

1110.5 Earnings Defined

For determining work deductions, a person's earnings for a taxable year consists of the sum of their remuneration for services rendered as an employee during the year and their net self-employment (SE) earnings for the year, MINUS any net loss from SE for the year. Earnings are counted for the period in which they are earned, regardless of when they are paid; however, net earnings from SE are generally counted as earnings for the taxable year in which they are received.

Earnings, for work deduction purposes, include amounts "deducted" from the annuitants pay for health insurance premiums, income tax withholding, employee contributions to a retirement plan [i.e. 401(k) plan], union dues, etc.

Example: If the employee's gross pay in a given month is \$2,000, with deductions of \$25.00 for health insurance, \$300.00 for income tax withholding, and \$200.00 for a 401(k) retirement account, their earnings for work deduction purposes is \$2,000 for that month.

This section gives general guidelines for determining when earnings count for deduction purposes.

1110.5.1 Wages for Services as an Employee

Unless specifically excluded from "wages" under the Social Security (SS) Act, earnings for persons who are in service for hire normally include the following:

- A. All remuneration for services in employment, whether covered or not covered under the Railroad Retirement Act or the Social Security Act. Pay for work not covered for social security contribution and benefit purposes may be counted as earnings for the annual earnings test;
- B. Employment outside the U.S. covered by the SS Act;
- C. All cash wages from agricultural labor, even though less than \$150.00 a year;
- D. All cash wages from domestic service in a private home, service as an industrial home worker and service not in the employer's trade or business, even though less than \$50.00 a quarter; and
- E. Cash tips of \$20.00 or more per month for one employer.

[FOM1 1110.10](#) and [1110.15](#) have more specific information on which earnings should be included or excluded for deduction purposes.

1110.5.2 Wages in Kind

Wages in kind are considered earnings unless they are specifically excluded from wages by the SS Act.

If an oral or written agreement between a person and their employer states the value of the gratuity furnished, that value is the amount of remuneration if it is considered reasonable by the standards at the time of payment. It is immaterial whether the agreement was reached before, during or after the gratuity was furnished.

When the employer and the person have not agreed on the value of the gratuity furnished in lieu of cash payments, the reasonable value of the gratuity is determined on the basis of the benefit to the person rather than the cost to the employer. For example, the price a restaurant charges a customer for a meal is not necessarily the value of the same meal furnished to an employee of the restaurant, since employees do not usually get the same services as the customer.

1110.5.3 Self-Employment

Self-employment earnings are net earnings, regardless of the amount, from SE inside the U.S. (whether or not covered by the SS Act) and from SE outside the U.S., if covered by the SS Act. The net loss from SE is subtracted from the sum of any net earnings from other trades, businesses or total remuneration from employment. This means that if the SE business had a total loss for the taxable year, no work deductions for SE would be applied. Services performed in the U.S. by U.S. citizens employed by foreign governments, by wholly-owned instrumentalities of foreign governments, or by certain international organizations are included as self-employment earnings.

Deferred income received in a year after the year in which entitlement begins may be excluded in determining the individual's excess earnings, if it is based on services performed before entitlement begins. This applies to years after 1977 for an annuity or overall minimum (O/M) share payable for months after December 1977, but not for a disabled employee or child.

Detailed information on SE earnings and deferred income is in [FOM1 1110.20](#) and [FOM1 1110.45](#).

1110.5.4 Military Service

After 1956, earnings for deduction purposes include a serviceperson's basic pay from the U.S. armed forces while on active duty or active duty for training, either within or outside the U.S.

Active duty is extended full-time duty; active duty for training is, generally, full-time duty for periods of 14 days or more. Attendance at weekly drills by the serviceperson is assumed to be inactive duty for training. Earnings from inactive duty should be treated as follows:

- Inactive duty performed prior to January 1, 1988 - Earnings from inactive duty are not subject to work deductions.
- Inactive duty performed January 1, 1988 or later - Earnings from inactive duty are subject to work deductions.

1110.5.5 Earnings From Federal Government Employment

Earnings from employment for the Federal government are the gross earnings that the annuitant receives for services performed for the Federal government after the annuity beginning date (ABD).

Earnings, for work deduction purposes, include amounts "deducted" from the annuitants pay for health insurance premiums, income tax withholding, employee contributions to a retirement thrift plan, union dues, etc.

Example - If the employee's gross pay in a given month is \$2,000, with deductions of \$25.00 for health insurance, \$300.00 for income tax withholding, and \$200.00 for thrift plan account, their earnings for work deduction purposes is \$2,000 for that month.

1110.5.6 Earnings of Homeworkers

Homeworkers are employees earning wages if they:

- Work away from the employer's place of business; and,
- Work in accordance with the employer's specifications; and,
- Work on material or goods furnished by the employer; and,
- Return the finished product to the employer or to someone whom the employer designates. It is immaterial whether the employer calls for the work or the worker delivers it to the employer.

This group includes people who make quilts, buttons, gloves, clothing, needlecraft products, typing, etc., for an employer. The work is done away from the employer's place of business, usually, in the workers home, the home of another, or in a home workshop. Usually, the specifications given are simple and consist of following patterns or samples furnished by the employer.

The pay received from any one employer by homeworkers in this category is not counted for Social Security benefit entitlement purposes when that employer pays the homemaker cash wages of less than \$100 in a calendar year. However, all pay, cash and/or payments-in-kind, is counted in applying the earnings test for work deductions to a beneficiary, even if the cash-pay test is not met.

1110.5.7 Vacation Pay or Other Accrued Payments

A. Based on Service Before the ABD Year

Accrued payments from a railroad or non-railroad employer based on service performed before the annuity beginning date (ABD) year are not subject to work deductions. Accrued payments for the ABD year are subject to work deductions. When crediting a payment of accrued vacation pay or (annual leave), in lieu of taking the vacation, the RRB follows the guidelines established by SSA. Accrued vacation pay (or annual leave) paid in a lump sum at retirement relates to service performed prior to the date the employment relationship terminated.

B. Based on Service in the ABD Year or Later

If vacation pay or annual leave is based on service performed in the ABD year or later, these earnings are included in the total yearly earnings from that employer and are subject to work deductions. However, the non-work months for the grace year explained in [FOM1 1105.40](#) may apply.

1110.5.8 Back Pay or Deferred Earnings

A. Based on Service Before the ABD Year

If the annuitant receives back pay from either a railroad employer or a non-railroad employer, and the actual date last worked for that employer is in a year before the ABD year, the back pay is credited to the month that the employee performed the service for that pay for that employer. The payments are not subject to work deductions.

Example 1 - The annuitant's date last worked is 12-31-1991. Their ABD is 1-1-92. They received back pay on 2-5-92, from a railroad employer for the months of September 1991 through November 1991. For work deduction purposes, the back pay is considered earned in 1991 and does not cause work deductions.

Example 2 - Same facts as example 1, but the annuitant is also paying \$200.00 per month from their wages in 1991 into a 401(k) retirement plan. The amounts paid into the 401(k) account are considered earned in 1991, and do not cause work deductions.

B. Based on Service in the ABD Year or Later

For work deduction purposes, back pay or deferred earnings for services to a railroad or non-railroad employer performed in the ABD year or later, are considered to have been paid in the month in which they were earned. These earnings are included in the total yearly earnings from that employer and are subject to work deductions.

Example 1 - The annuitant has an annuity beginning date of January 1, 1990. The annuitant continues to work for their non-railroad employer in 1991 and 1992. On January 2, 1993, they receive back pay for months in 1991. The back pay is used to determine the work deductions that apply to the annuity for benefits paid for 1991.

Example 2 - Same facts as example 1, but the annuitant is also paying \$200.00 per month from their wages in 1991 into a 401(k) retirement plan. The amounts paid into the 401(k) account are considered earned in 1991 and are used to determine the work deductions that apply in 1991.

1110.5.9 Sick Pay

A. Based on Service Before the ABD Year

If the annuitant receives sick pay "under a plan or agreement," for up to six months after the actual date last worked, from either a railroad employer or a non-railroad employer, and the actual date last worked for that employer is in a year before the ABD year, the "sick pay" is credited to tier 1 only to the actual date last worked for that employer. The payments are not subject to work deductions. This type of Sick Pay from a railroad employer is indicated on the Employment Data Maintenance (EDM) record as "Miscellaneous Compensation." It is also referred to as "Tier 1 Sick Pay."

Example - The annuitant's date last worked is 9-30-1991. Their ABD is 1-1-92. The annuitant received "Tier 1 Sick Pay" from a railroad employer for the months of September 1991 through February 1992. For work deduction purposes, the total amount of the "Tier 1 Sick Pay" is credited to 9-30-1991. The "Tier 1 Sick Pay" does not cause work deductions.

B. Based on Service in the ABD Year or Later

If the annuitant is carried on the payroll in the year of the annuity beginning date, the "sick pay" is subject to the annual earnings test for work deductions.

If the annuitant performs service for a non-railroad employer after the annuity beginning date and then receives sick pay under a "plan or agreement" for a period (up to six months) after the actual date last worked for the non-railroad employer, these payments are credited to the date last worked for the non-railroad employer and are included in the total yearly earnings used in the annual earnings test for work deductions.

Example - The annuitant's actual date last worked is 2-28-1992. Their ABD is 3-1-92. The annuitant received "Sick Pay" from a non-railroad employer for the months of March 1992 through August 1992. For work deduction purposes, the total amount of the "Sick Pay" is credited to 2-28-1992. The "Sick Pay" is

included in the annuitant's yearly earnings. However, "non-work" months will probably apply after the ABD.

1110.5.10 Payment to School Employees during Non-Work Months

If the annuitant was a school employee who received payments during "non-work" months, use the guidelines as shown below:

1. Nature of Payments to School Employees - School teachers are usually engaged in a seasonal job with employment contracts requiring the performance of a specified number of days, weeks, or months of teaching (or similar) services during the school term in return for a specific salary. Frequently, the agreed-upon salary is paid out in 12 monthly installments for the convenience of both the employer and the employee. In such cases, the wages are earned when the personal services stipulated in the contract are performed and not during the off-season months.
2. Imposing Work Deductions - Do not impose a work deduction because of excess earnings for a "Non-Work" month in the "Grace Year" (i.e., one in which no services of any kind were rendered) falling between school years even though a wage or salary payment is made to the teacher (or janitor, clerk, etc.) for that month. In such cases, the payments made during the period between school terms are presumed to be part of the total earnings for the contract year and should be allocated to the months in which they actually were earned. However, if the school employee performs any additional service for additional remuneration between the school years (such as teaching summer school) for the same employer on a full or part-time basis, that month should not be considered a "non-work" month.
3. Sabbatical Leave - Do not apply work deductions because of sabbatical leave payments for the normal "non-work" summer months where the school system makes regular salary payments to teachers in 12 monthly payments (even though the school year is of only 9 or 10 months' duration), unless the payments are for research and study actually performed during the summer months.

1110.5.11 Dismissal or Separation Payments

Dismissal or separation pay usually refers to payments made by an employer to an employee whose employment is terminated independently of their or her wishes. Normally, the employment is terminated because of economic conditions which result in a reduction of force or a shutdown of a plant. The payment is made to provide income to a terminated employee while they are seeking other employment. These payments are subject to the annual earnings test.

The dismissal or separation pay is deemed to have been paid on the actual date last worked, regardless of when paid. (This presumption may be rebutted if there is proof that the payments are for services rendered at an earlier time.)

Example 1 - The annuitant received a regular salary of \$2,000, per month for 1-1-1991 through 3-31-1991. The annuitant receives dismissal pay of \$25,000 which was paid in monthly installments of \$2,500 per month for ten months effective from 4-1-1991. Their actual date last worked was 3-31-1991. Their ABD is 9-1-1991. The total amount of the separation pay is credited to 3-31-1991. The annuitant's total earnings for the year is \$31,000. The annuitant has non-work months from 9-1-1991 through 12-31-1991.

Example 2 - The annuitant received a regular salary of \$2,000, per month for 1-1-1991 through 3-31-1991. The annuitant receives separation pay of \$25,000 which was paid in a lump sum on 7-5-1991. Their actual date last worked was 3-31-1991. Their ABD is 9-1-1991. The total amount of the separation pay is credited to 3-31-1991. The annuitant's total earnings for the year are \$31,000. The annuitant has non-work months from 9-1-1991 through 12-31-1991.

1110.5.12 Earnings from Investments

Earnings from investments are not based on service to an employer or "substantial service" in self-employment. These earnings are not subject to work deductions. Some examples of these types of payments are:

- Rentals from real estate that cannot be counted as earnings from self-employment because, for instance, the beneficiary did not materially participate in production work on a farm, the annuitant was not a real estate dealer, etc.
- Interest and dividends from stocks and bonds (unless they are received by a dealer in securities in the course of business).
- Gain or loss from the sale of capital assets, or sale, exchange, or conversion of other property which are not stock in trade, nor includable in inventory.
- Payments from an Individual Retirement Account 401(k) plan.

1110.5.13 Earnings from Employment Outside the United States

If the annuitant is performing service to an employer or self-employment outside the United States and the annual earnings test applies, the earnings must be converted to U.S. dollars to determine the amount of the reduction to the annuity on account of work. The annuity applications and reporting forms specify that only U.S. dollars are to be shown. To convert the foreign earnings amount to U.S. dollars, complete Form G-310, Conversion of Foreign Currency, and forward it to your lead or supervisor. They will obtain the exchange rate for the period in question and return the form to you.

1110.5.14 Earnings while Incarcerated

If the annuitant is performing service to an employer while confined in a jail, prison, or other penal institution or correctional facility in accordance with FOM1 150.15 for retirement and survivor annuities, the annual earnings test applies for the purpose of work deductions.

Example:

An EE's ABD is 03/01/18, but has been incarcerated since 11/07/2013. While imprisoned, the EE took a position in the prison as a Suicide Prevention Companion that pays \$60/month during 2013 and continues to make earnings after their ABD. Earnings are paid by the State of Indiana, however the EE does not receive any W-2 or tax form to report this income to the IRS each year. Monthly \$30 work deductions are applicable to the \$60 LPE/LPS earnings and the annuity is to be reduced accordingly.

Note: The lack of IRS reporting of the earnings is an area that makes this example a tricky area to monitor because the earnings would never be seen on DEQY/EDM.

1110.5.15 Earnings from In-Home Support Services Programs

In-home supportive services programs (IHSS) vary from state to state. Therefore, no general answer can be given to determine if the payment should be subject to work deductions. Determinations will need to be made on a case by case basis. The case should be forwarded to Policy and Systems (P&S) - RRA Application and Calculation Unit (RAC). P&S-RAC will evaluate and determine if the case should be forwarded to the Office of General Counsel (OGC) to obtain a legal opinion. Depending on the facts of each case, P&S-RAC or OGC may solicit additional information that is necessary for reaching a work deduction determination.

Before forwarding the case to P&S-RAC, the case file should contain information about the annuitant's work relationship with the IHSS. Work relationship information is typically found in the responses to RRB forms (for example annuity applications, AA-4, G-251, G-252, G-254, and other OMB approved sources). Where the work relationship information is unclear or deficient, then further development is needed. The case file's work relationship information should include:

- 1) The source of the funding for the annuitant's work. (For example: the name of the government program, non-profit organization, or private entity/individual that is paying for the annuitant's work.)
- 2) Documentation describing the work relationship. (For example: a work contract, a provider agreement, a program website, a work consent form, a program brochure, or any other available work document.)
- 3) The name and relationship of the person that the annuitant is providing in-home support services for.
- 4) A description of the annuitant's work tasks and work schedule.
- 5) Details about who directs and records the annuitant's work schedule.
- 6) An explanation about who selects the annuitant's work tasks and who provides any of equipment used by the annuitant.
- 7) A description or record (such as a pay stub) of the frequency (pay period), pay rate, and gross monthly amount of the annuitant's earnings.
- 8) Tax information pertaining to the IHSS that identifies the earnings for all years worked, the payor of the earnings, and the type of earnings (employment or self-

employment or other form of income) that were reported. The tax information can be in the form of a DEQY, W-2, IRS-1099, IRS-1040 with schedules, paystubs, or any other reliable source.

1110.10 Income Included As Earnings

Certain kinds of income are not included as earnings for work deduction purposes. The charts in this section and in [FOM1 1110.15](#) indicate the major kinds of income and how they are treated in the annual earnings test. The charts are not all-inclusive. Check both sections to see if the information you need is covered. This information is furnished to give you guidelines on answering inquiries. In many cases, the nature of the payment must be determined and a final determination made by the examiner in Operations. If you cannot reconcile the payment with this list or the list in [FOM1 1110.15](#), send the inquiry to Policy and Systems, RRA Application and Calculation (P&S-RAC) section for a formal determination. P&S-RAC may need to submit a request for legal opinion to the RRB's Office of General Counsel for a final decision.

The kinds of income listed in this section are included as earnings for deduction purposes.

	Type of Income	Count as Earnings for Deductions
1.	Advances	Count advances in period the services are performed unless the advances are paid against future commissions. If the advances are paid against future commissions, count in the period paid.
2.	Agreements Not to Compete	If the agreement calls for services to be performed, count as earned in the period the services are performed.
3.	Back Pay	Count back pay in the period for which paid unless not under a statute, court order, agency ruling, etc. If the back pay is paid under a statute, court order, agency ruling, etc., count when paid; but no later than the last month of employment.

4.	Bonuses	<p>a. Occasional Bonus</p> <p>Count occasional bonuses in the month of payment. A bonus is considered occasional if both the payment and the amount are determined at the sole discretion of the employer at or near the time of payment.</p> <p>b. Regular Bonus</p> <p>Count regular bonuses in the month for which paid. A regular bonus is considered as part of the employee's pay.</p> <p>Note: Bonuses paid by a third party are not considered as earnings for work deduction purposes.</p>
5.	Cafeteria Plan Payments	<p>Count cafeteria plan payments if the payment meet the definition of wages and the plan has not meet IRS requirements, i.e. is not a "qualified benefit under section 125."</p> <p>Note: The IRS determines whether a plan is a cafeteria plan under section 125 of the Code and whether any benefit under the plan is a qualified benefit. The W2 form normally indicates whether the plan is covered under section 125.</p>
6.	Cash Remuneration	Covered employment under the SS Act or non-covered employment, without regard to minimum and maximum limitations.
7.	Clergymen's Income (Ministers)	<p>Count remuneration for services rendered in the exercise of the ministry, regardless of whether or not coverage was elected and whether self-employed or an employee. Include salary, allowances for parsonage, rent, travel, etc.</p> <p>Note: If the allowance for parsonage or housing is included in retirement pay, it should not be counted.</p> <p>SSA has specific procedure for controlling the income reported for ministers. As such, only the posted SEI amount should be used for work deduction purposes. For more information, refer to POMS RS 02505.120.</p>

8.	Clerical Orders Under A Vow of Poverty	Count reported wages of clerical orders under a vow of poverty if the order has filed a certificate of election of Social Security coverage. If no certificate has been filed, do not count.
9.	Commissions	If self-employed, count net earnings from SE. If an employee, count gross commissions and advances against commissions to be paid in the future. Also see FOM1 1110.45 for deferred earnings.
10.	Consultants	Count wages in period consultant performed services if an employee. If self-employed, count remuneration when received.
	Container Royalty Payments	Container royalty payments are special payments to compensate longshoremen for decreased employment opportunities resulting from the use of containerized shipping. These payments are counted as earnings for work deduction purposes.
11.	Deferred Compensation	Count in last month of employment (or in period actually earned when benefits are affected) if payments are from a nonqualified deferred compensation plan.
12.	Director's Fees	A director attending board meetings is not an employee of a corporation, since the board of directors is the governing body of the corporation and is not subject to its control. A director who does no work for the corporation, but attends the meetings of the board of directors, is deemed to be self-employed. The fees are included as SE income for deductions.

13.	Dismissal, Severance or Termination Pay	<p>Dismissal, severance or termination pay refers to payments made by employer to an employee whose employment is terminated independently of the employee's wishes. Normally, the employment is terminated because of economic conditions which result in the shutdown of a plant or other similar action taken by an employer. The dismissal or severance payment is made to provide income to a terminated employee while seeking other employment. The true nature of the payment must be determined.</p> <p>Dismissal pay is counted as earnings for deduction purposes.</p>
14.	Election Workers	Any payment to election judges or workers for services rendered.
15.	Employer Payments for Educational Assistance	Count employer payments for educational expenses.
16.	Federal Annual and Sick Leave Payments	<p>Federal annual and sick leave payments are considered a continuation of salary. If employment continues, count in the months of absence. If physical services are performed after May 1990 and the employment relationship then terminates, count in last month of services (or period earned if benefits are affected).</p> <p>Consider leave donated to a recipient, as earned by the recipient, i.e., the same as the recipient's other sick leave.</p>
17.	Federally Sponsored Economic and Human Development Programs a CETA(Comprehensive Training Act)	<p>Generally, the head of the agency administering a program determines if remuneration is wages. Wages count as earnings for deductions when an employer-employee relationship exists, or the employing agency has determined payments to be wages.</p> <p>Count any compensation received for work which is substantial and necessary, if it is gainful and fills a public need.</p>

	<p>b Domestic and Volunteer Service Act of 1973 (includes Vista and Title I Special Volunteer Programs)</p>	<p>No remuneration received by volunteers is counted. The Act covers the following programs:</p> <p>National Volunteer Anti-Poverty Programs</p> <p>Part A Volunteers in Service to America (VISTA)</p> <p>Part B Service-Learning Programs</p> <p>Part C Special Volunteer Programs</p> <p>Title II National Older American Volunteer Programs</p> <p>Part A Retired Senior Volunteer Program</p> <p>Part B Foster Grandparent Program and Older American Community Service Programs</p> <p>Title III National Volunteer Programs to Assist Small Business and Promote Volunteer Service by Persons with Business Experience.</p>
18.	Fiduciary Fees	Count earnings of professional fiduciaries and non-professional fiduciaries carrying on a trade or business under certain conditions.
19.	Fringe Benefits	Generally, low value awards, gifts (watches, pins, etc.) are not wages and, therefore, are not counted. However, some fringe benefits may be wages and therefore, counted, e.g., the value of have a company car for personal use. Development is needed in these cases.
20.	Health Savings Accounts (HSAs)	Count employee contributions to HSAs as wages for work deduction purposes. Do not count employer contributions to HSAs as wages for work deduction purposes.
21.	Holiday Pay	Count holiday pay. If the holiday pay is in excess of the regular salary, treat as a bonus.

22.	Idle Time, Standby, and Non-work Payments	<p>Payments through the month age 62 is attained are counted as earnings.</p> <p>Beginning January 1, 1984, include payments made to an annuitant after the month age 62 is attained, if no work was done in the period for which paid. Also beginning January 1, 1984, sick leave payments made to Federal employees after the month age 62 is attained are counted.</p> <p>Before January 1, 1984, these payments were excluded from earnings after the month age 62 was attained.</p>
23.	Incentive Awards	Incentive awards under a supplemental compensation plan are counted as earnings.
24.	Insurance Commissions	<p>A. Life Insurance – Agent Is An Employee</p> <p>Count original commission plus all anticipated renewal commissions on the sale of life insurance, in the month the employee performed the last act to be entitled to the commissions.</p> <p>B. Life Insurance – Agent Is Self-employed</p> <p>Count each original commission on the sale of life insurance, in the year actually received.</p> <p>Renewal commissions are excluded from earnings for work deduction purposes if the annuitant did not perform any service in the year of the payment.</p> <p>C. Casualty Insurance – Agent Is An Employee</p> <p>Count commissions for casualty insurance in the year sold. If renewed, count in the year renewed.</p> <p>D. Casualty Insurance – Agent Is Self-employed</p> <p>Count in the year the agent receives the commission for selling a casualty insurance policy. If the policy is renewed, count the “repeat commission” in the year it is received only if the agent performed services in the year in question.</p>
25.	Legislators	Count wages reported by the State.

26.	Life Insurance Paid By Employer	Count as wages, the employer's cost of premiums for group term life insurance that exceeds \$50,000 for the beneficiary. If the employment relationship has terminated, count in the last month of employment.
27.	Members of Congress	Count remuneration for services in Congress that are reported as wages.
28.	Military Service	Count military pay in the period for which it is paid, whether for active or inactive duty and including pay for inactive duty training of a member of a reserve component. Do not count the value of or allowances provided for food, clothing, shelter, etc., or special or incentive pay (e.g., flight pay, hazardous duty pay, etc.)
29.	Net Earnings from SE	Count all net earnings from SE derive from all trades or businesses as computed under the Internal Revenue Service (IRS) code. The legality of a business or trade is immaterial. Covered or non-covered under social security is immaterial.
30.	Nonteaching School Employees	Count in the period in which services by the nonteaching employee were performed (even if paid on a 12-month schedule).
31.	Partnerships	Count the NESE derived from a valid business partnership.
32.	Peace Corps	Count both current and termination Peace Corps payments.
33.	Prizes, Awards and Gratuities	Count prizes, awards and gratuities only if they are part of the salesperson' wage structure.
34.	Public Officers Other Than Congressmen or Legislators	Count wages reported for holders of a public office.
35.	Railroad Employment	Railroad compensation is only counted for work deduction purposes in the ABD year if the employee also has non-railroad earnings in the ABD month or later which are subject to work deductions. Refer to FOM1

36.	Royalties and Patents	<p>Royalties paid prior to the year the annuitant attains full retirement age are counted as earnings for work deduction purposes.</p> <p>Example:</p> <p>An employee becomes entitled to an annuity in March 2002 at age 62. They receive \$75,000 per year in royalties from books written and copyrighted in 2000. Their annuity will be subject to work deductions for 2002, 2003, and 2004 because they have not attained full retirement age.</p> <p>Refer to FOM1 1110.15 for information on royalties that are not counted for work deduction purposes.</p> <p>For Patents, the annuitant, in order to provide a more accurate assessment, would need to submit additional information to the RRB regarding the patent such as when the patent was created, earnings information, tax records, etc.</p>
37.	Sabbatical Leave Payments	Count sabbatical leave payments only if wages. Reference POMS RS 01402.220 and RS 01402.265.
38.	Scholarships and Grants	Count scholarships and grants only if wages. Reference POMS RS 01401.408 and RS 01402.265.
39.	Service Charge/Fee (Tips)	Count service charge/tips as wages in the period paid to the employee.
40.	Sick Pay	Refer to FOM1 1110.15
41.	Stand-By Payments	Payments received for an employee to be on call are considered as earnings for work deduction purposes.

42.	State and Local “Pick-up” Plans	<p>Many retirement systems for employees of State and local governments provide for contributions by both employer and employees. Sometimes the employer will “pick-up”; i.e., pay the contribution that is required of the employee under a salary reduction agreement. In such cases, the amount of the “picked-up” portion is counted as wages to the employee in the year it is picked up.</p> <p>If the contributions are paid only by the employer with the employer’s own funds; i.e., there is no salary reduction agreement, do not count the payments as wages.</p>
43.	Statutory Employee	<p>Although independent contractors, under common law rules, may be treated as statutory employees for certain employment tax purposes, they do not qualify as employees. Due to similar working conditions, IRS provided for their coverage as employees rather than self-employed persons. However, their earnings are treated as net earnings from self-employment and must be included when applying the earnings test.</p>
44.	Stock Bonus Plan	<p>Count the fair market value of the stock if not tax exempt. Reference POMS RS 01401.340 and RS 01402.125.</p>
45.	Stock Option Plan	<p>Count as wages the difference between the fair market value of stock at the time the option is exercised and the option price. Count these in the period the option was granted. (IRS Ruling 56-452).</p>

45a	Exercising Stock Options Prior to 2002	<p>A stock option is the right to purchase specific numbers of shares of a company's stocks at a future date at a pre-set price.</p> <p>Before tax year 2002, when the employee exercised a stock option, the difference between the stock price paid under the option and the fair market value of the stock (also referred to as the "spread") was counted as wages for work deduction purposes, if the income from the "spread," was reported in the same year as when the employee sold the stock. See FOM1 1110.15, Income Excluded From Earnings, for additional information on the years when stock options were excluded as wages for work deduction purposes.</p>
46.	Subchapter S Corporations	Taxable distribution from a Subchapter S corporation may be considered wages where they represent remuneration for services as opposed to a return on an investment. (Decisions on whether taxable income from a Subchapter S corporation is considered earnings are made on a case-by-case basis.)
47.	Taxes Owed by Employee	Count any taxes owed by the employee that are withheld from wages by the employer.
48.	Television, Radio, Motion Picture Residuals	Count remuneration from television, radio and motion picture residuals in the period the performer provided the original services if the performer was an employee.
49.	Tips	<p>Count tips amounting to \$20 or more per calendar month from each employer. When a customer's bill includes an additional amount which is for distribution to employees by an employer, such amounts are not tips or gratuities but are considered wages.</p> <p>Tips received in a medium other than cash are not counted as wages.</p>
50.	Trial Work Period Earnings	Count trial work period earnings in year the disability annuitant becomes entitled to an age and service annuity but consider if the monthly earnings test can apply.

51.	Vacation Pay, Pay in Lieu of Vacation, and Annual Leave Payments	Count as earnings. Vacation pay should be credited to the period in which the individual took the vacation. If the individual receives a lump sum in lieu of vacation pay Payments at the time of retirement, the vacation pay should be considered earned in the last month worked.
52.	Earnings while Incarcerated	Count as earnings. Annual earnings test(s) apply if categorized as LPE or Regular.

1110.15 Income Excluded From Earnings

The kinds of income listed in this section are not included as earnings for work deduction purposes. The list is not all-inclusive. This information is furnished to give you guidelines in answering inquiries. If you receive an inquiry regarding a “special payment” and cannot reconcile it with this list or the list in [FOM1 1110.10](#), send the inquiry to Policy and Systems, RRA Application and Calculation section for a formal determination. P&S-RAC may need to submit a request for legal opinion to the RRB’s Office of General Counsel for a final decision.

TYPE OF PAYMENT	DO NOT COUNT AS EARNINGS
Annuity Plan or Systems Payments	Payments made by an employer under a plan or system to a former employee who has reached a specified age and whose employment relationship has terminated because of retirement.
Awards	<ul style="list-style-type: none"> a. Employee Achievement Do not count employee achievement awards. b. Length of Service Do not count length of service awards. c. Employee Suggestion Awards – See FOM1 1110.10. d. Outstanding Work – See FOM1 1110.10.
BUY OUTS	A buy out is a payment made on account of retirement and should not be counted as earnings for work deduction purposes.

Cafeteria Plans	<p>Payments received from cafeteria plans are not counted as wages for work deduction purposes if the plan meets the requirements of section 125 of the Internal Revenue Code. IRS makes this determination.</p> <p>A copy of the plan with a description of the payments should be submitted as proof.</p>
Capital Gains	All capital gains, including income received from the sale of farm animals, provided they were held for work, dairy or breeding purposes.
Damages, Attorney's Fees, Interest or Legal Penalty Payments	If the payment was made under a court judgment or by compromise settlement with the employer, based on a legal action for wages. Back pay recovered in the proceedings <u>is counted as earnings</u> .
Dividends and Interest	<p>Do not count dividends and interest as earning for work deduction purposes.</p> <p>EXCEPTION: If dividends or interest are received by a dealer in stocks and securities while they are in inventory for resale, those dividends or interest would be counted.</p>
Employer Payments for Dependent Care	Do not count employer payments for dependent care programs as earnings.
Engineer Reserve Pool Payments to Canadian Residents	Legal opinion L-2003-13 ruled that these payments are not earnings for work deduction purposes.
Expenses Deductible for Hiring A Substitute or Assistance	Do not count as wages to the principal employee, the amount of wages paid by the principal employee to a substitute or assistance.
Farm Rental Income	Income received by a landowner in cash or as their share of a crop produced on their land is considered rental income. This is excluded from net SE income if the owner did not materially participate in the production of the crop.
Federal Agricultural Program Payments (FAPP) Made to Farmers	Do not count FAPP payments such as deficiency payments, conservation reserve payments, whole

	<p>herd dairy buyout program payments, PIK payments, etc.</p> <p>These payments are usually shown in item 6a on Schedule F.</p>
Fiduciary Fees	Do not count fees paid to a non-professional fiduciary who is not carrying on a trade or business, but who merely directs and gathers the assets of an estate in isolated cases. <u>Do</u> count fees of professional fiduciaries.
Flexicredits	Flexicredits are a type of employer contribution towards insurance benefits and are not counted as earnings.
Foster Care Payments	Foster care payments are not considered as earnings for work deduction purposes.
Guaranteed Annual Income Payments (New York Shipping Association)	Do not count guaranteed annual income payments made pursuant to union agreement with the NY Shipping Association.
Health Savings Accounts (HSAs)	Do not count employer contributions to HSAs as wages for work deduction purposes.
Higher Education Act	Payments received under Title IV of the Higher Education Act are excluded from income as earnings.
Hobby Income	Do not count the amount of income that is derived from a hobby that is not a business or trade.
In-Kind Wages	<p>Exclude income received for domestic or farm work, or from services not in the course of the employer's trade or business or for services by certain homeworkers whose cash pay in a calendar year is less than \$100.00.</p> <p>Exclude meals or lodging furnished as remuneration for employment if furnished on the business premises of the employer and for the convenience of the employer.</p>
Insurance Policy Proceeds	Proceeds from insurance policies are not counted as earnings.

Insurance Premiums Paid By The Employer	Do not include for work deduction purposes.
Investment Income	Exclude from earnings, income not attributable to the performance of personal services (e.g., rentals from real estate). Do not count dividends received on stocks and interest on bonds, provided it is not received in the course of a trade or business as a deal in stocks and bonds.
Judgment or Judicial Award	Do not count a judgment or judicial award as earnings for work deduction purposes.
Jury Duty Fees	Compensation received for jury duty, including meals and lodging are not counted as earnings.
Loans of a Personal Nature	Loans of a personal nature are not counted as wages for work deduction purposes unless the employee repays the loan by working in covered employment for employer.
Meals and Lodging	Do not count the value of meals and lodging if furnished for the convenience of the employer on the employer's premises and the employee is required to accept as a condition of employment.
Medical and Hospital Expenses	Do not count employer payments made under a medical plan or system, or payments made later than 6 months after the employee last worked if not under a plan or system.
Moving Expenses	Payments as reimbursement or allowance for moving expenses are not counted as earnings if the annuitant incurred the moving expenses in reporting to a new place of employment, and the expenses would be deductible for income tax purposes.
Non-Covered Remuneration For Services Outside the U.S.	When services are performed outside of the U.S. and the annuitant does not work more than 45 hours in a month, the earnings are not counted for work deduction purposes.
Payments Under a Plan	Certain payments or series of payments paid by an employer to an employee or to any of their dependents on or after the employment

	relationship has terminated because of death, retirement for disability or retirement for age and paid under a plan established by the employer.
Payments Upon or After Retirement	Do not count payments statutorily excluded such as “because of retirement” or “on account of retirement”. If not thus excluded, count in the last month of employment (or prior period earned if benefits are affected).
Pension and Retirement Payments	Special payments made on account of retirement are not included as earnings.
Pre-Tax Medical Insurance Premiums	Do not count as earning for work deduction purposes. Note: These cases normally involve disability annuitants working for a school district. If there is a discrepancy between the earnings information on form RL-231f and the earnings posted by SSA, secure a copy of the annuitant’s W-2. The pre-tax medical insurance premiums are normally through some type of cafeteria plan.
Prizes and Gratuities	Not counted as earnings unless the payment is an integral part of the salesperson’s wage structure. Prize winnings from contests are not counted as earnings unless the person enters a contest as a trade or business.
Profit Sharing Payment From a Plan	Not counted if the plan is financed by a trust fund. (NOTE: If the trust fund is not tax exempt, count the payment as earnings.)
Qualified Native American entity income from fishing-rights related activity	If a tribe member makes income through fishing rights-related activities, directly or indirectly through a <u>qualified Native American entity</u> , that income is not counted as earnings. Fishing rights-related activity is any activity directly related to harvesting, processing, transporting, or selling fish (with conditions) while exercising the recognized fishing rights of the tribe.
Redwood National Park Act Payments	Do not count Redwood National Park Act payments for work deduction purposes.

Release Payments	Payments to secure release of an unexpired contract of employment are not counted as earnings.
Relief Payments	Relief from unemployment and similar programs providing assistance to the needy should not be counted as earnings.
Rental Income	<p>Do not count rental income as earnings unless payment is received by real estate dealers from property held for sale or substantial service activity is provided.</p> <p>Example:</p> <p>An employee rents rooms through AIRBNB. Income from Air BNB is not considered earnings. Earnings from investments are not based on service to an employer or "substantial service" in self-employment. If the individual is providing services beyond renting the property, i.e. changing the tenant bed linens or providing meals each day then a self-employment determination would need to be made to see if the employee is providing "substantial service".</p>
Retired Partnership Payments	Retirement payments received by a retired partner are not counted as earnings provided the payments are made under a written plan and the retirement partner renders no services to the partnership.
Royalties	<p>For an annuitant who has attained full retirement age, royalties, to the extent that they flow from property created by the annuitant prior to the taxable year in which they attained full retirement age are not counted as earnings for work deduction purposes.</p> <p>Example:</p> <p>An employee becomes entitled to an annuity in March 2002 at age 62. They receive \$75,000 per year in royalties from books written and copyrighted in 2000. Their annuity will be subject to work deductions for 2002, 2003, and 2004</p>

	because they have not attained full retirement age. Royalties received in 2005 (the year they attain full retirement age) may be excluded.
Section 125 Plan	This is another plan involving employer contributions to the employee's insurance benefits and should not be counted as earnings for work deduction purposes.
Sick Leave Payments to Government Employees	<p>Most Federal agencies report sick leave as wages since Federal agencies have determined that payments for sick leave are continuing payments of salary and are not made on account of sickness or accident disability. Before January 1, 1984, sick leave payments made to Federal employees after age 62 was attained may be excluded if the employee did not work in the pay period.</p> <p>All state and local government sick leave payments <u>are counted</u> as earnings, <u>unless</u> it is established that there is a separate plan for payments on account of sickness or accident disability, that are not just continued salary payments.</p>
Sick Pay Before January 1, 1982	Prior to January 1, 1982, sick pay was not counted as earnings if it was paid under a plan or system.
Sick Pay Beginning January 1, 1982	Effective January 1, 1982, sick pay is not counted as earnings if it is paid after the expiration of six full calendar months after the month last worked.
Stock Options	<p>A stock option is the right to purchase specific numbers of shares of a company's stocks at a future date at a pre-set price. The "spread" is defined as the difference between the option price and the fair market value of the stock.</p> <p>Prior to tax year 2002, if the income from the "spread" when exercising stock options can be attributable to the period when the employee was granted the options, but was actually paid in a later year, the income is not counted as wages for work deduction purposes.</p> <p>For tax year 2002 and later, see FOM1 1110.10.</p>

Strike Benefits	Not counted as earnings provided that the payment is not based on walking a picket line or performance of any other service as an employee of the union.
Subchapter S Corporation	Undistributed taxable income from a subchapter S corporation which is not available for use will generally not be counted as earnings for services, except where the corporation has been set up for the primary purpose of avoidance of earnings restrictions. Decisions on whether income from a Subchapter S corporation should be considered as earnings are made on a case-by-case basis.
Supplemental Unemployment Benefits	Do not count supplemental unemployment benefits unless FICA taxable under IRS rules.
Tax Sheltered Annuities	The amount of the annuity purchased from the employer's funds are not counted as earnings to the employee. The amount of the annuity purchased from the employee's fund is considered to be earnings.
Tips	Tips paid to an employee which are less than \$20 a month, or are not paid in cash, are not counted as earnings for work deduction purposes.
Traveling and Business Expenses	Payments made by an employer which are reimbursement specifically for travel expenses of the employee and which are so identified by the employer at the time of the payment are not counted as earnings.
Trust Payments	If the payments are made under an employer's plan or system or to a trust fund that is tax exempt, the payments are not counted as earnings.
Unemployment Compensation	Railroad unemployment insurance payments and unemployment compensation paid by States are not counted for work deduction purposes.
Veteran's Training Pay and Allowances	Do not consider veteran's training pay subsistence or dependency allowance paid by the VA to an individual while in school or while engaged in On-

	the-job training as an apprentice or trainee as earnings for deduction purposes. Any additional payments made to the veteran by an employer may be wages depending on the type of work program.
Worker's Compensation	Worker's compensation is not counted as Earnings for work deduction purposes.

1110.20 Self-Employment Income

Self-employment (SEI) is remuneration for "substantial services" performed for an unincorporated trade or business which the person owns.

Form AA-4, "Self-Employment and Substantial Service Questionnaire," is usually completed by an employee or spouse applicant who indicates on the annuity application that they are or were recently self-employed. It is also completed in cases where the employee claims S/E at any time after leaving railroad service and a S/E vs. LPE decision is needed for a C/C determination or for work deduction purposes. Occasionally, individuals complete the questionnaire, at their request, before filing an annuity application, to have the SEI determination made in advance.

Earnings from SEI for work deduction purposes are the "net earnings from self-employment (NESE)". The NESE amount is subject to work deductions, if it exceeds the annual exempt amount.

The NESE amount is the amount of the wages for the earnings year normally displayed on the Employment Data Maintenance screen (EDMID104, Creditable Service and Earnings Yearly Totals) or in item 4 of Form G-90.

If this amount is not available from these sources, request the RRB field office to obtain a copy of the annuitant's income tax Form 1040, Schedule SE, filed with the Internal Revenue Service to pay the Self-Employment Contributions Act (SECA) tax for the earnings posted to their social security wage record based on their SEI.

Also obtain copies of the Form 1040, Schedule C or Form 1040, Schedule F for the computation of the net profit or net loss from SEI. The Form 1040, Schedule SE, (either the short form or the long form) combines the net earnings from all SEI trades or businesses carried on by the self-employed person in the earnings year.

A net loss from SEI would be subtracted from a profit from other SEI in the same year. The net SEI earnings are then multiplied by .9235. The result is the NESE.

If the individual is filing a joint income tax return, the Form 1040 Schedule SE should include their earnings only. The spouse files a separate Form 1040, Schedule SE on their own social security number to report her SEI to their own wage record. Use that amount for the spouse annuity work deductions for the spouse's own earnings.

Example: The employee (DOB 2-10-25), for the earnings year 1991, filed a Form 1040 Schedule C with a net profit of \$15,000 as a self-employed insurance agent and Form 1040 Schedule F with a net loss of \$1,000 from a farm they own and operates as SEI. The Form 1040 Schedule SE indicates that their total SEI earnings for the earnings year 1991 are \$14,000. This amount is multiplied by .9235. The resulting NESE of \$12,929 is posted to their wage record and is displayed in item 4 of Form G-90. Since this amount exceeds their annual exempt amount of \$9,720, and their tier 1 is not reduced for SSA benefits, their tier 1 is subject to work deductions.

Where an individual sells their business, the amount received for inventory or stock in trade or business is included in gross receipts in determining the net SEI on Form 1040 Schedule C. However, the earnings from the sale of the inventory will not be counted as earnings for work deduction purposes if the employee is no longer engaged in the business or the business is closed.

Where an individual sells their business and retains ownership of accounts receivable:

- Collections are included in computing the net SEI on Form 1040 Schedule C in the year received when a cash basis method of accounting is used; or,
- Collections are not included when using accrual method of accounting because they were included in the net SEI on Form 1040 Schedule C in the years in which the sales were made.

For the purpose of determining work deductions, a person's earnings for a taxable year consists of the sum of their remuneration for services rendered as an employee during the year and their net self-employment (SE) earnings for the year, MINUS any net loss from SE for the year.

The "optional" method of computing net earnings from SE is available to any individual who is regularly self-employed or a member of a partnership, when the actual earnings from non-farm SE are less than \$1,600.00 and less than two-thirds of the gross non-farm income. When both non-farm and farm businesses are involved, the non-farm option may be used only if the individual's actual net earnings from both non-farm and farm SE are less than \$1600.00.

Beginning 1-1-78, it must be determined if the monthly earnings test may be used in a given year. If the monthly earnings test does not apply, work deductions are based on the annuitant's net self-employment income for the year.

If the monthly earnings test applies, work deductions do not apply for any month in which the annuitant both does not earn over the monthly exempt amount in wages and does not render substantial services in self-employment, regardless of their total earnings for the year.

1110.25 Meaning Of Substantial Services

A self-employed person's monthly work activity cannot be gauged accurately in terms of the amount of monthly earnings, as is done with employed workers. The self-employed person's monthly services, therefore, are measured by considering whether they are substantial. A substantial service determination is made only if the monthly earnings test applies. Once the monthly earnings test has been applied in a particular year, work deductions in subsequent years will be assessed based on the total yearly earnings, regardless of the time spent in substantial services.

The general test of whether services are substantial is whether, in view of the particular services rendered and the surrounding circumstances, the person can reasonably be considered retired in a particular month. If they can be considered retired in a month, their services in that month are not substantial. In considering whether services in SE are substantial in a month, the factors in the following sections may be pertinent. The determination of substantial services is judgmental, and is based on the facts presented. The final determination is made by RBD; these guidelines are furnished for your information.

There is not necessarily any connection between earnings from SE and substantial services. For example, earnings from SE may come after the month services were rendered, or may represent profits based solely on investment or past service. Thus, services may be substantial in a month in which no income is realized, or services may not be substantial in a month in which a large amount of income is realized. On the other hand, to the extent that earnings from SE reflect the kind and amount of services rendered in a month, consideration of earnings could be helpful in making determinations of substantial services.

1110.25.1 The Amount of Time Devoted to SE

Time is a major consideration in deciding whether a person can reasonably be considered retired. Thus, certain assumptions are based on the amount of time devoted to the business. More than 45 hours of services in a month is usually considered substantial. However, if the individual submits evidence establishing that they can reasonably be considered retired in a month in which services amount to more than 45 hours, the services may not be found substantial.

Services of 45 hours or less in a month would not usually be considered substantial. However, services of 15 through 45 hours in a month could be regarded as substantial if, for example, they were spent in the management of a large business or in a highly skilled occupation.

When time devoted to a business in a month is less than 15 hours, it is assumed that services are not substantial, regardless of their nature.

Time devoted to SE includes all time devoted by a self-employed person to any trades or businesses from which the net earnings or losses are includable in their earnings for

annual earnings test purposes. Time devoted to such businesses includes all time spent by the self-employed person in any activity, whether physical or mental, at the place of business or elsewhere, which relates to the operation of the business. This includes, among other things, advising and planning, making business contacts and attending meetings, and preparing and maintaining the facilities of the business.

If a self-employed annuitant is idle during a calendar month because they are on vacation, sick or chooses not to work, they did not render substantial services during that month.

The fact that an annuitant owns an operating business is not controlling. Such an annuitant may have their business affairs so arranged that they are not required to, and does not perform substantial services in one or more months.

1110.25.2 The Nature of the Services Rendered

A decision may be made whether services were or were not substantial based only on consideration of time devoted to the business. However, when this is not the case, the nature of services rendered is considered with the amount of time devoted to business.

Some services may be substantial even though performed for less than 45 hours in a month. Such services could be managerial and technical services by an owner or partner in a large business, highly skilled services such as those rendered by professional persons, or any services to which high earnings are directly attributable.

In evaluating the services of an annuitant, both the nature of the services and the amount of time devoted to the business are considered. When services are less than 15 hours in a month, they are not substantial regardless of their nature. The closer services are to 45 hours in a month, the less skilled and valuable they would have to be in order to be substantial. Services performed regularly as one of the key functions of a business are more likely to be substantial than those performed temporarily due to an unexpected absence of an employee.

1110.25.3 How Services Compare with Services in Past Years

Consideration of the time spent and nature of services rendered may be enough to determine that services were or were not substantial. However, when the decision cannot be based on these facts alone, the relationship of present services to services rendered in the past becomes significant.

If there has been a significant reduction in a person's participation in their business (and especially when there has also been an accompanying reduction in the scope of the business itself), this factor is given considerable weight toward finding that the reduced services are not substantial. A sharp curtailment is not always necessary; a tapering off over a period of years might also result in a significant reduction. Conversely, an absence of any significant change in the amount and kind of services rendered would weigh in favor of holding the services to be substantial.

Sometimes an owner of a business may continue to designate their position in the business by the same title they used when working full time. However, their former functions may be largely assumed by other workers in the business and the efforts of the owner are greatly reduced in significance. Such a situation would weigh strongly in favor of holding services amounting to less than 45 hours in a month not substantial.

1110.25.4 Setting in Which the Services Were Performed

The presence or absence of a manager may be significant in evaluating the importance of the person's role in the business operations. In some cases the person may share the responsibility of management, while in others they may turn it over completely to a manager.

The kind and size of business and amount of capital invested also affect the significance of services the person may be performing. If, for example, the person renders services in a business being conducted on a limited scale with little capital invested (in the nature of a sideline to retirement), their services would less likely be substantial than if they were spent in a larger and more profitable business in which considerable capital was invested, or which required considerable management or other skilled services.

The fact that a business is seasonal may also have a bearing. In the off-season, services may be unimportant and are less likely to be substantial.

1110.30 Guide for Developing Substantial Services

When full development is required, all information about monthly services and the circumstances under which the services were rendered will be requested by RBD. The following questions may prove helpful in getting complete factual development. The annuitant must submit a signed statement including the pertinent information.

- A. In what type of trade or business were the services rendered?
- B. What was the annuitant's status in the business (sole owner, partner, etc.)?
- C. What was the approximate value of the business and what percentage did the annuitant own?
- D. How many full and part-time employees worked in the business?
- E. Was there a manager? If so, what was their name and address and what was the extent of their responsibility?
- F. Did the annuitant share the responsibility of management?
- G. If any of the employees are related to the annuitant, what is the relationship of each?

- H. What were the regular business hours? If the regular business hours varied during certain months of the year, what were the variances and what was the reason for them?
- I. What were the annuitant's duties and responsibilities?
- J. How much skill did the annuitant's work require?
- K. Were high earnings derived from the business based on the annuitant's personal services?
- L. To what extent were the earnings of the business based on the capital invested in it?
- M. Did the annuitant regularly go to the place of business and, if so, how long did they usually spend there each day?
- N. How much time did the annuitant devote to the business while away from the place of business?
- O. What were the total number of hours devoted to the business by the annuitant during each month that they allege that services were not substantial?
- P. If the annuitant was away on vacation, on what dates did the vacation begin and end?
- Q. If the annuitant was off work because of illness or injury, on what date did they become unable to work and on what date were they able to return to work?
- R. How do the services in question compare with services rendered by the annuitant in prior years?

1110.35 Disclosure of Guides To The Public

The guides used in making substantial service determinations may be disclosed to the public. However, take special care to avoid disclosing any one guide to the exclusion of the others. All four tests should be explained. Avoid any misunderstanding that only a straight hourly test is applied.

1110.40 Allocating Earnings

The information in this section does not apply to employee disability annuitants. Special rules apply in allocating earnings when there is a question regarding disability and when services were performed. See [FOM1 1125.20](#).

1110.40.1 Earnings from Employment

Earnings from employment (wages) are counted as earnings for the taxable year in which the services are rendered. However, the SS Act provides that wages paid to an individual during a taxable year are presumed to have been earned in that year. Therefore, unless an individual claims otherwise, earnings are counted in the year they are paid. Also see [FOM1 1110.40.3](#).

1110.40.2 Earnings from Self-Employment

Net earnings from self-employment are generally counted as earnings for the taxable year in which they are received, regardless of when they are earned. [FOM1 1110.45](#) explains when certain deferred SE income should be counted.

1110.40.3 Special Payments

When special wage payments are received, an annuitant may allege that payments are either not earnings or are wages for a period different than that in which paid. Special payments include vacation pay, sick pay, bonuses, back pay and severance pay. The question is usually material only when payment is made close to retirement or during a prolonged absence from work. In those circumstances, first determine if the earnings should be counted for deduction purposes ([FOM1 1110.10](#) and [1110.15](#)).

If a special payment is material to the amount of work deductions, it may be allocated to a period other than when payment is made if:

- A. Special payment made before employment relationship terminates - For work deduction purposes, an employment relationship is considered terminated when the individual last performed physical services, unless the individual is expected to return to work or is subject to call to render additional services.

When a special payment is paid before the employment relationship terminates, it is credited as follows:

1. Credited to the month of absence
 - a. Federal, state or local annual and sick leave payments;
 - b. Holiday pay;
 - c. Sick pay, if it is included as earnings;
 - d. Vacation pay.
2. Credited to the month of payment, unless proven otherwise (see B)
 - a. Advances against commissions;
 - b. Occasional bonuses (payment is at sole discretion of employer);

- c. Payment in lieu of vacation.
- 3. Credited to the month for which paid
 - a. Back pay;
 - b. Bonuses which are a regular part of the individual's pay;
 - c. Deferred wages;
 - d. Idle-time, standby or subject-to-call payments;
 - e. Payments to school teachers during non-work months (when paid in 12 installments for 9 or 10 months work).
- B. Special payment made after employment relationship terminates - A special wage payment made at the time of or after the termination of an employment relationship is credited as earnings in the last month the employee worked.

EXCEPTION: Any special wage payment, except bonuses, may be credited to a different period if there is a written plan which shows that the special payment was for services rendered in a different period.

1110.40.4 Payments to School Employees During Non-Work Months

If the monthly earnings test applies during a given year, special guidelines are required for school employees. School teachers are usually engaged in a seasonal job with employment contracts requiring the performance of teaching (or similar) services during the school term in return for a specific salary. Frequently, the salary is paid out in 12 monthly installments for the convenience of both the employer and the employee. In such cases, the wages are earned when the personal services stipulated in the contract are performed, and not during the off-season month.

A deduction because of excess earnings is not imposed for a non-work month (i.e., one in which no services of any kind were rendered) falling between school years, even though a wage or salary payment is made to the teacher (or janitor, clerk, etc.) for that month. In such cases, the payments made during the period between school terms are presumed to be part of the total earnings for the contract year and are allocated to the months in which they actually were earned if allocation would be material.

1110.40.5 Charging Of Earnings Of Corporate Directors

Effective January 1, 1991, for purposes of excess earnings deductions, corporate director's earnings are to be treated as received in the year that the relevant services are performed. For years before 1991, corporate director's earnings are to be treated as earnings for the year in which the earnings are received.

1110.45 Deferred Self-Employment Earnings

Deferred self-employment income that is received after the year of entitlement to an annuity, is not included in earnings for deduction purposes if the income is not attributable to services performed after the month in which the annuity began. This provision is effective for taxable years beginning January 1, 1978; it may also be referred to as the "special self-employment income tax exclusion."

The SE income exclusion rule does not apply to wages from regular employment. Wages are still counted as earnings for the year in which they are earned.

When deferred SE income is excluded, it is not considered for an earlier period; it is treated as if it did not exist for work deduction purposes. The SE earnings excluded from the year received are not then added to the total yearly earnings of the year in which the services resulting in the income were performed.

EXAMPLE: A self-employed insurance salesman retired from all work in November 1994. Their annuity beginning date is 12-1-94. In 1995, they received \$10,000.00 in renewal commissions for policies sold prior to 1995. They have no net income for work deductions in 1995 because the \$10,000.00 received after the year their annuity began is SE income attributable to services performed prior to their month of entitlement. They performed no substantial services as an insurance salesman in 1995. The \$10,000.00 is also not added to their 1994 earnings.

For the purpose of the exclusion provision, "services" means any regular service performed in the ongoing operation or management of a trade, profession, or business which can be related to the income received.

1110.45.1 Field Office Development

When an individual reports self-employment that is similar to the kinds listed in the preceding section, explain the deferred income exclusion provision. If the annuitant alleges that some or all of the SE earnings should be excluded, a signed statement explaining the facts in the case is required.

Unless there is good reason to doubt a credible explanation of SE income that should be excluded, the allegation will be accepted without further development. Operations will notify you if verification is required.

