

## 1335.5 General

A. Continuance of entitlement - Entitlement to benefits based on disability continues until terminated for one of the following events:

- Beneficiary dies;
- Converting to age benefits;
- Medical recovery of the beneficiary;
- Ability to work is demonstrated.

When a disability termination determination is made before converting to age benefits, then a new application is required to establish entitlement to the same disability benefit or to any other benefits. Conversion to other benefits prior to FRA will not occur, even if the beneficiary is eligible for the benefits based on criteria other than disability, unless medical recovery is shown. If a disability termination determination is made after the beneficiary converted to age benefits, then they maintain their age benefits without needing to develop for a new age retirement application.

See [FOM-I-310.45](#) regarding termination of benefits.

B. Continuance of benefits - Even while entitlement to disability benefits continues, benefits (cash and other) may be suspended for one of the following reasons:

- Work for a railroad employer;
- Excess earnings (see [FOM-I-1125](#)).

When the condition causing suspension is removed, benefits may be reinstated if the annuitant is still disabled. Any work could cause an investigation to determine if the beneficiary has medically recovered or demonstrated an ability to work as described later in this chapter. See [FOM-I-310.40](#) regarding suspension of benefits and [FOM-I-310.80](#) regarding reinstatement.

C. Medical recovery - The establishment that a beneficiary has medically recovered requires a continuance of disability determination by a disability claims examiner in the Disability Programs Section. This determination is similar to the initial disability determination; the disability claims examiner usually looks at current medical evidence and non-medical factors to determine if there has been significant medical improvement, which would permit the annuitant to engage in substantial gainful activity, since the last rating. Recovery is generally determined to have occurred at the time the determination is made. In limited instances recovery can be determined to be retroactive. (See [FOM1 1335.45](#))

D. Demonstrated ability to work - A beneficiary is considered to have demonstrated the ability to work for the purposes of terminating benefits when they have shown the ability to work in:

- Substantial gainful activity in total and permanent disability cases, OR
- Their regular railroad occupation or similar occupation in occupational disability cases.

The beneficiary's work activities and earnings are used by disability claims examiners to determine if the ability to work has been demonstrated to the extent necessary for termination. Consideration is given to circumstances attendant to the work activity and earnings such as type of employment, value of services rendered, whether a "made" or "subsidized" job, extraordinary expenses attributable to the disabling condition, etc.

## **1335.10 Special Instructions to Disability Applicants**

Disability applicants are given special instructions to report certain activities which may affect benefits and are cautioned that there are penalties for failure to report.

### **1335.10.1 Advice to Applicant about Events that Affect Entitlement and Payment**

At the time an application is filed, the contact representative explains to the applicant what events will affect entitlement and the payment of disability benefits. He is also told how those events affect entitlement and payment. This verbal information is supported by booklets which also explain what and how events affect benefits.

### **1335.10.2 Instruction to Report the Occurrence of an Event Affecting Benefits**

At the time of application, the applicant is instructed to report to the Railroad Retirement Board the occurrence of any event he has been informed would affect entitlement or payment of his benefit. The applicant signs a certification that he understands what the events are and that he will report them promptly if they occur. The consequences of failure to report are also explained. The applicant also receives an application receipt which lists the changes to be reported and explains how to report them.

The "failure to report" concept raises a possible fraud consideration. Refer to [FOM 1335.40](#) for handling instructions.

## **1335.15 Disability Monitoring Programs**

Entitlement and receipt of disability benefits are more susceptible to termination or suspension than other benefits because the basis for eligibility (disability) is not necessarily a permanent condition. Therefore, additional monitoring activities are necessary to assure the integrity of the program. Shown below are activities aimed at ensuring that disability benefits are properly paid.

## 1335.15.1 Disability Reminder Notices

The Railroad Retirement Board (RRB) releases three types of annual disability reminder notices to disability annuitants: Forms RL-4, RL-5 and RL-7.

### RL-4 and RL-5

On an annual basis, the RRB mails Forms RL-4 and RL-5 to retirement and survivor disability annuitants. Form RL-4 is issued to employee disability annuitants who are under full retirement age. Form RL-5 is issued to survivor disability annuitants who are under age 60. These notices remind disability annuitants of events that must be reported to the RRB. In addition, these notices provide the monthly earnings limit for the current calendar year and prior calendar year. Field offices should handle reports of work activity or changes in medical condition that are generated as a result of these mailings. If a response is received at headquarters that reports work activity or a change in medical condition, the report will be forwarded to the Disability Benefits Division (DBD) for handling. See [DCM 8.4.3](#) for how DBD will handle this correspondence.

### RL-7

The Form RL-7 *Disability Reminder Notice – Disabled Annuitant Under Earnings Limits*, is released to approximately 2,200 employee disabled annuitants who are under full retirement age (FRA) and who have earnings under the allowable limits. Annuitants are reminded of their responsibility to report any earnings for any month in which they exceed the monthly earnings limit or report if their annual earnings exceed the annual earnings limit.

The RL-7 is a reminder to these individuals that they must notify the RRB about any month their earnings exceed either the monthly earnings limit after deduction of disability work expenses during the year and/or if their annual earnings exceed the annual earnings limit. In addition, the RL-7 shows the monthly and annual earnings limits for three years. Field offices should handle reports of work activity or changes in medical condition that are generated as a result of these mailings. If a response is received at headquarters that reports work activity or a change in medical condition, the report will be forwarded to the Disability Benefits Division (DBD) for handling. See [DCM 8.4.3](#) for how DBD will handle this correspondence.

Starting in 2014, individual RL-4, RL-5 and RL-7 notices to annuitants are sent to Imaging. This serves as documentation that the annuitant was sent a notice. Blank copies of the RL-4, RL-5 and RL-7 are available in RRAILS.

If you receive an inquiry, assist the annuitant or payee in making any necessary report. Forward the report to the Disability Benefits Division (DBD) in an envelope marked: "DBD/CDR UNIT-REMINDER-DO NOT OPEN IN MAILROOM." You may include more than one report in each envelope. DBD may later request additional development if needed.

### 1335.15.2 Review of Cases in Current Pay Status

Disability cases are periodically called up for a continuing disability review (CDR). The possibility and frequency of review depends on the severity of the case. The Disability Benefits Division (DBD) will determine the need for review. That section categorizes cases based on the probability of recovery, for instance, medical improvement expected (MIE), medical improvement possible (MIP), medical improvement not expected (MINE), etc.

If medical improvement is expected or possible, the disability claims examiner will set a future call-up date at the time of the disability freeze determination. On the call-up date, the case will be reviewed to determine if entitlement should continue. In MIP cases, DBD will go through a screening process and select cases in which a Form G-254a and RL-254a are sent to the annuitant. Form G-254a is a screening questionnaire that assists in determining whether further medical review is necessary. If DBD does not receive a completed G-254a within 30 days, they will send a field assignment to trace with the annuitant. If a completed G-254a is not received within 14 days of the tracer, DBD will trace again to find out if more time is needed to obtain the completed G-254a. If the field indicates that the annuitant cannot be contacted, DBD will release a letter to the annuitant informing him that if he does not contact the field office and submit a completed G-254a within 30 days, the annuity may be suspended. If the field indicates that the annuitant is uncooperative, DBD will request the field to initiate a full CDR by requesting a G-254 and current medical evidence.

A full CDR is conducted for all MIE cases and some MIP cases. Generally, the review will include acquisition of G-254 and current medical evidence and non-medical evidence via an assignment to the field office.

If, however, medical improvement is not expected, the case would not be routinely reviewed. While these cases are no longer reviewed on a routine basis, there may be situations, (such a disabled child included in O/M becoming eligible for a survivor annuity) in which DBD will do a review. If a field assignment is warranted, DBD will advise the field office as to the type of information that is needed.

### 1335.15.3 Report of Work or Recovery by Annuitant

If an annuitant reports work activity or recovery from disability to the field office, the report should be sent to DBD promptly. The report to DBD should contain enough details to permit the disability claims examiner to determine if a continuing disability investigation is required.

- A. Report of work - Disability annuitants are required to report all work activity regardless of the amount of earnings. See [FOM-I-1125.25](#).

Advise the annuitant that his work must be reconciled with his disability. Also advise an employee of disability work deductions if he earns over the monthly disability earnings limit (see [FOM1 1125.5.2](#)).

- B. Report of recovery - If a disability annuitant reports that he has recovered from his disability, take a statement from him to that effect. Ask the annuitant to submit any recent medical evidence in his possession which substantiates his claimed recovery.

**Note:** Since this workload is handled by the disability Post section, if statements are imaged into the Disability mailbox without an email, the Post section does not receive the notification. Therefore, in order to ensure all statements are handled accordingly, when a report of work (earnings report or recovery from disability report) is received from a disabled annuitant, image the statement as file only "Earnings Report" AND send an email to the DPS mailbox regarding the report of work.

### 1335.15.4 Employer Reported Earnings

Both railroad retirement and social security covered earnings are checked each year to ascertain if disability annuitants have unreported earnings which may indicate recovery or the ability to work.

- A. Reported railroad earnings - Since railroad covered earnings are reported directly to the Railroad Retirement Board (RRB), checking disabled annuitant records against annual compensation reports is a relatively simple process. If earnings are reported on an annuitant's record, a referral is generated which initiates an investigation.
- B. Reported social security earnings - Earnings reported to the Social Security Administration (SSA), whether from employment or self-employment, are accessible to the RRB. Each year SSA transmits earnings information on annuitants who have been earmarked on SSA records as receiving railroad benefits. Additionally, requests for earnings information on individual cases can be made at any time. Information available is limited to the latest year of earnings posted at SSA plus preceding years. If earnings reported at SSA do not match earnings reported by the annuitant, an investigation is initiated to resolve the discrepancy. An annuitant who disagrees with the earnings reported by SSA should be directed to contact SSA to resolve the discrepancy.
- C. Reported earnings through the state wage match - A listing of earnings from all 50 states is obtained by the RRB. DPS reviews referrals from state wage matches and often makes assignments to the field for investigation.

### 1335.15.5 Use of Subpoena in Earnings Investigations

In some earnings investigations of disability annuitants, DBD will request the Office of the General Counsel (OGC) to provide a subpoena to be issued to the employer. In these cases, DBD will forward the subpoena and return of service document to the field office that serves the area in which the employer is located. The field office may deliver the subpoena in person, or mail the subpoena by certified mail with a return receipt requested. The return of service document is to be completed by the claims representative handling the subpoena and is to be filed in the applicant's file. Pend the

case for the date the documents are due to be returned as indicated on the subpoena. The field office will retain the return of service document until the information sought by the subpoena is obtained, at which point the return of service document may be discarded. Notify DBD if the employer does not respond to the subpoena, or refuses to cooperate with the subpoena, and send the evidence of the receipt of the subpoena to DBD, i.e. the return of service document if the subpoena is delivered in person or the return receipt furnished by the post office if it was delivered by certified mail.

### **1335.15.6 SSA Earnings Monitoring**

Earnings are requested from SSA for disability annuitants to determine their continuing eligibility to receive benefits. This process is referred to as Electronic Data Processing (EDP). Once we receive the earnings information, a computer generated Form G-254, *Continuing Disability Report*, and a Form RL-254 cover letter are released to disability annuitants having excess earnings. A Form RL-231F letter is also released to the annuitant's non-railroad employer(s) to verify the reported employment and earnings. The computer-generated forms include instructions for the completed forms to be returned to the annuitants' local field offices. For tracking purposes, these cases are also loaded to Universal STAR (USTAR). Details of the RL-231F forms released, such as employers and addresses, can be viewed on the EDP Detail Information screen in USTAR. This is accessed through the "Source Detail" button on the Work Detail screen.

NOTE: The EDP Detail Information screen in this category of field office work lists only the employers and earnings in which Form RL-231F forms were released and require monitoring and possible tracing for the return of completed forms. There may be other earnings reported (railroad earnings, self-employment earnings, etc.) which are included in the total EDP Run Amount at the top of this screen, however these earnings are not displayed at the bottom of the EDP Detail Information screen as they do not require field office handling. All earnings reports received from SSA are loaded and handled by DPS in separate USTAR categories.

#### **1335.15.6.1 Field Disability Earnings Investigation Work Category**

Field offices use USTAR to control and track the case referral, or work item, from when it is entered into the system to when it is closed out. The annuitant's ZIP code is used to assign cases to field offices. The cases are loaded under category codes consisting of the 3-digit field office number; the letters "DB"; and the last digit in the year of earnings, e.g., 296DB7 means the case is assigned to the Chicago field office and the earnings were reported for 2007. The same records are also loaded to USTAR for DBD-DPS control and tracking under category "DPSDBx" (the last character represents the year of earnings). This allows DPS to determine if field offices are in the process of investigating work activity, thereby avoiding duplicating work already in progress, and for follow-up action upon completion of field office handling.

### **1335.15.6.2 Field Office Handling**

Field office managers are responsible for assigning USTAR work items. For information on how to assign work or other USTAR information, refer to [FOM-I-15120.5](#). Claims representatives should take the following actions when handling disability earnings investigation cases.

#### **Form RL-231f or G-254 Received**

- Image the form and any documents attached
- Forward the form to DBD-DPS
- Send an e-mail to the DPS mailbox advising receipt and submission of the form.
- Document in the remarks section of the USTAR work details screen the forms received and date received.

Note that an office can image and submit these forms as they are received, or hold all forms, and image and submit them at the same time.

#### **Tracing**

Offices should trace for any forms which have not been returned within forty-five days of the USTAR entry date. Prepare a tracer (use RRAILS) Form G-254/RL-254 and/or RL-231F(s). Detailed information to prepare RL-231F forms, such as employers, addresses, and earnings information can be found by clicking on “Source Details” from the Work Detail Screen in USTAR. G-254 requires a reporting period date on page one. Enter January 1 of the EDP year shown on USTAR source details screen. Pend the file for thirty days. Notate in the remarks of the USTAR Work Detail screen the date that tracer forms were released and to whom they were sent.

#### **Closing Cases**

All forms received – as the last form is imaged and submitted to DPS, include in the email notice to DPS that the case is complete. Close the case on USTAR using the disposition code “Handled - Case Completed” (HCC).

#### **All Forms Not Returned**

Offices may abandon these cases 30 days after the tracer. Be sure all forms received have been imaged and the forms themselves submitted to DBD-DPS. Document in the remarks section of the Work Detail Screen on USTAR, the date the case was abandoned. Send an e-mail notice to the DPS mailbox notifying them of the case abandonment. Be sure to include in your e-mail the forms that were not received as well as the date tracer forms were released. Close out the case on USTAR with the disposition type - “Case Abandoned” (ABD) and indicate in the remarks of the Work Detail Screen that the case is being abandoned.

### **1335.15.6.3 Special Situations**

If the annuitant claims:

- not to have worked and the earnings do not belong to them;
- the earnings are incorrect; or,
- any other special situation, take the following actions:

<b>Step</b>	<b>Action</b>
1	Advise the annuitant to contact SSA to resolve any discrepancies.
2	Close the case out on USTAR under disposition code "Handled - Case Completed" (HCC). Document the remarks section of USTAR with the details of the case.
3	Send an e-mail to the DPS Group mailbox detailing circumstances.
4	Image all documentation as file only.

### **1335.20 Investigation for Continuing Disability**

Investigations to determine if there is continuance of disability under the Railroad Retirement Act or the Social Security Act can be initiated by any of the following:

- Voluntary reports - Report by annuitant that their condition improved or they are working;
- Change of address or payee - Address change from hospital to private residence, cancellation of representative payee;
- Vocational rehabilitation notice - Report that annuitant has reached their potential for return to labor market;
- Earnings report - Earnings should be examined to determine source;
- Medical re-examination required - Diaried cases for automatic review;
- Periodic disability review - Cases called up for routine review.

#### **1335.20.1 Conducting the Investigation**

The initial phase of the investigation involves a review of the claim file in light of any new information. If the new information cannot be reconciled with the disability rating,

the disability claims examiner will send an assignment to the field office requesting development of certain information and/or evidence.

Generally, the assignment will request a completed Form G-254, Form G-250 and a memorandum giving the contact representative's observations of the annuitant. If the investigation was originated by an earnings referral, only a Form Letter RL-231-F will be requested.

Due to the unsettling effect continuing disability reviews may have on some annuitants, development of all continuing disability review (CDR) cases must be initiated by telephone. In rare situations where telephone contact is not possible, release a Custom Field Service Letter on RRAILS asking the annuitant to contact a field office by telephone. Begin the review process when the annuitant calls. Following this initial contact, the field office development of a continuing disability investigation assignment should be conducted in the same manner as initial development of disability (excluding medical improvement not expected [MINE] cases). Document all actual and attempted contacts on Contact Log.

Please note that field personnel should exercise caution during any questioning of annuitants that involves personal contact (either in person or by phone). For example, if earnings are under investigation and clarification is needed, ask appropriate questions to obtain the factual information needed. Do not interrogate the annuitant about inconsistencies.

If the annuitant refuses to cooperate, follow the procedures in [FOM-I-1325.15.3](#).

If the case is one which involves MINE, the Disability Benefits Division (DBD) will identify it as such in the field office assignment. You will probably only need to develop a Form G-254 and a statement from a medical source since additional medical evidence is usually not required. If no medical source is available, you will need to secure a statement from a non-medical third-party source. Refer to [FOM-I-1335.20.2](#) for instructions on developing MINE reviews.

### **1335.20.2 Special Handling of MINE Cases**

Cases selected for continuing disability review categorized as MINE will be identified as such by the Disability Benefits Division (DBD) in the field office assignment. Investigation of these cases will not be as intensive and may be handled differently than the other cases selected for review. Because of the sensitive nature of these cases, particular care should be taken in gathering information. Development of these cases should be initiated by phone.

- A. DBD assignment - DBD will provide information as to the nature of the disability and the last phone number on record for the annuitant. If the phone number provided is not current or if DBD indicates that no phone number is available from the file, attempt to secure the number from a local phone directory or directory assistance. DBD will also provide the date to enter in Section 1 of the Form G-254 and information for you to use to prepare a letter to the medical

source provided by the annuitant. Also follow any additional instructions DBD provides. In the course of the investigation, you may discover something that could cause DBD to request additional medical evidence (e.g., annuitant working, signs of improvement in condition, etc.). Complete the original assignment and return it. Allow DBD to determine what additional action is necessary.

- B. Annuitant Contact - Contact the annuitant by telephone and identify yourself and the reason for your call. Advise the annuitant that you would like to ask a few questions which will constitute the continuing disability report and estimate the amount of time needed to complete the questioning. Ask the annuitant if you've reached him/her at a convenient time; if not, schedule a time to call back and conduct the phone interview. If you are unable to make phone contact with the annuitant, release a Custom Field Service Letter on RRAILS asking the annuitant to contact your office by phone, and begin the review process when the annuitant calls.

Upon completion of the questions on the Form G-254, advise the annuitant that you will be sending the form by mail for the annuitant's review and signature. Also explain that a Form G-197 will be sent for signature which allows us to contact the annuitant's doctor for a statement. If the annuitant is not currently under doctor's care, do not secure a Form G-197. However, you will need to secure the name, address and phone number of a non-medical third party who can verify the annuitant's statements. Also determine the third party's relationship to the annuitant. Signed permission to contact a non-medical third party is not necessary.

It is preferred that the Form G-254 be completed over the telephone, however, if that is not feasible or the annuitant prefers to complete the form personally, you may send it in the mail after the initial phone contact explaining the purpose of the review. You will also need to secure a signature on Form G-197 or the information to contact a non-medical third party as explained above.

Send the Form G-254 and Form G-197 (if necessary) to the annuitant; include a return envelope. Pend the case for 15 work days. If the form(s) have not been returned within that time frame, contact the annuitant and check on status. If the annuitant personally completed the Form G-254, review the form for completion. If necessary, contact the annuitant for clarification or missing information. Proceed to C. or D. of this section as appropriate.

If the telephone contact discloses that the annuitant is incapable of completing the review, advise DBD and determine if representative payee development is necessary. Do not pursue the disability review unless instructed to do so by DBD.

If the annuitant refuses to cooperate, advise DBD and take no further action unless instructed to do so by DBD.

- C. Securing statement from medical source - Prepare a letter to the annuitant's current medical provider. DBD will furnish specific information to be used in preparing the letter. For example, an assignment involving a statutorily blind individual may state that you should ask the physician if visual acuity remains at 20/200 or less in the better eye. If multiple conditions exist, you may need to pose more than one question.

The letter should also state that we will accept photocopies of the doctor's reports or notes in lieu of a statement. Include the signed Form G-197 signed by the annuitant and a return envelope.

If the annuitant provided more than one medical source, release a letter to the primary source only.

If the annuitant is not currently under doctor's care, make a third party contact as described in D. below.

- D. Non-medical third-party contact - This contact only needs to be made if a medical source is not available. The third-party contact is the person provided by the annuitant as stated in A of this section. Third party contacts include family members or friends, if they have knowledge of the annuitant's condition and can provide an objective assessment. However, it is preferred third party contacts be custodial institutions, sheltered workshop administrators, social service or other organizations that provide some sort of assistance or a member of the clergy.

Contact the third party by phone. If phone contact is not possible, prepare a letter. Ask the contact how recently he or she saw the individual, and whether, so far as he/she can tell, the individual remains impaired and unable to work. (Where no medical issue exists, the non-medical contact is primarily to verify that the individual is alive and not working.) Explain that we are conducting a continuing disability review on the individual as required by law.

Assure the person that we have permission from the individual to contact them. Do not tell such third parties any information about the individual other than that we are conducting a disability review. Prepare a summary of the statement, and forward it for the contact's review and signature; include a return envelope. In the rare situation that there is no third party available who can confirm the annuitant's statements, a representative of the field office will serve as the third-party contact. You should first contact DBD in this situation. They will provide specific questions and observations based on the annuitant's impairment.

## **1335.25 Continuance of Disability Under the Railroad Retirement Act**

The end result of the continuing disability investigation will be a determination by the disability claims examiner regarding the continuance of disability benefits under the Railroad Retirement Act (RR Act).

### 1335.25.1 Annuitant Still Meets Disability Requirements

In order to determine continued entitlement to disability benefits, the disability claims examiner must:

- Determine that the disability requirements of the RR Act, whether for occupational or total and permanent disability, are still met; AND
- Reconcile any work activity with the disability. If entitlement continues, any known earnings must be considered.

#### For Employees

- A. Earnings or expected earnings over the monthly disability earnings limit after deduction of disability related work expenses - The annuity will be suspended and pending to the end of the year for final work deduction determination.
- B. Earnings or expected earnings are less than the monthly disability earnings limit after deduction of disability related work expenses – No action will be taken.

### 1335.25.2 Annuitant No Longer Meets Disability Requirements of RR Act

Benefits will be terminated if the disability claims examiner determines that:

- The disability requirements of the RR Act are no longer met; OR
- Work activity cannot be reconciled with the disability (e.g., annuitant receiving benefits on the basis of being occupationally disabled as a track laborer works for a private contractor and performs the same duties of a track laborer).

The annuity will be payable (subject to work deductions) through the end of the second month following the month in which the annuitant no longer meets the disability requirements of the RR Act.

### 1335.30 Continuance of Disability Under the Social Security Act

If the annuitant is receiving benefits attributable to the Social Security Act (SS Act) (O/M, Medicare, etc.), the continuing disability investigation will also be a determination regarding the continuance of those benefits.

NOTE: Even though benefits attributable to the SS Act may be terminated, benefits under the Railroad Retirement Act (RR Act) may be continued if the requirements of the RR Act are still met (e.g., an annuitant may have recovered to the point that he is no longer entitled to a disability freeze, yet still be entitled to an annuity on the basis of occupational disability).

### 1335.30.1 Annuitant Meets Disability Requirements of SS Act

In order to determine continued entitlement to SS Act based on disability benefits, the disability claims examiner must:

- Determine that the disability requirements of the SS Act are still met; AND
- Reconcile any work activity with the disability according to SS Act rules. If entitlement continues, earnings still must be considered under RR Act work deduction rules.

### 1335.30.2 Annuitant Does Not Meet Disability Requirements of SS Act

- A. Annuitant does not meet SS Act requirements but does meet RR Act requirements - If the annuitant no longer meets the SS Act requirements for disability but does meet the requirements for disability under the RR Act, then SS Act-based benefits must be terminated while RR Act benefits will continue (see FOM-I-[1335.25.1](#)).
- B. Annuitant does not meet SS Act or RR Act requirements - If it is determined that the annuitant no longer meets the requirements of either the SS Act or RR Act, all benefits must be terminated.

### 1335.30.3 Cessation of Disability Under the SS Act

Cessation of disability under the SS Act will be found effective with the earliest month in which one of the following applies:

- A. If medical recovery is not an issue, as of the first month after 9 months of trial work in which the evidence establishes the individual is able to engage in substantial gainful activity (SGA). It is not necessary for the beneficiary to be engaging in SGA or still working in the month of cessation. For example, if an individual stopped working in the 9th month of his trial work period, cessation may still be found in the 10th month if his work activity during the completed trial work period clearly demonstrated the ability to engage in SGA. If the trial work period extension applies to the overall minimum (O/M) or a disabled child included in the O/M, see [FOM-I-325.95](#).
- B. If the trial work period does not apply (e.g., freeze only), as of the first month in which individual engages in SGA, or if he has worked in 9 months of his trial work period, as of the month he returns to work which is SGA.
- C. As of the month the evidence establishes that medical recovery has occurred.
- D. As of the month in which it is determined that, despite reasonable effort, the claimant cannot be located and that there is a reasonable possibility that disability has ceased.

- E. As of the month it is determined that a beneficiary will not cooperate and there is a question of continuing disability. For an explanation of trial work period and SGA, see [FOM-I-310.65.1](#) and [FOM-1-310.65.2](#).

### **1335.30.4 Coordination of Cessation Decisions with Social Security Administration**

When the RRB determines that an annuitant no longer meets the disability requirements of the SS Act, the Social Security Administration is notified if a joint freeze decision case is involved (see [FOM-I-1305.20.3.A](#)).

### **1335.35 Written Notice of Termination**

When it has been determined that an annuitant has recovered from disability or has demonstrated the ability to work, he is entitled to a written notice 30 days in advance of termination. The notice will provide him with:

- Date of recovery or demonstrated ability to work;
- Description of the evidence used as a basis for the determination;
- Termination dates of the annuity, freeze and Medicare, if applicable;
- An opportunity to submit any evidence within 30 days which will be considered in a review of the decision to terminate;
- Notice that any payments received after entitlement has ended are erroneous and will be subject to recovery;
- Notice that in the absence of new evidence, the decision to terminate will become final, and he will have the right to reconsideration/appeal at that time.

If new evidence is submitted within the allotted time and causes a reversal of the decision, payments will continue and a written notice will be sent reversing the decision to terminate. If the new evidence does not alter the decision, the annuitant will be so informed and termination will proceed. Regular reconsideration and subsequent appeal procedures will still apply.

### **1335.40 Handling Possible Fraud in Disability Cases**

Under certain circumstances, fraud under the "failure to report" and "false claims and/or false statements" concepts may apply to disability cases. The elements of fraud are discussed in [FOM 1235.25](#).

Situations meeting the guidelines under the failure to report and false claims and/or false statements concepts should be reported to the appropriate Headquarters operational section, i.e., the retirement post section or survivor post section. The operational unit will take necessary actions, i.e., prepare field assignments, release

overpayment letters, establish the debt on the PAR system, and, if an overpayment exceeding the threshold amount (see [RCM 6.6.191](#)) exists, prepare a referral to the Office of the Inspector General. Cases referred to and returned from OIG should be logged into the Referral Tracking System application (see [FOMI 15165 – RTS Instructions](#)). Please see your supervisor for instructions on who enters cases for your Section.

When an assignment is sent to a field office to obtain earnings, medical or other entitlement information from an annuitant, field office personnel should obtain information by questionnaire when possible. Field personnel should exercise caution during any questioning of annuitants that involves personal contact (either in person or by phone). For example, if earnings are under investigation and clarification is needed, ask appropriate questions to obtain the factual information needed. [See DCM 8.8.2, FOM 1310](#), and [FOM 1 Article 13, Appendix E](#), for more information. Do not interrogate the annuitant about inconsistencies. Helping the individual complete a questionnaire or asking for information or for a clarification is different from interrogation to obtain incriminating evidence. The latter is the OIG's responsibility. The reason for this focus on questioning technique is to avoid compromising effective prosecution if fraud becomes an issue in a case.

### **1335.45 Retroactive Disability Termination**

A retroactive disability termination refers to a determination where an annuitant or applicant is no longer disabled as of a specified date in the past. This occurs in closed period of disability cases; when medical, work, or earnings information is not submitted timely for a continuing disability review (CDR); or when there are Agency delays in processing a CDR. Below are Agency policies of different options of how a retroactive disability termination can be addressed by employee annuitants:

- A) An employee is receiving an early retirement annuity and subsequently obtains a closed period of disability decision: [See DCM 3.11.4](#) for guidance.
- B) An employee disability claimant is under FRA, not receiving an early retirement annuity, and their disability decision indicates that there is a closed period of disability due to medical recovery; then:
  - 1. They can request to cancel their disability application if they repay any associated benefits received from the RRB.
  - 2. A retirement application can be submitted and processed if the individual is eligible for an early retirement age annuity. The employee can be entitled to an early retirement age annuity based on the new application filing date (the ABD cannot be before the filing date or more than 3 months after the filing date). FS should follow [FOM1 305.25.3](#) and obtain a written statement if claimant will simultaneously be pursuing #3 or #4.

3. The individual can submit a new disability application to apply for re-entitlement to the same disability annuity that they were terminated from. If re-entitled, then the annuitant will have a new ABD. If applicable, RSBD will process the cancellation of the retirement application discussed in #2.
  4. The individual can submit new disability application to apply for a different disability annuity. If entitled, then the annuitant will have a new ABD. If applicable, RSBD will process the cancellation of the retirement application discussed in #2.
  5. DBD can consider reopening their disability termination decision and process any new medical evidence the individual may have. If DBD finds that the person's disability termination decision was incorrect, then the claimant's disability annuity is reinstated. If applicable, RSBD will process the cancellation of the retirement application discussed in #2.
  6. Any of the five items discussed above can be processed so long as the claimant does not pursue an appeal of the disability decision. A cancellation cannot be completed until an appeal is first closed. When a case is appealed a reopening cannot occur by DBD because they do not have jurisdiction of the case. A claimant that chooses to appeal may file a new retirement or disability application, but the RRB cannot process it or issue payment until the disability appeal is first finalized. If the appeal indicates that a closed period of disability should not apply to the case, then any newly filed applications will need to be denied by RSBD.
- C) An employee applicant is under FRA, not receiving an early retirement annuity, and their most recent disability decision indicates they had a closed period of disability due to a reason unrelated to a medical recovery; then:
1. They cannot be entitled to a different type of disability annuity nor can they receive an age annuity until reaching FRA. Any filing of an early retirement annuity before FRA would need to be denied; the same is true if an application is received for a different type of disability annuity.
  2. The employee can apply for re-entitlement to the same disability annuity that they qualified for in their closed period of disability provided they continue to meet the eligibility requirements. If re-entitled, then the annuitant will have a new ABD.
  3. They can appeal the closed period of disability decision, but the employee remains in an unpaid terminated status until a favorable decision is made.

4. DBD can consider reopening the disability case and process any new medical and non-medical evidence the claimant may have. The employee remains in terminated status until a favorable decision is made.
  5. Employee can cancel their original disability application if they repay any money received from the RRB. This option will allow them (if eligible) to qualify for an early retirement annuity.
- D) If an employee was entitled to a disability annuity but converted to a retirement age annuity due to reaching FRA, and it is determined that their prior disability annuity should have been retroactively terminated, then:
1. The employee can submit a new disability application for re-entitlement to the same disability annuity they previously held. If the disability termination resulted from medical recovery, then the employee can also apply for a different type of disability annuity. These options are available provided the claimant is not FRA in all of the preceding 12 months of their disability application filing date and is otherwise eligible to receive a disability annuity for any of those months. If the claimant is FRA in all 12 preceding months, then entitlement to a disability annuity is not possible.
  2. The employee can appeal the disability termination decision while they continue to receive their FRA retirement annuity.
  3. DBD can consider reopening the disability termination decision and process any new medical and non-medical evidence the claimant has submitted. The employee will continue to receive their FRA retirement annuity.
  4. If the employee was timely submitting all evidence and the reason that they are overpaid is due to an Agency delay in processing a CDR, then the employee may apply and qualify for a waiver from repaying the overpayment attributed to disability termination.
    - a. Note: if the claimant requests a reopening or appeal of the disability decision then the waiver should not be processed until the reopening or appeal decision is finalized.
  5. The employee can continue to receive their retirement annuity and pursue arrangements for the reimbursement of the overpayment. Otherwise, their FRA retirement annuity will be fully withheld until the overpayment is recovered.