact before 08-17-2007.
- The divorced spouse annuity will not be reduced for the employee's earnings.

The divorced spouse will have to stop work in the railroad industry and relinquish rights before an annuity will be paid. The reductions to the annuity are the same as with the regular divorced spouses (e.g., PSP, SS benefits, work deductions).

320.30 Spouse/Divorced Spouse Annuity Beginning Date

The "Annuity Beginning Date" (ABD) is explained in FOM-I-111.

320.31 Death of Spouse or Divorced Spouse Applicant Before ABD

If there is a valid spouse or divorced spouse annuity application pending when the applicant dies, refer to FOM-I-1581.35.7.

320.32 Suspension of Spouse or Divorced Spouse Annuity

The procedure explaining when to suspend a spouse/divorced spouse RRB annuity is in RCM 6.3. The field office instructions for FAST-S/T for suspending the RRB annuity are in FOM-I-1560.

The RRB field office is not authorized to suspend social security benefits being paid by the RRB without the permission of SSA (see FOM-I-715.25).

320.33 When a Spouse/Divorced Spouse Annuity Terminates

320.33.1 When Entitlement Ends for Spouse Annuity

A legal spouse's annuity terminates with the last day of the month before the month in which:

- The marriage to the employee annuitant is ended. If the marriage is ended by divorce, refer to FOM-I-320.50.
- The spouse dies;
- The employee's entitlement to an employee annuity ends; or

- The employee dies (See FOM-I-320.57).

320.33.2 When Entitlement Ends for a Spouse with a Child in Care

In addition to the events listed in FOM-I-320.33.1, the entitlement of a spouse under Full Retirement Age (or under age 60 in a 60/30 case) to an unreduced spouse's annuity ends with the last day of the month before the month in which the youngest child:

- Is no longer in care; or
- Marries; or
- Dies; or
- Attains age 18 and is not disabled. The procedure explaining the monthly age 18 attainment processing is in RCM 6.3.

EXCEPTION: For spouse annuity rates effective between, 9-1981 and 8-1992, a wife was eligible for Tier 2 until the child attained age 18. However, payment of tier 1 ceased when the child attained age 16.

When a disabled child age 18 or over recovers from disability, the spouse annuity is payable for 2 months after the month in which the child recovers.

Refer to FOM-I-320.40 if the spouse could qualify for an annuity based on age.

NOTE: A child age 18-22 who is a full-time student will NOT qualify a spouse for an annuity.

320.33.3 When a Divorced Spouse Annuity Terminates

A divorced spouse annuity terminates the last day of the month before the month in which:

1. The divorced spouse remarries. (Note: If the divorced spouse remarries the employee, refer to FOM-I-320.55.)
2. The divorced spouse becomes entitled to an RIB or DIB based on a PIA which equals or exceeds one-half of the employee's PIA;
3. The divorced spouse dies;
4. The employee dies (refer to FOM-I-320.57); or
5. The employee's entitlement to an annuity ends.

320.34 Field Office Processing Termination of Spouse or Divorced Spouse Annuity

The field office instructions for FAST-S/T for terminating the annuity are in [FOM1 1560](#).

The RRB field office is authorized to terminate social security benefits when the termination is due to the beneficiary's death (see [FOM1 715.25.3](#)). Therefore, the field office FAST-S/T termination code "51" due to the death of the spouse or divorced spouse should terminate both the RR annuity and any SS benefit.

The RRB field office is not authorized to terminate social security benefits without the permission of SSA, when the termination is for a reason other than the beneficiary's death (see [FOM1 715.25.3](#)). The field office should enter the FAST-S/T termination code of "57" due to the divorce of the spouse or remarriage of the divorced spouse to terminate the RRB annuity only. This action does not terminate any SS benefit payable to the spouse or divorced spouse.

If a post-entitlement event terminates the entitlement of an individual beneficiary to a railroad annuity, but entitlement to his/her social security benefit continues, jurisdiction for payment of his/her social security benefit may need to be transferred to SSA. Notify RSBD via email to review whether or not the jurisdiction of the social security benefit should be transferred to SSA.

RSBD must be notified if the spouse/divorced spouse RRB annuity was not terminated timely so that the overpayment can be addressed.

Furthermore, the termination of the spouse/divorced spouse annuity may affect jurisdiction of Medicare (see [FOM1 810.45](#)).

See additional details for handling situations in which the employee and spouse divorce in FOM1 320.50–320.54.

320.35 Spouse or Divorced Spouse Annuities Due but Unpaid

320.35.1 Death of Employee Annuitant

Entitlement to a spouse or divorced spouse annuity for a retroactive period can be established after the employee annuitant's death if the survivor files an RRB application for the spouse or divorced spouse annuity and the eligibility requirements for a spouse or divorced spouse annuity were met before the month in which the employee died as explained in FOM-I-112.10.

320.35.2 Death of Spouse or Divorced Spouse Annuitant

There may be an accrued spouse or divorced spouse annuity due if the folder or on-line screens contain:

1. Information indicating that the spouse or divorced spouse annuity payments were "suspended" effective a month before the month of death; or,
2. Information indicating that there are one or more uncashed spouse or divorced spouse annuity checks outstanding for month(s) before the month of death; or,
3. Information indicating that a spouse or divorced spouse annuity rate adjustment is needed that will increase the amount of the spouse annuity for months before the month of death.

320.35.3 When an Application is not Required for Accrued Annuity Based on Death of Spouse or Divorced Spouse

If the employee annuitant survives the spouse or divorced spouse, an application is not required for payment of the accrued spouse or divorced spouse annuity to the employee. Use the previously filed AA-1 - Employee Annuity Application as an application for any accrued annuity payable to the employee.

320.35.4 Application and Proofs

Headquarters will handle the claim according to the instructions in RCM 2.7, "Annuities Due But Unpaid at Death."

320.40 When Child No Longer In Care

The procedure explaining the monthly attainment processing of spouses and their children is in RCM 6.3.

320.40.1 Spouse Qualifies For Immediate Annuity Based on Age -

The spouse annuity based on child-in-care must be terminated and a new award prepared for the annuity based on age. The spouse will receive a new ABD based on the RRA provisions in effect at the time the annuity based on age is paid. Any public service pension reduction is based on the ABD for the previous annuity.

A modified application is required only when there is no break in entitlement, but an age reduction applies to the spouse annuity based on age. The application allows the person to "accept" the age reduction.

When the required forms are in the claim file and there is no break in entitlement, the annuity based on age may be processed without termination of the previous annuity. The new ABD and type of entitlement are required on the annuity award.

Release a letter to the spouse indicating the change in the basis of entitlement.

NOTE: If the spouse annuity based on a child-in-care was computed under 1974 Act or conversion rules and the basis for entitlement changes 10-1-81 or later, the unreduced

age annuity was still computed under 1974 Act or conversion rules as long as the spouse annuity entitlement did not end.

320.40.2 Break in Entitlement of One Month or More -

A new application is always required when there is a break in entitlement between the spouses annuity based on child-in-care and the spouse annuity based on age.

320.50 When the Spouse and Employee Divorce

The spouse annuity must be terminated when the spouse and the employee divorce. Entitlement ends with the last day of the month before the month in which the decree of divorce becomes final. Entitlement is not ended by a limited decree of divorce or an interlocutory decree of divorce. Legal separation does not necessarily terminate the marital relationship. State law determines whether or not a legal separation is considered a final divorce. Refer to [FOM1 930.5](#) for more information.

Example: If the spouse divorces the employee on April 15, 2021, the spouse annuity is effective through March 31, 2021. The termination effective date is April 1, 2021, and the last payment due will be paid in April.

The field office receiving the report of divorce is responsible for securing the divorce decree and terminating the spouse's annuity on FAST. A termination code of 57 should be entered. Refer to [FOM1 1565.40.1](#) or [RCM 9.7.21](#) for additional details on entering data on the FAST suspension/termination screen. The proof of divorce should be entered onto APPLE and scanned into WorkDesk. If a garnishment or partition of RRB benefits is mentioned in the divorce settlement or attached Qualified Domestic Relations Order (QDRO), forward the divorce decree to OGC. Refer to [FOM1 135.35](#) for more information regarding garnishments and partitions.

If the spouse is entitled to a divorced spouse annuity (see [FOM1 320.5.3](#)), Headquarters must prepare a new award to pay the divorced spouse annuity and should use the date of the final divorce decree as the filing date on the new award. Proof of divorce (see [FOM1 320.25.2](#)) is required.

NOTE: A defacto (deemed) spouse (see [FOM1 320.5.2](#)) is not eligible for a divorced spouse annuity regardless of the duration of the deemed marriage to the employee annuitant.

Refer to [FOM1 320.34](#) for additional details regarding Field Office handling of terminations for spouses/divorced spouses.

320.50.1 No New RRA Application Required -

No new RRA application is required when:

- A. A legal RRA spouse's annuity is terminated by divorce and the divorced spouse meets the requirements for a divorced spouse annuity, including attainment of age 62 and
- B. Was entitled to a spouse annuity on the same RRB claim number in the month before the divorce is final.

Note: An age reduction may apply when a spouse annuity is converted to a divorced spouse annuity. See [FOM1 320.50.4](#) for additional details.

320.50.2 New RRA Application Needed -

A new RRA application is needed for a divorced spouse annuity after a legal spouse's annuity is terminated by final divorce when:

- A. there is a gap in eligibility between the end of the spouse annuity and the annuity beginning date of the divorced spouse annuity (i.e. months before the divorced spouse is age 62) or
- B. entitlement to the divorced spouse annuity is based on a different RRB claim number.

320.50.3 Direct Deposit Data

The RRB field office should check for any change in the divorced spouse's name, bank, and bank account number and process the direct deposit information according to [FOM1 110.73](#). Any changes in name, direct deposit, etc. should be secured, updated on FAST, when appropriate, and forwarded onto RSBD for correct award setup and payment.

320.50.4 Change from Full Spouse Annuity to Reduced Age Divorced Spouse Annuity

If an age reduction is to be applied to the divorced spouse annuity and the previous spouse annuity was not subject to an age reduction (i.e. spouse 60/30 annuity or spouse with child-in-care), determine if an additional statement is needed by reviewing the spouse's original application.

- A. If the application indicates the spouse will accept a reduced annuity, the RSBD examiner will use that application to process the reduced age divorced spouse annuity.
- B. If the application indicates the spouse will not accept a reduced annuity, the field office representative will need to secure a signed statement indicating the divorced spouse will accept a reduced age annuity. This is needed before a reduced age divorced spouse application can be processed. The field office representative should

be sure to scan the signed statement to WorkDesk and email RSBD regarding the secured statement.

NOTE: If the spouse's original application is not available on APPLE or imaging, the RSBD examiner can request the claim folder to review the original application.

320.55 Divorced Spouse Remarries the Employee

320.55.1 Development Required

When the divorced spouse was entitled to a divorced spouse annuity on the same RRB claim number in the month before the remarriage, and the person remarries the employee, the divorced spouse annuity must be terminated and a new award prepared for the spouse annuity. No new RRA application is required. Use the date of remarriage as the filing date on the new award. Proof of the remarriage is required. See FOM1 320.13.1 to determine if the one-year marriage requirement can be waived.

A modified G-88 is also required. The LPE will be any nonrailroad employer that the person worked for within 6 months of the new spouse annuity ABD.

The RRB field office should check for any change in the spouse's name, bank, and bank account number and process the direct deposit information according to [FOM1 110.73](#).

320.55.2 Change from Reduced Divorced Spouse Annuity to Unreduced 60/30 Spouse Annuity

If an age reduction was applied to the divorced spouse annuity and the spouse is entitled to a 60/30 annuity without an age reduction, pay the 60/30 spouse annuity without an age reduction.

320.56 Divorced Spouse Who Becomes Re-entitled to a Divorced Spouse Annuity

A divorced spouse must be "unmarried." Thus, if a divorced spouse annuitant's entitlement ends because of marriage and that subsequent marriage is later terminated, the divorced spouse may again be entitled to a divorced spouse annuity as "unmarried." Proof of subsequent marriage termination would be required.

Whenever there is a gap in entitlement, a divorced spouse must file a new application. If the divorced spouse is still under full retirement age, the age reduction for the new entitlement will be based on the divorced spouse's previous age reduction.

The RRB field office should check for any change in the spouse's name, bank, and bank account number and process the direct deposit information according to [FOM1 110.73](#).

320.57 Spouse or Divorced Spouse on Rolls When Employee Dies

So that they may continue to receive benefits without interruption, the widow(er) or Surviving Divorced Spouse of a completely insured annuitant is deemed to have filed an application for a survivor annuity. They continue to receive their spouse/divorced spouse annuity until the spouse-to-widow conversion is processed, unless evidence in file creates doubt as to eligibility for a widow(er)'s annuity or surviving divorced spouse annuity.

However, such payments are restricted to a "reasonable" period after the month in which the employee died. If proof of death is not received within six months after the month of death, the field office should determine why proof of the employee's death has not been submitted and whether payments made to the widow(er) or surviving divorced spouse after the employee's death were proper.

320.58 When Spouse May Switch From Reduced Annuity To Unreduced Annuity

A spouse who previously elected a reduced annuity may later become entitled to an unreduced annuity if there is a change in the law which provides eligibility for an unreduced annuity.

EXAMPLE 1: A spouse has a dependent grandchild in her care on 1-1-1972, the date she is entitled to a reduced spouse's annuity. On 1-1-1973, the earliest date female spouse benefits are payable based on a dependent grandchild, she becomes entitled to an unreduced spouse's annuity.

EXAMPLE 2: A male spouse is receiving an age reduced annuity from 6-1-1982. Effective 5-1-1983, he can receive an unreduced annuity based on a child-in-care.

This provision does NOT apply to spouse cases where the spouses acquire an entitled child after they elected the reduced annuity (e.g. the child was adopted after the reduced annuity began). However, in such a situation, the spouse has the option of canceling the reduced-age application and filing for the unreduced annuity. This may be especially advantageous if the spouse filed for a reduced annuity after the child attained age 18 and the child became disabled before attaining age 22. (See RCM Chapter 5.1 for procedure on cancellation of application.)

320.59 New Application Required After Denial of Application

Before the RRB makes a final decision on the annuity application, applicants can change their application to agree with the proofs they submit. However, after a formal denial of an application, applicants cannot change their application to agree with the proof they submits. A new application is required.

RSBD will take formal denial action as explained in [FOM1 110.20](#).

At one time, it was the policy of the RRB to consider all denied applications for employee or spouse annuities as effective for any annuities for which the applicants later became eligible. That was known as the "Continuing Application Concept." That concept no longer applied to an application that was denied for any reason with the date of the notice of the formal decision after 9-7-1961.

Also, if the applicants do not meet the conditions outlined in [RCM 6.2](#), Reopenings, a new application is required.

320.60 Vested Dual Benefit Entitlement Requirements

Under the 1974 Railroad Retirement Act, a spouse annuitant who is entitled to social security benefits, in addition to a spouse annuity, does not receive the full advantage of receiving both benefits. A railroad annuity must be adjusted for the amount of social security benefits payable. However, for spouse annuities authorized for payment before 8-13-1981, a spouse annuitant could benefit from social security coverage if she was vested for a "vested dual benefit" (VDB), an amount added to the annuity computation. It was designed to simulate the additional amount that the spouse would receive because of entitlement to both RR and SS benefits.

The 1981 RRA amendments eliminated VDB entitlement for spouses paid under the 1981 RRA amendments. A VDB may be paid only if the spouse was vested as of 12-31-1974, her spouse annuity was authorized for payment before 8-13-1981 (the enactment date of the amendments), and the spouse was entitled to the VDB before 8-13-1981. Prior to 8-13-1981, the spouse only had to be vested as of 12-31-1974. A divorced spouse, and a husband based on a child in care effective 5-1-1983, are not eligible for a VDB.

The requirements for a vested status are in FOM-I-320.60.1 and 320.60.2. It is not necessary that the employee be vested for the spouse to be vested. The requirements for payment of a VDB 8-13-81 or later are explained in FOM-I-320.65.

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.

320.60.1 Spouse on the Rolls on 12-31-74

A spouse who filed an application before 1-1-75 and had a beginning date before 1-1-75 is vested if she was:

- A. Receiving SS benefits on 12-31-74; or
- B. Fully or transitionally insured under the Social Security Act on her own wage record on 12-31-74.

320.60.2 Spouse on the Rolls After 12-31-74

A spouse who filed an application after 1-1-75 or had a beginning date after 1-1-75 is vested if either A. or B. below apply:

- A. The spouse has a fully or transitionally insured status under the Social Security Act as of 12-31-74; the employee has at least 10 years of RR service as of 12-31-74; and the employee HAS EITHER
1. Some RR service in 1974; or
 2. A current connection (C/C) on either 12-31-74 or on his ABD; or
 3. At least 25 years of RR service as of 12-31-74;

OR

- B. The employee has at least 10 years of RR service as of 12-31-74 and the spouse has a fully insured status under the Social Security Act by the end of the year before 1974 in which RR service was last performed by the employee.

EXAMPLE 1: The employee, who has 25 years of RR service, was receiving both an RR and an SS benefit on 12-31-74. His wife filed for a wife's annuity after 12-31-74. She was insured for an SS benefit on her own wage record as of 12-31-74. All of the requirements in FOM-I-320.60.2A are met for her to be vested.

EXAMPLE 2: The employee worked in the RR industry from May 1, 1932, to April 24, 1951. From 5-1-51 on, he worked for an SS employer. His ABD and his SS effective date both are on 7-1-74.

His wife worked for an SS employer from 1939 to 1962. She had an insured status under the Social Security Act by 12-31-51. Her ABD is 1-1-75. Since her husband had over 10 years of RR service and she was insured for SS benefits by the end of the year in which her husband last performed RR service, she is vested under the conditions in FOM-I-320.60.2B.

320.65 Vested Dual Benefit Payment 8-13-81 Or Later

A vested dual benefit (VDB) may be paid only if the spouse was vested as of 12-31-74, her spouse annuity was authorized for payment before 8-13-81, and the spouse was entitled to the VDB before 8-13-81.

Generally, if the spouse annuity was paid before 9-1-81, it was probably authorized for payment before 8-13-81. An annuity award processed by RASl is authorized for payment on the date the computer run is made. A claim processed manually is

authorized for payment on the date the award form is signed by both a claims examiner and a claims authorizer.

To be entitled to the VDB on her own account before 8-13-81, the spouse's date of birth must be before 8-14-19, or the spouse must be entitled to a social security disability insurance benefit which began in August 1981 or earlier, and the VDB must be payable before 8-13-81. To be entitled to the VDB based on the employee's earnings record, the spouse's date of birth must be before 8-14-19, or the spouse must be entitled to a social security benefit based on a child in care, and the employee's VDB date of entitlement must be before 8-13-81. When VDB entitlement depends on SS benefit entitlement, the SS benefit must have been paid before 8-13-81, and the RRB must have been aware of such entitlement before that date.

The spouse VDB may not be paid if it was erroneously denied before 8-13-81. The 1981 Railroad Retirement Act (RRA) amendments prohibit payment of a VDB in all cases in which entitlement was not determined prior to 8-13-81, including cases when entitlement was denied incorrectly.

An erroneous VDB denial generally means that the spouse was eligible for the VDB when the annuity was awarded or recertified, but the VDB determination was not made or was made incorrectly. The fact that the VDB was not paid, for whatever reason (delay, oversight, etc.), when evidence indicates such entitlement, means that the VDB was erroneously denied and cannot be paid.

EXAMPLE 1: A spouse annuitant was paid one-half of the employee's VDB on 8-1-81. The evidence in file also indicated she was vested for an RIB/DIB on her own account, but the RIB/DIB VDB was not paid on 8-1-81. Because the RIB/DIB VDB was not paid when the annuity was recertified and the spouse was eligible for the VDB, the RIB/DIB VDB was erroneously denied and cannot be paid.

EXAMPLE 2: A 60/30 spouse annuity was paid 3-1-81, showing that the spouse was eligible for an RIB/DIB VDB on 7-1-81, when she attained age 62. Even though the VDB was not paid before 8-13-81, the VDB should be paid. This situation does not involve erroneous denial of the VDB.

320.70 Employee Is Vested But The Spouse Is Not

Although the employee annuitant may be vested, the spouse is not vested if:

- A. She is fully insured under the Social Security Act on 12-31-74 but the employee annuitant does not meet the RR requirements necessary for her to be vested (only in 1974 Act cases); or
- B. The spouse is not fully insured or transitionally insured under the Social Security Act on her own wage record on 12-31-74 or fully insured by the end of the year before 1974 in which the employee last performed RR service.

However, if the employee is fully insured under the Social Security Act, the female or male spouse could still receive a VDB benefit because the spouse of a vested employee was guaranteed at least one-half of the employee's VDB. This VDB is payable from the employee's VDB date of entitlement but not before the spouse attains age 62 or has an eligible child of the employee in care. If the spouse is a male age 60-61, he may receive one-half of the employee's VDB effective 12-1-78 or later if he has a minor child of the employee in his care. The 1981 amendment requirements in FOM-I-320.65 must be met for any spouse VDB payment 8-13-81 or later.

If the employee is entitled to a VDB based on a transitional insured status at the Social Security Administration but the spouse is not eligible for a transitional wife's benefit because she did not attain age 62 before 1969, no VDB can be paid to the spouse.

320.75 One-Half Support Requirement For Male Spouse's VDB

A male spouse who is vested for a VDB on his own wage record may not receive a VDB amount based on being insured for a retirement insurance benefit (RIB) or disability insurance benefit (DIB) unless he also meets the one-half support requirement. Since one-half support was a requirement for paying a husband's benefit as of 12-31-74, a non-dependent male spouse cannot receive a full RIB or DIB VDB but is limited to only one-half of the employee's VDB, if any. If the female employee is not vested, a non-dependent male spouse is not entitled to a VDB amount even if he is vested on his own wage record. The 1981 amendment requirements in FOM-I-320.65 must be met for VDB payment 8-13-81 or later.

320.75.1 When Requirement Must Be Met

The point at which the one-half support requirement must be met is at the later of:

- A. The ABD of the spouse annuity; or
- B. The date the spouse could become entitled to an RIB; or
- C. The date the spouse could become entitled to a DIB.

320.75.2 When Proof Must Be Submitted

Proof of support must be filed within 2 years after the point at which the support requirement must be met, unless good cause can be established. The male spouse should submit a Form G-134 (Statement Regarding Contributions and Support). Proof must have been submitted before 8-13-81.

EXAMPLE: The employee's husband (date of birth 2-15-16) is entitled to a spouse annuity beginning 2-1-78. He is entitled to a DIB effective 11-1-77 based on a period of disability beginning 5-1-77. He attains age 65 in 2-81, when the DIB is switched to an

RIB. In this case, the support requirement may be met on 11-1-77, 2-1-78, or 2-1-81. If the spouse has not filed proof of support by 2-1-80 (2 years after the spouse ABD), he can still become entitled to a VDB effective 2-1-81 if the one-half support requirement is met on that date and the spouse files proof of support before 8-13-81.

320.80 When The Vested Dual Benefit Is Payable

The earliest point at which the spouse annuitant would be eligible for a vested dual benefit (VDB) depends on whether eligibility is based on the spouse's own wage record or on the employee's wage record. No VDB may be paid 8-13-81 or later unless the requirements in FOM-I-320.65 are met.

320.80.1 Eligibility Based on the Spouse's Own Wage Record

The VDB amount on a spouse's own wage record becomes payable to the spouse annuitant at the earliest point at which she would be eligible for an SS benefit, either:

- A. Age 62 if she is eligible for a reduced RIB; or
- B. Any age if she is eligible for a DIB.

320.80.2 Eligibility Based on the Employee's Wage Record

A spouse's VDB based on the employee's entitlement to a VDB is not payable before the employee's VDB date of entitlement. The employee does not actually have to have filed for an SS benefit to qualify the spouse for one-half of the employee VDB amount.

The spouse would be eligible for a VDB at:

- A. Age 62 if the spouse is eligible for a wife's or husband's SS benefit; or
- B. Any age if a female spouse is eligible for an SS benefit based on having in her care a child eligible for a child's SS benefit on the employee's wage record; or
- C. Age 60 if a male spouse is eligible for an SS benefit based on having in his care a child eligible for a child's SS benefit on the employee's wage record. The VDB entitlement is not effective before December 1, 1978.

320.81 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; or

- B. The VDB cutback percentage is greater than 75%. The Tier 2 reduction for VDB entitlement is 25% of the VDB. If the VDB is cut back more than 75%, the Tier 2 reduction will exceed the amount of the VDB payable. VDB entitlement, therefore, will cause the annuity rate to decrease; or
- C. The spouse is vested for an RIB/DIB VDB and a spouse VDB, but only the spouse VDB is payable. In this case, the spouse's Tier 2 is reduced for her RIB/DIB VDB entitlement. However, the RIB/DIB VDB is not payable because the spouse VDB is higher. If the spouse waives her RIB/DIB VDB entitlement, Tier 2 will not be reduced and the VDB amount will be the same.

This will only apply to cases in which VDB entitlement was established before 8-13-81. Whenever entitlement to an RIB/DIB VDB is waived, the annuitant's Tier 2 is not reduced for the VDB. However, the waiver does not affect any other annuity. That means that the RRA maximum computation, and the spouse minimum guaranty for a widow(er)'s annuity, will be based on Tier 2 after reduction for VDB entitlement.

The effective date of the waiver and other general information is in FOM-I-110.115. If the VDB has not been awarded, the waiver may be effective with the VDB date of entitlement. If the VDB has been paid, the rules in FOM-I-110.115 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 VDB 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.

320.85 When Vested Dual Benefit Entitlement Ends

Vested dual benefit (VDB) entitlement for a spouse annuitant ends either when her SS eligibility ends or when her annuity is terminated.

320.85.1 Spouse Annuity Based on Age

A spouse's VDB entitlement ends with the earliest of the following dates:

- A. The last day of the month before the month in which the spouse dies; or

- B. The last day of the month before the month in which the employee dies; or
- C. The last day of the month before the month the marriage to the employee annuitant is ended. If the marriage is ended by divorce, entitlement ends with the month before the month in which the decree of divorce becomes final; or
- D. The last day of the month before the month of termination of entitlement to a DIB, wife's, or husband's benefit under the Social Security Act.

320.85.2 Spouse with a Child in Her Care

In addition to the events listed in FOM-I-320.85.1, if the spouse VDB is based on having a child in care, VDB entitlement ends the last day of the month before the month the last child:

- A. Is no longer in care; or
- B. Marries; or
- C. Dies; or
- D. Attains age 18 and is not disabled. A spouse may be eligible for continued VDB payment if the child age 18 is disabled.

EXCEPTION: The VDB of an annuity awarded under the 1937 RR Act is payable until the child attains age 18.

Prior to 9-1-83, the VDB in all cases terminated when the child attained age 18. The VDB in a 1974 Act case was terminated 8-31-83 if the child was age 16-18 and not disabled.

- E. Is age 18 or over and is no longer considered eligible based on a disabling condition. When a disabled child recovers from disability, the VDB is payable for 2 months after the month in which the child recovers; OR
- F. VDB entitlement ends the month before the month of termination of the spouse's entitlement to an SS benefit based on having in care a child who is entitled to a child's SS benefit on the employee's wage record.

NOTE: If the VDB benefit is being paid, it is not terminated when an SS benefit is terminated because the spouse becomes entitled to a new type of SS benefit still based on her own or the employee's wage record, since the spouse is still eligible for an SS benefit. However, if there is a change in the type and rate of the SS benefit, and the new benefit is based on either the spouse's or the employee's wage record, the VDB benefit will be recomputed even if the change in computation is 8-13-81 or later.

