330.5 Non-railroad Work

330.5.1 Before December 1, 1988

To be eligible for an employee, spouse or divorced spouse annuity before December 1, 1988, the applicant must have stopped any compensated service for, and relinquished all rights to return to, the service of a "Last Pre-retirement Nonrailroad Employer" (LPE), even though the compensation may be small and the service performed on a temporary, part-time, casual or irregular basis.

LPE is explained in more detail in FOM1_330_15.

An applicant for an employee, spouse or divorced spouse annuity did not have to cease the types of nonrailroad work that was not LPE.

330.5.2 December 1, 1988, or Later

Effective December 1, 1988 the applicant does not have to stop any nonrailroad service and the applicant is no longer required to relinquish rights to nonrailroad service. Earnings from any nonrailroad employer are possibly subject to work deductions (refer to FOM1 1110.5).

This includes a "Last Pre-retirement Nonrailroad Employer" (LPE) (see FOM-I-330.15). However, LPE earnings after the ABD require deductions from the applicant's Tier II and supplemental annuity. A spouse's Tier II is reduced for the employee's LPE earnings as well as for the spouse's own LPE earnings. Refer to FOM1 1121.05.

330.15 Last Pre-Retirement Non-Railroad Employment Defined

330.15.1 Definition

An annuitant's Last Pre-Retirement Nonrailroad Employer (LPE) is defined as any nonrailroad individual, company or institution whom they are working before their annuity beginning date (ABD) or whom they stopped working within six months of the ABD in order to receive an annuity. With the exception of seasonal employment as described in FOM1 330.37, the nonrailroad employer is always the annuitant's LPE if they are working in nonrailroad employment before their ABD or, if they have stopped working, they still hold rights to return to service of the nonrailroad employer on their ABD.

In accordance with Legal Opinion L-2021-01, dated July 27, 2021, work for a new nonrailroad employer that begins on the same date that an annuitant's entitlement to an annuity begins is not work for a pre-retirement employer, and earnings from that work are not subject to Tier II work deductions.

Note: This definition of the LPE employer is effective for ABDs February 1, 2004 and later. Cases with an ABD prior to February 1, 2004 were processed without regard to the "within six months" rule.

If the applicant stopped work for a nonrailroad employer more than six months before the ABD, and does not have re-employment rights, we assume the person stopped working for reasons other than receiving an annuity, unless there is information to the contrary. Therefore, such employer is not considered to be their LPE.

Example 1: The spouse's ABD is 12/01/2021. On her application she indicated that she last worked for Chili's, a nonrailroad employer on 03/19/2021. Since her date last worked for Chili's is more than six months before her ABD, Chili's is not her LPE employer.

Example 2: An employee's ABD is 06/01/2021. According to his application, his last nonrailroad employer was Microsoft and the date last worked was 11/25/2020. Since his date last worked is more than six months before his ABD, Microsoft is not his LPE employer.

Example 3: An employee's ABD is 08/01/2021. According to his application, he will begin working for his nonrailroad employer, Starbucks, on the same day as his ABD. Since he will begin working on 08/01/2021, his ABD, Starbucks is not his LPE employer. Therefore, the earnings made from working at Starbucks will not be subject to Tier II work deductions.

Example 4 : A spouse has a 02/01/2021 ABD. Her date last worked is 07/31/2020 for her nonrailroad employer, Farmer's Mart. This is a unique case because there are exactly six months in the period between the date last worked and the ABD. If evidence in the case proves that the date last worked is correct and that the annuitant does not have any rights to return to work for Farmer's Mart, then Farmer's Mart would not be her LPE employer. In this type of case, examiners might request further development from field offices.

If the applicant stopped work for a nonrailroad employer within six months of the ABD, we assume the person stopped work in order to receive an annuity, unless there is information to the contrary (i.e., applicant was laid off without return to work rights). Therefore, such employer is considered to be their LPE.

Example 5: The spouse's ABD is 12/01/2021. On her application she listed her LPE employer, Target with a DLW of 6/06/2021. We later discovered that she began working for a new employer, Walmart on 12/01/2021. Apply FOM 330.15 as written to this situation; Walmart would not be her LPE because she began working for the employer on her ABD. Earnings made from her new employer will not be subject to Tier II work deductions.

Example 6: An employee's ABD is 01/01/2021. The employee starts his nonrailroad employment with Taco Bell on 04/01/2021. Since he will began working for Taco Bell after his ABD, Taco Bell is not his LPE employer and earnings made from his new employer will not be subject to Tier II work deductions. However, if the employee request a later ABD of 06/01/2021 and the employee continues his employment with Taco Bell, then Taco Bell is considered to be his LPE. Earning made from Taco Bell will be subject to Tier II work deductions starting with the new ABD.

Example 7: A spouse's ABD is 10/01/2021 based on child in care. According to her application, she will begin working for her nonrailroad employer, Costco on the same day as her ABD. Since she will begin working on 10/01/2021, her ABD, Costco is not her LPE employer. Therefore, the earnings made from working at Costco will not be subject to Tier II work deductions.

However, if the spouse's ABD changes from 10/01/2021 because she is no longer entitled to an annuity based on child in care to an ABD of 11/01/2021 based on age and service and the spouse is still employed by Costco, then Costco will be her LPE employer because she is working for Costco within six months of her new ABD.

330.15.2 More than One LPE

When the annuitant was working for two or more persons, companies, or institutions within the six months preceding their ABD, all such employers are presumed to be their LPE.

330.25 LPE Determinations

Each LPE decision is based on the facts and circumstances in the particular case. Although there are no set rules that cover every case, the basic guidelines are in FOM1 330.30. It is extremely important to have an accurate LPE determination made before the annuity is awarded. Be sure to consider any non-railroad work that might begin before the annuity beginning date but after the filing date. An erroneous decision or a decision based on incomplete or inaccurate information may result in a large overpayment.

330.25.1 By RRB Field Office

The field office has the authority to make the LPE or simple "seasonal employment" or "self-employment" determination. The field office will decide what data to develop and whether a review of their determination by RBD is required. If the claimed "seasonal employment" or "self-employment" does not specifically meet the basic guidelines in FOM1 330.30, the field office should request a review of their determination by RBD. The field office may also request a RBD review for any other case in which they want RBD to make the LPE determination.

When LPE, seasonal employment or self-employment indicated on an application does not require review by RBD, the field office will make the determination that the work is LPE, seasonal employment or self-employment. The field office will document this decision by specific entries made on the APPLE APMU032 *Non-Railroad Employment* screen, APPLE APMU005 (PF 24) *Summary* screen, and APPLE APMU550 *Remarks* screen of the application. The APPLE *Receipt for Your Claim* will include the name of the LPE that was entered on the application as LPE.

However, when the applicant is claiming self-employment or "seasonal employment" that could be LPE, the field office should always release an RL-299 series letter to the applicant (see FOM1 330.28). The LPE, seasonal employment or self-employment determination made by the field office that did not require review by RBD will be final.

330.25.2 By RBD

In most cases, RBD can resolve LPE questions using the information in this chapter or precedent legal opinions. If the examiner cannot readily resolve an LPE question, the case should be discussed with their supervisor, who will complete Form G-231a *Worksheet for Development and Determination of Pre-Retirement Nonrailroad Employment* and either make the decision based on precedent opinion or refer the case to their attorney-advisor. RBD should always release an RL-299 series letter to the applicant (see FOM1 330.28).

330.25.3 By RRB Office of General Counsel

The RRB Office of General Counsel (OGC) has the authority to make LPE determinations when the employee or spouse writes to them directly or when the field office or RBD requests them to make the LPE determinations.

a. Informal Determination

The Office of General Counsel may make an informal determination by replying to the inquiry by email. RBD should document this determination by sending an RL-299 series letter to the employee or spouse. Send a copy of the letter to imaging for the claim file.

b. Formal Determination

The Office of General Counsel makes a formal determination by responding directly to the employee or spouse. The final determination is the legal opinion issued by the Office of General Counsel. Send a copy of the legal opinion to imaging for the claim file.

330.26 How to Request RBD Review

Cases that need to be reviewed by RBD should be notated on the application via the Self-Employment Review field on the APPLE Non-Railroad Employment Screen. Be sure to have the AA-4 imaged, as a work item, to RBD to adjudicate.

It is not necessary to enter a review code in the Manual Review item of the APPLE Summary Screen to prevent the release of IMPACT and/or SPAR, unless the contact representative questions whether LPE or self-employment is actually railroad employment.

If the question is whether employment is LPE, the RRB field office should apply a potential LPE work deduction reduction to the Tier II IMPACT or SPAR amount.

330.27 Advance LPE Determinations

A potential employee or spouse annuitant may request an LPE determination before they file an application. Such a request will be handled in the same manner as if an annuity application had been filed. Complete information should be developed and reviewed by the field office. Based on the criteria presented in FOM1 330.30, the field may either make the determination whether employment is LPE or self-employment, or can refer the advance LPE determination to RBD for a decision. Use an RL-299 series letter to advise the employee or spouse of the determination (see FOM1 330.28).

An advance LPE determination remains effective when an application is filed, provided the facts on which the decision is based have not changed. The facts must be restated to insure that no change has occurred alter the determination.

330.28 RL-299 Series Notification of Decision Letters

As explained in FOM1 1745 the field offices or RBD examiners use the following letters to advise an employee or spouse of an LPE determination:

- Use Form RL-299A to notify an employee whether the RRB considers work claimed as self-employment to actually be self-employment or to be Last Pre-retirement Nonrailroad Employment (LPE).

- Use Form RL-299B to notify a spouse whether the RRB considers work claimed as self-employment to actually be self-employment or to be Last Pre-retirement Nonrailroad Employment (LPE).

- Use Form RL-299C to notify an employee or spouse that the RRB considers the work to be “seasonal employment.’

- Use Form RL-299D to notify an employee or spouse that the RRB considers work claimed as “seasonal employment” to actually be LPE.

- Use Form RL-299E for advance LPE determinations for an employee or spouse (see FOM1 330.27) when the LPE does not involve any claim of SEI or “seasonal employment.” Note that the RL-299E letter is not required if the applicant is filing an AA-1 or AA-3 at the same time. The APPLE Receipt page of the application, which includes the name of the LPE, is sufficient notice to the applicant of the LPE determination.

Do not include an AB-25 appeals paragraph in these letters. Instead use one of the code paragraphs designed for these letters that will advise the person that a subsequent award or adjustment letter will provide appeals rights. The applicant can appeal any mention of the LPE on the RL-20 award letters.

330.30 LPE Guidelines

Each LPE decision is based on the facts and circumstances in the particular case. There are no set rules that cover every case. The following guidelines indicate the information needed by the field office or RBD to make an LPE determination.

330.30.1 Employment That is Considered LPE -

The following types of work are LPE if the work continues past the ABD or ends within 6 months of the ABD. The RRB field office may make the LPE determination.

1. Ordinary nonrailroad work for wages or commissions, full or part- time.
2. Service in Canada for a railroad employer whose principal operation is in Canada (see RCM 5.2.13).
3. Public office. (See FOM1 330.34)

330.30.2 Employment Not Considered LPE -

The following types of work are not LPE. The RRB field office may make the LPE determination without RBD review.

1. Ordinary nonrailroad work for wages or commissions, full or part time that ends more than 6 months before the ABD
2. Service in Canada for a railroad employer, whose principal operation is in the United States.
3. Self-employment (see FOM1 330.31).
4. Military Service.
5. Employment that is gratuitous or for which only a gratuity is paid.

6. Service for less than $25.00 ($3.00 before 1-1-75) a month to a local lodge or division of a railway labor organization is not railroad service or LPE. An exception is service performed as an employee representative by a local lodge or division secretary collecting insurance premiums. This service is considered LPE even if the commissions received are less than $25.00 a month.

7. Mail handling under contract for the Post Office Department.

8. Jury duty.

9. For annuity beginning dates prior to 12-1-88, nonrailroad employment which begins after the applicant demonstrated intent to retire (see FOM1 330.110).

10. Nonrailroad employment which began on or after the annuity beginning date.

11. Ownership of a Limited Liability Corporation (LLC), legally referred to as being a "member" (see FOM1 330.36.)

12. "Seasonal" employment (see FOM1 330.37.)

330.30.3 Work That Does Not Need RBD Review -

The following types of work may or may not be LPE. The RRB field office may make the LPE determination.

1. Public Employment. (See FOM1 330.35.)

2. Work for a Corporation. (See FOM1 330.36.)

3. Work for a Reorganized or Merged Employer. (See FOM1 330.38.)

330.30.4 Work That Needs RBD Review -

The following types of work require RBD review:

1. Consultants, especially consultants for a former employer (see FOM1 330.33.3.)

2. Ministers of churches (see FOM1 330.33.5.)

3. Salesmen (see FOM1 330.33.4), and

4. Volunteer Public Service, such as CETA employment (see FOM1 330.35.2).

330.31 Self-Employment

Self-employment is work performed in a person's own business, trade or profession, rather than for an employer. While self-employment is not LPE, some activities claimed by the applicant as self-employment may actually be employment for someone else (e.g., salesman or domestic worker). An applicant may or may not be considered self-employed if they work in an incorporated business. Refer to FOM1 330.36 if the claimed self-employment involves a corporation. Refer to FOM1 330.33.4 if the applicant claims self-employment as an independent contractor. The fact that an applicant has reported earnings as self-employment to the Internal Revenue Service does not make their work "self-employment."

A determination must be made by the RRB field office or RBD in each case the Application AA-1 or Application AA-3 indicates self-employment during the last 6 months preceding the annuity beginning date or during the last 6 months concurrent with railroad work. The applicant should also complete Form AA-4, "Self-Employment and Substantial Service Questionnaire." Consider the circumstances of each case. Form G-177L *General Information about Continuing in or Returning to Nonrailroad Employment after Retirement under the Railroad Retirement Act* provides guidelines, based on precedent legal opinions that will permit a determination in most cases.

In disability cases, DBD must evaluate all work done in the last 15 years immediately prior to alleged disability onset date in order to determine SGA and whether or not substantial services were performed. Therefore, in disability cases, secure an AA-4 for work shown as self-employment during this 15-year period. If the work does not affect C/C or LPE determination (e.g. the work covered on the AA-4 was performed more than 12 months before date last worked in RR or non-RR work), a determination by RBD or the field office is not necessary.

Use this information to make a determination before the case is processed for award.

330.32 Railroad Employment vs. Self-Employment Determination

See FOM1 330.36 if the claimed self-employment involves a corporation. Otherwise, the fact that an applicant has claimed self-employment and reported earnings as self-employment to the Internal Revenue Service does not require the RRB to consider the work to be "self-employment." Secure complete details of the work on Form AA-4, *Self-Employment and Substantial Service Questionnaire.* Refer to FOM-I-212.8 if the employee is only receiving reimbursement for expenses.

330.32.1 APPLE Summary Screen

The RRB field office will leave the IMPACT and SPAR items blank and code the APPLE Summary Screen for MANUAL REVIEW (to prevent the release of IMPACT and/or SPAR) when claimed nonrailroad employment or self-employment could actually be railroad employment.

330.32.2 Work for a Railroad Employer

If applicants perform work for a railroad and that work is subject to the continuing authority of the railroad to supervise and direct the manner in which the work is done, or if they are integrated into the staff or operations of the railroad while performing such work, then they are considered to be acting as an employee of the railroad. This is especially true if the work is similar to their last railroad job.

330.32.3 Consultant Services

Employment as a consultant in work similar to their last railroad job is not considered LPE when the person is reimbursed only for expenses incurred or their services are also available to the public. On the other hand, consultant services performed exclusively for the railroad for an indefinite period may be railroad employment.

330.32.4 Self-Employed Independent Contractor

In general, if the arrangement between the applicants and the railroad is such that the applicants are not supervised by the railroad when performing their services and they are not integrated into the staff or operations of that railroad, then they are considered to be self-employed independent contractors.

330.32.5 Notice of Self-Employment vs. Railroad Determination

RBD will use RRAILS letter RL-299A to advise an employee or RL-299B to advise a spouse when the RRB considers work claimed as self-employment to actually be self-employment (see FOM1 330.28).

If RBD considers work claimed as self-employment to actually be railroad employment, they should refer the case to BFO - Audit and Compliance Section for a “coverage determination.” A copy of this referral should be sent to the applicant and imaged for the claim file.

330.33 LPE vs. Self-Employment Determination

See FOM1 330.36 if the claimed self-employment involves a corporation. Otherwise, the fact that an applicant has claimed self-employment and reported earnings as self-employment to the Internal Revenue Service does not require the RRB to consider the work to be "self-employment." Secure complete details

of the work on Form AA-4, *Self-Employment and Substantial Service Questionnaire.*

330.33.1 APPLE Summary Screen

The RRB field office will not prevent the release of IMPACT and/or SPAR pending an RBD review of an LPE vs. self-employment determination. However, the field office is to apply a potential LPE work deduction reduction to the Tier II IMPACT or SPAR amount. See FOM1 1121.05. for more information about LPE work deductions.

330.33.2 Work for an Employer

If the person performs work for their client subject to the continuing authority of that client to supervise and direct the manner in which the person works, or if the person is integrated into the staff or operations of their client while performing such work, then the person will be considered to be acting as an employee and their client is their LPE employer.

330.33.3 Consultant Services

Employment as a consultant (such as a physician or an attorney) is not considered LPE when the person is reimbursed only for expenses incurred or their services are also available to the public. On the other hand, consultant services performed exclusively for one individual or company for an indefinite period may be LPE.

330.33.4 Self-Employed Independent Contractor

In general, if the arrangement between the person and their client is such that the person is not supervised by their client when the person performs services and the person is not integrated into the staff or operations of that client, then the person is considered to be a self-employed independent contractor.

a. Salespersons

Salespersons who work as independent contractors are self-employed. If workers are independent contractors under the IRS common law rules, they may be treated as an employee by statute, i.e. statutory employee, for certain employment tax purposes such as Social Security and Medicare taxes. Salespersons who cannot be considered independent contractors or self-employed persons are considered to be working for someone else. As such, the employment is considered LPE.

Whether or not a salesperson (e.g., real estate, insurance, cosmetic) can be considered an independent contractor will depend on several factors discussed on Form AA-4. Specifically pertinent:

- Income is derived solely from sales activity (commissions) rather than a guaranteed salary for specific hours worked; and

- There is a contract stipulating that the individual is not an employee of the company, rather they are an independent contractor.

b. Avon Salespersons

Situation: The spouse applicant is an Avon sales representative. They solicit orders for Avon products, collect payment and deliver products to the customer. They have a written contract that specifically disallows any employer/employee relationship and identifies the amount of commission to be paid based on total sales. They report their earnings to the IRS and pay self-employment tax.

Determination: This is self-employment. The spouse is not under any individual's supervision. The spouse alone determines the amount of time spent on this activity. Their income is based solely on the amount of products sold.

c. Gas Station Franchise

Situation: The spouse applicant owns and operates a Shell gas station. His business is not incorporated. He has a contract with the Shell Oil Co. to purchase gasoline and other petroleum products, renewable yearly. He employs 2 part-time attendants. He determines the number of hours he will work, pays all the expenses related to operating the station, reports his earnings to the IRS and pays the self-employment tax.

Determination: This is self-employment. The spouse is able to terminate the relationship with Shell Oil; he is not subject to their supervision and his income is not guaranteed. It is based solely on the amount of products and services he sells.

d. Coffee Cart Service

Situation: The spouse applicant has a coffee cart service. She provides coffee snacks to the employees of a Power Co. She is not supervised and she determines the number of hours she will work. She has a written contract with the Power Co. that states spouse is an independent contractor; that she does not participate in employee benefits; that she is responsible for all state and federal tax and unemployment insurance; and that her compensation consists of income derived from services rendered after the expense of supplies and equipment.

In addition to the preceding, the Power Co. guarantees her a minimum monthly income of $750.00, reserves the right to terminate the contract and mandates at least 2 daily runs, once in the morning and once in the afternoon.

Determination: This is LPE.

e. Cattle Rancher

Situation: The employee applicant raises cattle and grows feed for these cattle on a family owned farm. His earnings are based on the cattle sold. He is responsible for all the expenses and pays self-employment tax on the net income.

Determination: This is self-employment.

330.33.5 Minister

Employment as a minister of a church (or a rabbi of a synagogue) may be considered as self-employment or LPE depending on the circumstances. The fact that wages as a minister are reported to SSA as self-employment income has no bearing on our determination. A church is an identifiable entity and may be considered a "person" within the meaning of the LPE provision of the Railroad Retirement Act.

If the individual does not have any specific duties with the church and is not subject to the direction and control of a supervisor, the activities claimed by the applicant are considered self-employment. If the church exercises control over the way the minister serves the congregation, the church is an LPE employer.

When employment as a minister is indicated, Headquarters review of the field office determination is required. If doubt exists about whether the activity is self-employment or LPE, RBD should refer the case to their attorney-advisor.

The following aspects should be considered when determining whether or not the individual is performing "compensated service" within the meaning of the Railroad Retirement Act:

- Motive for working - The receipt of remuneration should be incidental to and not at all the motivating factor in the performance of the functions of the religious office.

- Previous Agreement with the Church Regarding Remuneration - If the individual reports that they have an agreement to receive any form of payment or fixed amount in return for their services, determine that the individual is performing compensated service.

- Other Considerations - Reimbursement to clergyman for expenses incurred while performing job should not be considered compensation.

a. Minister in LPE

Situation: John Doe is a clergyman at a church in Louisville, KY. His duties consist of visitation of members, sick calls, mid-week services and two services each Sunday. These duties have been chosen and assigned to him by the

church. Before assuming the position of minister with this Church, he made an agreement with the elders to receive a fixed percentage of the contribution made by his parishioners to the church. He had been a minister to this church for 2 years averaging about $250 per month at the time he filed for a railroad retirement annuity.

Determination: Mr. Doe is working for a church that can be considered an LPE employer because they exercise control over his duties. He is also rendering compensated service because he made an agreement with the elders to receive money for his services.

b. Minster Not LPE

Situation: Donald Smith is a clergyman at a church in Seattle, Washington. He performs the various duties required of a minister such as making sick calls, mid-week services, and Sunday services. Occasionally at the Sunday services, a collection is made for the benefit of the minister. The amounts of money collected range from $25 to $75 per month. There is no agreement between the minister and the congregation that these collections are made in return for Mr. Smith's services as minister.

Determination: This church is considered an LPE employer because it exercises control over the way Mr. Smith renders service to the church. However, Mr. Smith has no previous agreement to receive money for being a minister, so that he is not in compensated service to an LPE employer. Therefore, he may go on rendering service to the church and receive money from them in the same manner without LPE work deductions.

330.33.6 Notice of SEI vs. LPE Determination

The field office or RBD will use RRAILS letter RL-299A to advise an employee or RL-299B to advise a spouse whether the RRB considers work claimed as self-employment to actually be self-employment or to be LPE (see FOM1330.28).

330.34 Public Office

330.34.1 General

If the application filing date in June 24, 1991, or later, all appointed or elected public office is considered to be LPE and subject to LPE work deductions.

330.34.2 Appointed Public Office When Filing Date before June 24, 1991

Appointed public office positions were or were not considered to be LPE depending on the primary motive that the individual had in serving. The following guidelines were used in determining whether or not the public office was considered LPE:

a. Remuneration of More Than $150 a Month (More Than $1800 a Year)

This service was treated as LPE because we assumed that the individual's prime motive in serving in the public office was the salary involved rather than the desire to serve the public.

b. Remuneration of $150 a Month ($1,800 a Year) or Less -

An LPE determination was required because we could not make an assumption of what the individual's prime motive in serving was. The field office developed information concerning the statute or ordinance that established the office, the duties and the term of office and the amount of compensation paid.

330.34.3 Elected Public Office When Filing Date Before June 24, 1991. -

If the elected public office positions were with a foreign country, they were subject to the guidelines in FOM1330.34.2. Otherwise, an exception was made for elected officials based on their annuity beginning date:

a. Annuity Beginning Date was 1-1-75 or Later -

The elected public office positions within the United States, a State, or political sub-division of a State were not considered LPE, and the elected official did not have to stop that service, regardless of the amount of remuneration received or the motive the individual had in serving. This provision also applied to individuals appointed to fill an unexpired portion of a term of an elected office; or,

b. Annuity Beginning Date was before 1-1-75 -

The elected public office positions within the United States, a State, or political sub-division of a State was subject to the guidelines outlined in Section B(2) above.

330.34.4 Public Office Questionnaire Used Before June 24, 1991

Form AA-4 was not used. The RRB field offices secured the following information in a domestic appointed public office position or in a foreign appointed or elected public office position. The field offices developed the following information.

1. Is the applicant in an elected or appointed position?

2. Was the applicant required to take an oath of office?

3. Is there a definite term of office? If so, what is the term?

4. How often, and in what amounts, is compensation paid (i.e., salary per day, per month, or per year, whichever is appropriate)?

5. What are the duties and responsibilities of the office?

6. How much time is spent in the performance of the duties of the office?

7. What is the citation to the state statute that establishes the position and prescribes the duties and compensation? If the position is provided by local ordinance, obtain a copy or submit a verbatim extract of the pertinent provision.

330.35 Public Employment

For public employment, in addition to Form AA-4, determine if the service is regular employment, is performed under provisions of The Domestic and Volunteer Service Act of 1973 or is performed Title V of the Older American Community Service Employment Act.

330.35.1 General

"Public employment" (i.e., employment by a unit of a local, State, or Federal government) differs from "public office" in that the person in public employment is under the control and supervision of another "person." Therefore, "public employment" is usually considered LPE.

If a unit of a local, state, or Federal government employs the applicant, determine whether the governmental unit by which the applicant is employed is independent of any larger unit or is an integral part of a larger unit. In public employment cases it is necessary to determine which governmental unit is the last employer. Generally, if an employee worked for a governmental unit that is an integral part of a larger political entity, the entire entity is the LPE employer.

EXAMPLE 1: An age and service applicant last worked for the VA. His LPE employer is the U.S. Government and not just the VA.

EXAMPLE 2: A spouse applicant last worked for the Klondike Water Department that is an integral part of the village government of Klondike, Arizona. Her LPE employer is the village of Klondike, and not just the Water Department.

In some cases, particularly those involving local governmental units, it may be difficult to distinguish the political entity. Most States have independent local or regional districts such as school districts, park districts, sanitation districts, fire protection districts, etc., which are not part of a larger political entity. In developing data in these cases, be sure to find out whether the governmental unit is "independent" or part of a larger unit.

EXAMPLE 3: A disability applicant last worked for the Frostfree Falls Park District, an independent political unit that operates the park system in the town of Frostfree Falls, Minnesota. His LPE employer is the Frostfree Falls Park District and not the town of Frostfree Falls.

330.35.2 Volunteer Public Service (Not Covered By Domestic and Volunteer Services Act of 1973)

In a case in which persons appear to have an LPE because of their continued service as a volunteer worker, that is not covered by the Domestic and Volunteer Services Act of 1973, (such as volunteer firemen), investigate the payments made to them. If the organization considers the payments to be just reimbursement for the person’s expenses, the organization is not the person’s LPE. Under such circumstances, their service is not LPE, even if the payments are reported to SSA as wages or if payment is made at a set rate; for instance, $3 for each fire to which the annuitants respond.

If, however, the person receives payments that are considered to be compensation, and not merely reimbursement for expenses, the organization is their LPE and their employment is considered earnings from LPE.

330.35.3 Volunteer Services under Domestic and Volunteer Service Act of 1973

The Domestic and Volunteer Service Act of 1973 consolidated, under the ACTION Agency, the domestic volunteer programs. The act was comprised of six volunteer service programs throughout the Federal Government identified under Titles I, II and III of this act.

These services are meant to be provided by volunteers and not by members of the labor force. A stipend or allowance may be provided only to enable volunteers to effectively carry out their assignments. Payments to volunteers under this Act shall not eliminate eligibility for any government program. Therefore, this employment is not LPE.

These programs are:

a. Title I - National Volunteer Antipoverty Programs

Part A - Volunteers in Service to America (VISTA).

Part B - Service - Learning Programs.

Part C - Special Volunteer Programs.

b. Title II - National Older American Volunteer Programs

Part A - Retired Senior Volunteer Program.

Part B - Foster Grandparent Program and Older American Community Service Programs.

c. Title III -

National Volunteer Programs To Assist Small Business and Promote Volunteer Service By Persons With Business Experience

330.35.4 Public Service Performed under Title V of the Older American Community Service Employment Act

Service performed under and entirely funded by Title V of the Older American Community Service Employment Act does not constitute LPE.

330.35.5 CETA employment

The purpose of the Comprehensive Employment and Training Act (CETA) is to provide job training and employment opportunities for economically disadvantaged, unemployed, and underemployed persons and to assure that training and other services lead to maximum employment opportunities and enhance self-sufficiency by establishing a flexible and decentralized system of Federal, state, and local programs.

CETA employment may or may not be regular employment that is considered to be LPE. A determination must be made by RBD in each case, based on the particular facts in the case. The wages may or may not be covered under the Federal Insurance Contributions Act (FICA), and may or may not be creditable as employment for purposes of state unemployment compensation acts. Since the facts vary in individual cases, no guidelines have been established that will indicate whether CETA employment is LPE.

CETA employment, in addition to Form AA-4, secure the following information:

1. Under which subchapter or Title was the person employed?
2. What type of work did the person perform?
3. Was this work similar to that performed with the railroad?
4. Did the person receive any special training for this job?
5. How long was the person employed under CETA?
6. Did the person pay FICA taxes?

330.36 Corporations

Employment with Corporations may or may not be LPE.

330.36.1 Corporation Work that is Self-Employment

1. Directors of a Corporation - Directors of a corporation are persons who represent the stockholders in business dealings with the corporation's management. A person serving as a member of a corporation's board of directors is not an employee of the company. The company is not their LPE. The position is self-employment that will not break their C/C.

   NOTE: When applying work deductions for years before 1991, corporate director's earnings are treated as earnings for the year in which they are received. Effective January 1991, corporate director's earnings are treated as received in the year that the relevant services are performed.

2. Limited Liability Corporations (LLC) - LLC is a business that has some of the organizational features of an incorporated business but does not meet the federal requirements of a true corporation. An owner of a LLC is legally referred to as a "member." Membership in a LLC is self-employment, not LPE.

   The person that is claiming that their company is an LLC must submit proof. Proof of LLC structure is the individual's statement supported by the business name on any license, articles of the organization, or the operating agreement. If the person is claiming a consultant business, the LLC contracts with various clients will be preferred proof.

330.36.2 Corporation Work that is LPE

When a business has been incorporated, the corporation is a legal person and, therefore, an employer.

1. Corporate officers -Corporate officers (e.g. President, Vice-President, Secretary, or Treasurer) are employees that have administrative duties. The corporation is their LPE.

2. Subchapter "S" corporations.- Subchapter "S" type corporations are full corporations and are LPE.

3. Limited Liability Corporations (LLC) - An LLC is an LPE for persons who do not own the LLC, but are hired by the members who own an LLC.

330.37 Seasonal Employment

330.37.1 Definition of "Seasonal Employment"

Some types of nonrailroad seasonal work are not LPE, even though work is performed in the 6 months immediately before the ABD. With respect to nonrailroad seasonal employment (i.e. Christmas season employment), L-97-37 states that the employer is not considered to be LPE if:

- the annuitant possesses no re-employment rights and must reapply each year for the position; and,

- the employment relationship is terminated at the end of each period of employment; and,

- such employment has terminated prior to the annuity beginning date for some reason not related to the application for an annuity under the Railroad Retirement Act.

Whether an individual is in a period of seasonal employment when their annuity begins is relevant to the question of whether LPE work deductions apply **only to the extent** that such information sheds light on the question of whether the seasonal employment terminated prior to the annuity beginning date for some reason not related to the application for an annuity.

You have to determine if there is a pattern of seasonal employment during the years prior to the time the application is filed. If there is a pattern of prior seasonal employment, then that employment terminated prior to the annuity beginning date for some reason not related to the application for an annuity. The annuitant does not have to be outside of a period of seasonal employment for the exemption to apply.

Example 1 - The employee works for H&R Block during the tax season from January 15, 2003 through May 15, 2003. He does not retain employment rights with H&R block when he stops working on May 15, 2003. His RRB annuity begins July 15, 2003. H&R Block is not his LPE. If he re-applies to work at H&R Block in the next tax season and begins work on January 15 2004, he is not in LPE.

Example 2 -The employee (age 62 with 32 years of railroad service) stop working in railroad employment on December 20, 2003. The earliest possible ABD by law is December 21, 2003. On that day, the employee is working for Mr. Santa Claus as an order fulfillment specialist. The employee has worked for Mr. Santa Claus for the last three Christmas seasons. Mr. Santa Claus is not the employee's LPE employer even though he is working for Mr. Santa Claus on his ABD because a pattern of seasonal employment has been established.

330.37.2 Document the APPLE Screen

The field office should document the decision that the nonrailroad employment was "Seasonal Employment" by using the *Employment Type Code* = 6 - "Seasonal Employment." on the APPLE Nonrailroad Work screen. Document the decision that the nonrailroad employment was seasonal work, on the APPLE APMU550 *Remarks* screen (PF-12). Enter a complete explanation about the seasonal non-RR employment (include employer's name and address, and dates involved).

When pre-filling the name of the LPE on the Form AA-1 *Receipt for Your Claim*, APPLE will edit out nonrailroad work that has an *Employment Type Code* = 6 - “Seasonal Employment.”

If the claimed “seasonal employment” does not specifically meet the basic guidelines in FOM1 330.30 and the field determines the employment not to be LPE, the field office should request RBD manual review by using manual review code “3” on the APPLE Summary screen.

330.37.3 Notice of Seasonal vs. LPE Determination

The field office or RBD will use RRAILS letter RL-299C to advise an employee or spouse that the work is considered to be “seasonal employment or RL-299D to advise an employee or spouse that the RRB considers work claimed as seasonal employment to actually be LPE (see FOM1 330.28).

330.38 Work for Reorganized or Merged LPE Employer

330.38.1 Change in Employer EIN

Most LPE employers are identified by their Employer Identification Number (EIN). L-77-135 and L-68-1 explain that the dissolution of a corporation and creation of a new corporate entity or other business structure, such as a partnership, with a new EIN, means that an employer becomes a "new person." Employment for that new person is not LPE, even if there is no change in the duties of the job.

330.38.2 Under Jurisdiction of Holding Company

The fact that an LPE is in Chapter 11 bankruptcy and is under the jurisdiction of a holding company does not necessarily mean that it has become a new corporation entity. The annuitant's earnings may temporarily be reported under the holding company's EIN for the LPE employer. However, the LPE may emerge from the Chapter 11 proceedings with the original corporate structure and the original EIN.

330.38.3 Working for Subsidiary with Different EIN

L-77-162 describes a situation in which the annuitant was working for a subsidiary of the LPE with different EIN. It states that the strongest indication of an employer-employee relationship is the continuing authority of the employer to supervise and direct the manner of the annuitant's performance. Annuitants are determined to be in LPE, even though they are carried on the payroll of a subsidiary

330.38.4 Consolidation of Payroll Processing for the Federal Civilian Workforce

Effective January 10, 2003 the Office of Management and Budget (OMB) consolidated the payroll processing for the civilian Federal workforce   As a result; the entire Federal civilian payroll is processed by the following four agencies:

- Department of Defense Finance and Accounting Service
- General Services Administration
- Department of Agriculture National Finance Center
- Department of Interior National Business Center

Due to the consolidation of payroll processing for the Federal civilian workforce, the Employer Identification Number (EIN) appearing for a civilian Federal employee may not show the agency the employee worked for, but will show the agency that processes the payroll.

330.40 LPE Entries on Annuity Application Forms

Instructions for completing the Nonrailroad work items on the RRAILS Application AA-1 is in FOM1 1710, Form AA-1.

APPLE On-line Help includes instructions for completing the nonrailroad work screen.

330.41 When LPE Data On Application Is Incorrect

LPE information provided by the applicant or annuitant might be contradicted by other evidence in file. An example would be a wage pattern - confirmed as LPE by SSA's employer breakdown - showing employment after the ABD year.

330.41.1 Annuitant's Statement

If the employment requires LPE work deductions, handle the case as follows:

1. Obtain the Form G-19F, *Earnings Questionnaire* , or an equivalent statement if the annuitant failed to report post-ABD earnings in a prior year. (Earnings reports are discussed in FOM1 1121.40.2); or,

2. If the annuitant stopped working in LPE and does not need to report prior year earnings, obtain the annuitant's certification on Form G-88 or in a signed statement.

In all other situations, the annuitant should provide a signed statement acknowledging or protesting the LPE data.

330.41.2 Contact the Employer(s) Regarding LPE

When necessary, RBD will release Form G-231 (Request for Field Investigation of Last Pre-retirement Nonrailroad Employer) to the field office serving the area in which the employer is located.

330.42 Annuitant Protests Earnings Report From SSA

Information on earnings amounts and employers is received twice a year from SSA, usually in May and November. When an annuitant's payments have been suspended or are being adjusted based on their wage record from the Social Security Administration (SSA) indicating LPE, and the annuitant protests that they did not perform the service, develop the basis for the protest.

The actual work may have been performed by someone else using their SSA number, such as their spouse or other family members, or by persons not of the family. Get statements from the employer, the actual employee, and the annuitant explaining in detail the circumstances of the employment. If the work was not the annuitant's, RBD will adjust the annuity accordingly.

RBD will send a full report of our investigation and decision, including any copies of statements, to the appropriate SSA office and request SSA to notify us of any action they take to adjust the wages of the persons involved. An adjustment to remove the earnings from the computation of the annuity will be made after SSA has adjusted the annuitant's wage record.

330.44 LPE Earnings Reports

LPE work deductions are discussed in FOM 1 1121.

330.44.1 Annuitant Stops LPE

A person is considered to cease service as of the last day they performs compensated service for an LPE. If "Pay For Time Lost" or vacation pay extends past the actual day last worked, the person is considered to cease service at the end of the "Pay For Time Lost. If the person stops LPE, they should contact the nearest RRB office to complete Form G-19F, *Earnings Questionnaire*.

The field office should use the SPEED (System Processing Excess Earnings Data) found in Boardwalk to report the earnings information. By doing so, the earnings information is stored in a database and a STAR referral is created for handling by the appropriate unit in Operations. Refer to FOM 1 15125 for detailed instructions for accessing and using SPEED. Make sure you use the proper reporting screen in SPEED and indicate it is a “Cease Work” report.

If LPE Work deductions are being applied to the spouse based on EE's LPE and the EE ceases such work, indicate in Remarks on the EE's Cease Work Report that the spouse work deductions also need to be removed.

Field offices should retain all original earnings reports until September 30th each year. At that time, the accumulated reports should be batched and submitted to headquarters for imaging as explained in FOM 1 1115.35.3.

330.44.2 Annuitant Returns to LPE

An employee or spouse must notify the RRB immediately of return to work for an LPE employer. A written statement must be submitted if the employee or spouse has already retired and wishes to return to work.

Obtain a written statement from the annuitant which includes:

- An estimate of the expected average monthly earnings;
- The name and address of the employer; and
- The beginning date, and if known, the ending date of the employment.

Advise the employee or spouse that next year the RRB will request a final report of earnings, including a monthly breakdown of LPE earnings.

330.50 Railroad Work

330.50.1 Railroad Work Applicants Must Stop

An employee, spouse or divorced spouse annuity cannot begin earlier than the day after the last day of the applicant's railroad service.

The one exception to work the applicant must stop is service for less than $25.00 a month to a local lodge or division of a railway labor organization. However, work by a local lodge or division secretary collecting insurance premiums, regardless of the amount of salary, is railroad work which must be stopped.

After the annuity is awarded, payment cannot be made for any month in which the annuitant works for a railroad employer.

In contrast with the above, the payment of membership dues by local lodges on behalf of their secretaries is not creditable compensation (railroad work). This represents payments of an employee expense and will not affect payment of the annuity.

330.50.2 When Cessation of Service Occurs

An applicant is considered to cease service as of the last day they perform compensated service for an RR or LPE employer. If "Pay For Time Lost" extends past the actual day last worked, the applicant is considered to cease service at the end of the "Pay For Time Lost."

330.52 Relinquishment of Rights

The relinquishment of rights only affects the benefits under the Railroad Retirement Act (RRA). The relinquishment of rights does not bind the railroad should the employer choose to provide certain employee benefits (i.e. health insurance, an employee buyout) after the employee stops working.

If an individual cancels a previously submitted relinquishment of rights before it becomes effective, no annuities that require the individual's relinquishment of rights are payable. However, once effective, the employees cannot revoke the relinquishment of rights, even if they offer to refund the amount of the RRA annuities that were paid based on the relinquishment of rights.

330.52.1 Age and Service Cases

Before an age and service employee annuity can be paid under the Railroad Retirement Act (RRA), an applicant for an employee age and service annuity must relinquish all seniority or other rights they may have to return to work for any railroad employer.

While a non-disability annuity can begin to accrue when an applicant stops working, it cannot be awarded until relinquishment of rights is effected. For example, a qualified age and service applicant who stops working on December 31 but does not relinquish their rights until March 15, is entitled to an annuity from January 1. However, payment cannot be vouchered before March 15, the day relinquishment of rights is accomplished.

330.52.2 Disability Annuities

A disability annuity can be paid to an employee who has stopped railroad employment, but has not relinquished their rights.

If a disability annuitant under Full Retirement Age becomes eligible for a supplemental annuity (SUPP ANN), the employee must relinquish rights to railroad employment before the SUPP ANN may be paid. A SUP ANN may not begin before the 1st day of the 12th month prior to the month the employee relinquishes their rights.

Automatic relinquishment of rights in disability cases at Full Retirement Age is explained in FOM1 330.54.

330.52.3 Spouse/Divorced Spouse Annuities

Before applications for spouse annuities or divorced spouse annuities can be paid, the applicants must relinquish all seniority or other rights they may have to return to work for any railroad employer. While a spouse annuity or divorced spouse annuity can begin to accrue when an applicant stops working, it cannot be awarded until relinquishment of rights is effected.

For example, a qualified spouse applicant who stops working for a railroad on December 31, is entitled to a spouse annuity from January 1. However, the spouse does not relinquish rights until March 15. Payment cannot be vouchered before March 15, the day relinquishment of rights is accomplished.

If a disability annuitant under Full Retirement Age has a spouse eligible for a spouse annuity, the employee must relinquish rights to railroad employment before the spouse annuity may be paid. The retroactivity of a spouse's annuity is not affected by the date the employee relinquishes rights. Therefore, the spouse may file an application as soon as they are otherwise eligible for an annuity in order to protect their filing date. However, the annuity cannot be paid until the employee relinquishes their rights.

In these cases, code the APPLE Summary screen for manual review. Do not enter a SPAR rate. Explain the reason for the manual review code in the remarks section of the APPLE Summary screen and in an email message to RBD. If a G-346 is submitted, Item 8 should be crossed out and initialed by the employee..

330.53 When Relinquishment Of Rights Is Accomplished

An individual's right to return to work for an employer is ended (for the purposes of the Railroad Retirement Act) whenever any of the following events occur:

A. An employer reports to the RRB that the individual no longer has the right; or

B. The individual or an authorized agent of that individual gives the employer an oral or written notice of the individual's wish to give up that right; and:

1. The individual certifies to the RRB that the right has been given up; and,

2. The RRB notifies the employer of the individual's certification; and,

3. The employer either confirms the individual's right has been given up or fails to reply within 10 days following the day the RRB mailed the notice to the employer; or,

C. The employer or the individual or both take an action which clearly and positively ends that right; or,

D. The individual signs a statement that they give up all rights to return to work in order to receive a separation allowance or severance pay.

E. An event occurs which under established rules or practices of the employer automatically ends the right to return to service; or

F. The RRB gives up that right for the applicant filing up to 3 months in advance of the date last worked or disability annuitant, having been authorized to do so, as explained in FOM1 330.56); or,

G. The individual never has that right and permanently stops working; or,

H. The applicant dies.

330.54 How Relinquishment Of Rights Is Accomplished

330.54.1 Relinquishment of Rights to Railroad Service in Age and Service Cases

Before an annuity can be awarded, an employee age and service applicant, a spouse applicant or a divorced spouse applicant must certify to the RRB that they have relinquished any and all rights to return to railroad service.

The Form AA-1 "Application For Employee Annuity" and Form AA-3 "Application For Spouse/Divorced Spouse Annuity" include questions concerning the applicant's rights to return to railroad service.

Under advance filing procedures, an age and service employee or spouse applicant may file for an annuity up to 3 months before retiring from railroad service. After certifying the date on which employment ended or will end on the annuity application, the applicant must promptly report any change in the date last worked. Otherwise, the annuity beginning date could be incorrect, resulting in erroneous payments. Use electronic mail to notify RBD when the applicant reports a change.

Relinquishment of rights is satisfied if the applicant:

A. Indicates on the Form AA-1, Form AA-3 or Form G-346 that they do not have seniority or other rights to work for a railroad employer or work for a railroad labor organization; or

B. Completes an acceptable Form G-88, a modified Form G-88 in the case of a spouse applicant; or

C. Furnishes the required information in a signed statement witnessed by 2 persons or authenticated by an authorized RRB employee.

330.54.2 Relinquishment of Rights to Railroad Service in Disability Cases

Disability annuitants who file a Form AA-1d "Application For Determination of Employee Disability," authorize the RRB to automatically relinquish their rights either at attainment of Full Retirement Age or before attaining Full Retirement Age when:

1. The disabled annuitant becomes eligible for a SUPP ANN, or,

2. the spouse of the disability annuitant becomes eligible for a spouse annuity; or,

3. If the disability annuity is denied, the employee is eligible for a reduced age annuity, and the employee indicated on the Application AA-1 that they would accept the reduced age and service annuity.

In addition, Form G-346, "Employee's Certification," with a revision date of 10-92 or later, includes the statements from the employees authorizing the RRB to relinquish their rights in order to pay the spouse annuities.

Note - Before 5-76, the Form AA-1d "Application For Determination of Employee Disability" with a revision date before 5-76 gave the applicant the option of having the RRB relinquish their rights at age 65. If the annuitant did not authorize the RRB to relinquish their rights at age 65, their annuity payments were suspended at age 65. We informed the annuitant that we would resume payments when they relinquished their rights. When the annuitant later notified us that they had relinquished their rights, we furnished the date rights relinquished (DRR) to the employer and reinstated payments from the date of suspension.

330.55 Relinquishment of Rights When An Employee Claims Their Termination Is Wrong

The applicant has no rights but is attempting to restore them when:

A. an applicant's employment has been terminated by an employer; and,

B. the applicant disputes the termination action and is prosecuting a claim before the National Railroad Adjustment Board for reinstatement and for time lost from the effective date of the termination action.

The following statement must be made over the applicant's signature in the remarks sections of the application and the Form G-88: "I do not at this time possess any rights to return to the service of an employer. This statement shall be without prejudice to my claim that I was wrongfully deprived of such rights on (date of termination)." Item 4 on the Form G-88 and item 11 on the Form G-88A.2 should not be completed.

The applicant must also sign an "Assignment of Claim" statement to the extent of the annuity payments they may receive for any period for which they may subsequently be awarded back pay. RBD requires only the original copy of the statement in the format listed below.

330.55.1 Action by the Field Office

The field office will prepare Form RL-40A, Assignment of Claim, for the employee's signature. The form is available on RRAILS. Forward the signed statement to the Retirement Benefits Division-Retirement Initial Section (RBD-RIS). with the application package.

If the employee requests a copy for themselves, or their representative, prepare additional copies as needed.

If the employee does not wish to complete the "Assignment of Claim" statement at the time of filing (e.g., they wish to consult a representative), give the employee the "Assignment of Claim" statement, to be returned to your office. Indicate on the APPLE Summary screen that the "Assignment of Claim" statement will be submitted at a later date. Always code the APPLE Summary screen for MANUAL REVIEW.

330.55.2 Action by RBD-RIS Examiner

The RBD-RIS examiner will review Form RL-40A for completeness and forward it, along with the Form RL-40 cover letter, to the railroad employer's highest ranking official. Form RL-40 is available on RRAILS. The title of the railroad official and address of the employer can be obtained on RRAILS by using the railroad employer's BA number.

NOTE: No annuity will be paid until the RL-40 A statement has been reviewed by the RIS examiner.

330.56 Annuitant Protests Automatic Relinquishment Of Rights

Certain disabled employees may not wish to relinquish their rights because of possible adverse effects on their benefits from the railroad. If an employee does not wish to relinquish their rights before they attain full retirement age, they must notify the RRB in writing when they file the application. Secure a signed statement from the employee that they do not authorize the RRB to relinquish their rights before full retirement age. You may use the "Remarks" section of the application for this purpose. Code the case for MANUAL REVIEW on the APPLE Summary screen. Instruct the employee that they must notify the RRB if they later wish to relinquish their rights before attaining full retirement age. When the annuitant later notifies the RRB that they have relinquished their rights, RBD will furnish the date rights relinquished (DRR) to the employer and pay the benefits that require the relinquishment of rights.

330.57 Annuitant Wants to Revoke Relinquishment of Rights

If a disability annuitant protests the RRB's automatic relinquishment of rights before it becomes effective, no annuities that require the individual's relinquishment of rights are payable.

However, the age and service or disability annuitant cannot revoke the relinquishment of rights once relinquishment of rights has become effective, even if they offer to refund the amount of the RRA annuities that were paid based on the relinquishment of rights.

330.58 Unacceptable Certifications

A certification of termination of service and relinquishment of rights is not acceptable if executed:

A. Before the date on which the applicant claims to have stopped work and relinquished rights to return to service; or,

B. Before the date on which the applicant states the employment relationship ceased and rights were relinquished to return to service; or,

C. More than 15 days before the ABD. When an employer indicates on a Form G-88A.1 listing or G-88A.2 that the DLW or DRR is later than the date claimed by the applicant, consider the applicant's certification acceptable if it was not completed more than 15 days before the ABD determined on the basis of the employer's report. Use the dates furnished by the employer for all adjudicative purposes.

If an employee or spouse applicant completes an unacceptable certification, RBD will request the RRB field office to obtain a Form G-88 from the applicant certifying the revised date RR employment ended and rights were relinquished. The field office should advise the applicant when to complete and return the Form G-88 to the RRB. (This depends on why the former certification was not acceptable.)

A Form G-88 should not be requested in any case when the age and service application is filed more than 3 months before the annuity may begin. RBD will deny the claim and advise the applicant to file a new application.

330.60 Notifying Employers In Age And Service Cases

330.60.1 Railroad Employers

A. Action by RRB Field Office - Release Form G-88A.2 if the employee's lag railroad service is required for eligibility.

B. Action by Headquarters - When the annuity is initially awarded in an age and service case, a G-88A.1 listing is sent to the railroad employer notifying of the established DLW and relinquishment of rights as explained in FOM 1 1720.

330.60.2 LPE Employers

It is not necessary to notify the LPE employer when the annuitant claims to have terminated service with that employer. Accept the annuitant's statement of an ending date for these cases.

330.61 Notifying Employers In Disability Cases

330.61.1 Cessation of Service

A. Action by Railroad Retirement Board field office - Release Form G-88A.2 if the employee's lag railroad service is required for eligibility. This will notify the employer of the date last worked (DLW) in disability cases.

   Generally, the forms should be released to the employer when the application package is forwarded to RBD. To expedite processing of the Form G-88A.2, you may release the form to the employer immediately if the application package will be delayed in the field office. However, do not release the G-88A.2 to the railroad before the claimed DLW-RR.

B. Action by Headquarters - When the annuity is initially awarded in a disability case, a G-88a.1 listing is sent to the railroad employer notifying them of the established DLW and relinquishment of rights, as explained in FOM-I-1720.

330.61.2 Relinquishment of Rights

A. Before Full Retirement Age - If the disability applicant has not attained Full Retirement Age, the employer will not be notified of cessation of service and relinquishment of rights unless the railroad has requested to receive this information on Form RL-5a. In cases involving the spouse's entitlement to an annuity after the disabled employee is on the rolls, RBD will release a Form RL-13g.1 to notify the employer of relinquishment of rights.

B. At Full Retirement Age - A Form RL-13g is used to notify a railroad employer that the RRB has relinquished an annuitant's rights at Full Retirement Age. The release of this form is explained below.

   1. Disability annuity in payment status in month before Full Retirement Age attained - The Form RL-13g form is computer-printed and released in the month before the annuitant attains Full Retirement Age. A Form RL-13g is not printed in cases where the annuitant

previously relinquished rights. No manual action is required to effect relinquishment of rights.

2. Disability annuity initially awarded in or after month Full Retirement Age attained - The Form RL-13g is computer-printed and released in the month following the month of the award. No manual action is required to effect relinquishment of rights.

3. Disability annuity in suspense in month before Full Retirement Age attained - Each month, tickler referrals are produced for these cases for review by RBD unless the employee previously relinquished their rights. RBD will manually prepare and release Form RL-13g, except if the employee is currently in railroad service.

330.75 Confirmation Of Date Last Worked And Date Of Relinquishment Of Rights

In most cases, an applicant's claimed date last worked (DLW) and date of relinquishment of rights (DRR) are confirmed by the absence of a notice to the contrary from an employer. Failure of an employer to refute the employee's claim (as shown on a Form G-88A.1 listing to the employer) in essence confirms the DLW and DRR.

In other cases, the applicant's certification that they have ceased service and relinquished rights is confirmed by one of the following methods:

A. An employer's statement that the applicant ceased service and relinquished rights to return to service; or

B. The employer's certification that the applicant previously stopped working and did not have rights to return to service; or

C. Correction of the DLW OR DRR by an employer with a later DLW OR DRR date.

330.80 Discrepancy In RR Employer's And Applicant's Statement Of Date Last Worked

330.80.1 Vacation Allowance Involved

Reconciliation of the date last worked (DLW) is usually not required when the discrepancy is explained by the fact that the applicant received a vacation allowance. In most cases, payment of a vacation allowance after the last day of compensated service does not change the employee's DLW for Railroad Retirement Act purposes. However, if the vacation period extends beyond 1 calendar month and it would benefit the employee to have the additional service, the vacation allowance can be credited as a service month. A vacation allowance

should never be used as service if it will affect the annuity beginning date unless, of course, eligibility is involved.

A few employers consider non-agreement (supervisory) employees to be in compensated service during the period covered by the vacation allowance. In these cases, the employer-employee relationship does not end until the vacation period is over, and the annuity cannot begin until the day after the vacation period ends. These employers will change the DLW on their Form G-88A.1 listings to the day the vacation period ends and enter the notation "Employee Not Covered By Vacation Agreement" in "Remarks." See FOM 1 210.

330.80.2 Vacation Not Involved

RBD will accept the employer's record of the applicant's last day of service unless it is obvious from information in file that the record is not correct. When the employer's record is obviously incorrect, RBD will ask the RRB Field office servicing the area in which the employer is located to inform the employer of the discrepancy and ask them to furnish a revised earnings report to the RRB.

330.95 Discrepancy In Applicant's And Employer's Statement Of Relinquishment of Rights

330.95.1 Acceptance of Employer's Record

Accept the employer's record of DRR if the date shown on that record is:

A. No earlier than the DLW (the date shown by the employer as the last day the applicant was considered an employee); and

B. Not more than 15 days later than the date on which the applicant filed their application or completed a Form G-88, provided the applicant has stated that they are not working and have not worked for any person, company or institution since leaving the service of an employer.

330.95.2 When Reconciliation Is Required

Reconciliation of any discrepancy between the applicant's statement and the employer's record of DRR is required when the employer's record may not be accepted under the conditions given in FOM1 330.95.1 , or before 12-1-88, when the applicant's employment outside the railroad industry might affect the ABD.

RBD will ask the field office to tell the applicant the date the employer reported and ask the applicant to recheck their own records. If the applicant wishes to change their previous statement, obtain a Form G-88. Tell them that if they feel the employer's report is in error, the applicant must submit a statement from the foreman or supervisor for whom they last worked to confirm the DRR.

330.110 Intent To Retire

Intent to retire rules are applicable only to cases with ABDs before 12-1-88.

330.110.1 Demonstrating Intent to Retire

An intent to retire is demonstrated if before entering any new employment the applicant relinquished rights to return to the service of a nonrailroad employer for whom they last worked before the earliest or designated ABD. Intent to retire is also demonstrated in:

a. Age and Service and Spouse Annuities - When the applicant does not work through the earliest possible ABD or, before 12-1-88, did not begin any new employment for at least six months after that date.

b. Disability Annuities - When the applicant filed an Application AA-1d.

330.110.2 Applying Intent to Retire Rules (ABD Before 12-1-88)

When nonrailroad employment begins after the earliest possible annuity beginning date, consider the annuity beginning date, the employer for whom the applicant last worked before that date, the date the applicant relinquished their rights to return to the service of that employer and the date the applicant began any new employment. In absence of information to the contrary, it is assumed that an employee did not retain rights to return to the service of a nonrailroad employer after the employee stopped working for that employer.

Apply these rules to determine the applicant's ABD and LPE employer:

a. When Rights were Relinquished BEFORE the Applicant Began Other Employment - The new employment is not LPE.

b. When Rights were NOT Relinquished Before the Applicant Began Other Employment

    1. In age and service and spouse cases

        - If the new employment did not begin within 6 months after the earliest possible annuity beginning date, it is not LPE;

        - If the new employment began within 6 months after the earliest possible ABD, it is LPE.

    2. In disability cases

        - If the employment began after the application was filed, it is not LPE;

- If the employment began before the application was filed, it is LPE.

Intent to retire rules do not apply if the ABD is after 11-30-88.