

## 405.5 Widow(er) Defined

To qualify for a survivor annuity under the Railroad Retirement Act (RR Act) before October 1, 1981, an applicant must have been the unremarried widow(er) of an insured employee.

Effective October 1, 1981, amendments to the RR Act establish entitlement for surviving divorced spouses and remarried widow(er)s.

Eligibility and entitlement criteria for each type of widow(er) annuity based on age is described in this chapter. Unless a section in this chapter specifically refers to a certain type of widow(er), any reference to widow(er) applies to all widow(er) annuities (unremarried, divorced, remarried).

### 405.5.1 Legal Widow(er) Defined

#### Relationship Requirement

The applicant must:

- Be considered as validly married to the employee under the laws of the state of the employee's domicile at the time of the employee's death; or
- Have the same rights as a widow(er) to share in the distribution of the employee's estate under the laws of the state of the employee's domicile at death.

In some instances, it may be possible for more than one person to meet the above requirements based on relationships with the same employee; one applicant can meet the valid marriage test, and the other can qualify under the inheritance test. When this occurs, both widow(er)s may be entitled to an annuity under the RR Act.

#### Marriage Requirement

The widow(er) must meet one of the following requirements:

1. Have been married to the employee for 9 months prior to death.

NOTE: The 9-month requirement is met if the employee was alive on or after the 9th month recurrence of the calendar day that marks the marriage, e.g., if the marriage occurred on February 29, the 9-month period would end on November 29; if the employee was alive on November 29, the duration of marriage requirement is met. That requirement would also be met if the marriage occurred on May 30 and the employee was alive on the next February 28 (February 29 in a leap year).

2. Can be deemed to meet the duration of marriage requirements.

General - The 9-month marriage requirement is deemed to be met in the following situations:

- The employee's death was accidental; or
- The employee's death occurred in the line of duty while serving on active duty as a member of the United States Armed Forces.

Note: The 9-month requirement CANNOT be deemed if at the time of the marriage the employee could not have reasonably been expected to live for 9 months.

Development of deemed 9-month duration of marriage - An accidental death is defined as a death, which occurred as a direct result of bodily injuries received by violent, external and accidental means. The death must occur from the bodily injuries independent of other causes and must occur within 3 months after the day on which the employee received such injuries.

Obtain proof of death (see [FOM1 920](#)). Assume that, at the time of marriage the employee was reasonably expected to live 9 months unless information obtained in the normal course of development indicates otherwise. If such information is obtained that, for example, at the time of marriage the employee had an illness, which is ordinarily fatal, advise Headquarters of any pertinent information when submitting the application and proofs. A final decision on whether the marriage requirement has been met will be made in Headquarters.

Proofs of death generally indicate whether the death falls into one of four categories: natural, accidental, homicide or suicide. For purposes of this provision, consider death accidental when the proof of death so indicates. Assume that accidental death was independent of other causes unless the proof of death clearly indicates that an ordinarily fatal illness was a contributing factor.

Even though the proof of death shows that death resulted from natural causes, develop for accidental death if the applicant claims death was accidental. The immediate cause of death may be, for example, pneumonia which was contracted as a result of lowered resistance caused by an automobile accident. When the proof of death shows "natural" causes and development indicates accidental injury may have been a contributing factor, develop fully, including an annuity application, and submit to Headquarters for a determination.

3. Have been previously married to the employee for at least 9 months, divorced and then remarried the employee. As long as the previous marriage lasted at least 9 months, the length of the subsequent marriage and the life expectancy of the employee at the time of that remarriage do not need to be considered.
4. Be the natural parent of the employee's child (the child must be born alive but need not still survive).

5. Have legally adopted a child of the employee during their marriage and before the child attained age 18.
6. Be the parent of a child legally adopted by the employee during their marriage and before the child attained age 18.
7. Have been married to the employee at the time both of them legally adopted a child under age 18.
8. Have been entitled or potentially entitled to a widow's, widower's, parent's or disabled child's insurance annuity under the RR Act in the month before the month of the widow(er)'s marriage.

General - Potentially entitled means that we can presume the filing of an application and the attaining of eligibility age for a widow, widower's or parent's insurance annuity if the deceased employee had the required status and the widow(er) met all other requirements.

For potential entitlement to a disabled child's insurance annuity, only the filing of an application can be presumed. All other requirements must actually have been met in the month before the month the widow(er) married the employee.

Development - When a widow(er) seeks to qualify under this provision, secure the RR claim number and name of the employee on whose record the widow(er) claims actual or potential entitlement. If the widow(er) does not know the RR claim number, secure the employee's name, date and place of birth, mother's maiden name and father's name.

This data should be shown in the "Remarks" section on the annuity application.

9. Have been entitled or potentially entitled to a widow(er)'s, parent's, spouses's, divorced spouses's, divorced widow(er)'s or disabled child's insurance benefit under the SS Act in the month before the month of their marriage.

General - For the purpose of qualifying under this provision, potentially entitled means that we can presume the filing of an application and the attainment of retirement age providing the widow(er) actually met all other requirements.

For potential entitlement to a disabled child's benefit under the SS Act, assume only the filing of an application. All other requirements must actually have been met in the month before the month of their marriage.

Do not consider a widow(er) entitled or potentially entitled to an SS Act widow(er)'s, parent's, divorced spouse's, divorced widow(er)'s or disabled child's insurance benefit if widow(er) was actually entitled to an retirement insurance benefit (RIB) or disability insurance benefit (DIB) which equaled or exceeded such other benefit. Entitlement to an RIB or DIB cannot be presumed.

Development - When a widow(er) qualifies under this provision secure the SS account number of the person on whose record the widow(er) might qualify for benefits. If the widow(er) does not know the SS account number, request the wage earner's name, date and place of birth, mother's maiden name and father's name. This data should be shown in the "Remarks" section on the annuity application.

10. Effective with applications filed on or after March 2, 2004, at the time of the employee's death, the employee and widow(er) were married for less than 9 months because:
- the employee was married prior to the marriage to the widow(er), but the prior spouse was institutionalized due to a mental or similar incapacity; and
  - during the period of the prior spouse's institutionalization, the employee would have divorced the prior spouse and married the widow(er), but they did not do so because such a divorce would have been unlawful, by reason of the prior spouse's institutionalization, under the laws of the State in which the employee was domiciled at the time; and
  - the prior spouse remained institutionalized up to the time they died; and
  - the employee married the widow(er) within 60 days after the institutionalized spouse's death.

Field Office Handling – Because of the rarity of these cases, they should be referred to Policy and Systems to determine if the widow(er) meets the 9 month marriage requirement under this provision. Code the APPLE application for manual review and enter in the remarks section that the case is a special deemed 9 month marriage case that needs to be forwarded to P&S-RAS for a determination. SBD will then refer the case to P&S-RAS.

Since laws vary from state to state, no special preliminary development action needs to be taken. Policy and Systems will determine what needs to be developed and advise the field office accordingly. However, if the applicant has already submitted any materials to support their claim, notate the remarks accordingly and send those materials to SBD. They will forward those materials, along with the APPLE referral, to P&S-RAS.

#### **405.5.2 De Facto (Deemed) Widow(er) Defined**

- A. General - An applicant may qualify as a widow(er) if the marriage to the deceased employee was invalid because:
- At the time of the marriage there was an impediment arising out of a prior marriage, either of the employee or spouse, or its dissolution; or

- There was a defect in the procedure of the marriage.
- B. Relationship requirement - An applicant may qualify as a de facto widow(er) if all the following requirements are met:
1. There was a marriage ceremony; and
  2. The applicant went through the ceremony in good faith, not knowing of the impediment at the time; and
  3. The applicant was living in the same household with the employee at the time of death. This requirement must be met even if the applicant was entitled to a spouse annuity at the time of the employee's death; and
  4. At the time of filing, there is no other person who has filed and been found entitled to any type of survivor benefit as the legal widow(er).
- C. Marriage requirement - In order to qualify for an annuity, a widow(er) must meet one of the requirements listed in FOM-I 405.5.1.

**NOTE:** In some situations, the RRB may recognize a same sex relationship as a deemed marriage for purposes of eligibility for widow(er) annuities when the railroad employee died before same sex ceremonial marriage became legal in the state of domicile and the state does not recognize common-law marriages. See [FOM-I 1581.20.4](#) for additional information.

### 405.5.3 Surviving Divorced Spouse Defined

- A. General - Effective October 1, 1981 a surviving divorced spouse may qualify for an annuity if they meet certain requirements. A surviving divorced spouse is precluded from being entitled to an annuity if the legal or de facto widow(er) previously elected the residual lump-sum.
- B. Relationship requirement - The applicant must be finally divorced from the deceased employee.
- If a final divorce was not effective prior to the employee's death, the spouse may qualify as a legal or de facto widow(er).
- C. Marriage requirement - Must have been married to the deceased employee for at least 10 years immediately before the date a final divorce was effective. This requirement is met if the divorce became final on or after the 10th anniversary of their marriage. The 10 year requirement can still be met when the period is interrupted by divorce. If the applicant and employee married, then divorced and remarried each other again and divorced again, the 10 year requirement can be met if the remarriage took place no later than the calendar year immediately following the calendar year of the divorce.

For example: If the applicant and the employee were married 8-9-1945, they were divorced 5-22-1950, they remarried on 9-15-1951 and were divorced again on 12-1-1955; the applicant may qualify as a surviving divorced spouse. The applicant meets the 10 year requirement with the appropriate proofs. But, if this remarriage took place in 1952 and all other facts above remain the same, this applicant could not meet the 10-year marriage requirement.

(Note: For entitlement 1/1991 or later, a “deemed” marriage satisfies the 10-year duration of marriage requirement for divorced spouses.)

A limited divorce (divorce from bed or board) or a preliminary decree of divorce (interlocutory decree or decree nisi) is not a final divorce. For further information about divorce decrees and related topics, see [RCM 4.3.51](#) and [FOM 320.16](#).

EXCEPTION: A surviving divorced spouse who has a minor (under age 16) or disabled, natural or legally adopted child of the deceased employee in their care can qualify for a widow(er)'s current insurance annuity (WCIA). The 10-year marriage requirement is not necessary for entitlement to a WCIA, but a surviving divorced spouse cannot receive a WIA based on age or disability unless they meet the 10-year marriage requirement.

#### 405.5.4 Remarried Widow(er) Defined

- A. General - Effective October 1, 1981, certain widow(er)s who have remarried can qualify for an annuity under the RR Act.
- B. Relationship requirement - The applicant must be the widow(er), as defined in this chapter, who remarries any time after the employee's death. Once a widow(er) has remarried, they are considered a remarried widow(er) for purposes of entitlement and payment under the RR Act. A widow(er) who remarries permanently loses entitlement to any tier II and vested dual benefit.
- C. Marriage requirement - The applicant must meet requirements for a widow(er) as defined in this chapter.

## 405.10 Eligibility And Entitlement

### 405.10.1 Eligibility and Entitlement Requirements

In addition to being the widow(er) (includes legal, deemed and remarried) or surviving divorced spouse of a deceased employee who died completely insured for survivor benefits under the 1974 Act (see [FOM-I-230.15](#)), an applicant must meet the following requirements:

- A. Age - The survivor must have attained age 60.

**NOTE:** A person attains a given age on the day preceding the anniversary date of their birth. For example, a person born on March 2, 1925 attained age 65 on

March 1, 1990; if their DOB had been March 1, 1925, they would have attained age 65 on February 28, 1990.

B. One-Half Support

Before 3-1-1977 a widower must have been receiving one-half support from the employee at the time of the employee's death or at the time the employee's retirement annuity began;

After 2-1977, a widower does not have to prove one-half support except for payment of a vested dual benefit before 8-13-81 or an employee annuity restored amount. Proof of support must be filed within 2 years after the point at which the support requirement must be met.

When proof of support is needed and not filed during the appropriate period, submit proof of support along with a statement over the applicant's signature, explaining why the proof was not previously furnished. The examiner will determine whether the support requirement can be met.

C. Living-With

1. Legal widow(er) - Living-with is not required to qualify a widow(er) for an insurance annuity under the Railroad Retirement Act (RR Act).

NOTE: Prior to 11-1966, living-with was a requirement for payment of a widow(er)'s insurance annuity (WIA). A widow(er) denied a WIA prior to 11-1-1966 on the basis of not living with the employee at death must file a new application to establish entitlement to a WIA.

2. De Facto (Deemed) widow(er) - In order to qualify for an insurance annuity under the RR Act, a widow(er) must be living in the same household as the employee at the time of the employee's death.
3. Surviving divorced spouse - Living-with is not required.

- D. Marital Status - Prior to October 1, 1981, a widow(er) who remarried could not qualify for an annuity beginning with the month of remarriage. The 1981 and 1984 amendments to the RR Act provided for the entitlement of certain widow(er)s who remarry.

Refer to [FOM-I-405.10.2](#) for additional information about the effect of remarriage on continuing annuity eligibility and entitlement.

- E. SS Entitlement - The entitlement of a surviving divorced spouse or remarried widow(er) to any social security benefit which is greater than the employee's death primary insurance amount (PIA), prevents eligibility to a widow(er)'s insurance annuity under the RR Act. However, if the social security benefit is smaller than the employee's PIA, but larger than the surviving divorced spouse's

or remarried widow(er)'s age reduced rate, and the possibility of an age 62 or FRA adjusted reduction factor (ARF) exists that could increase the annuity rate above zero, the surviving divorced spouse or remarried widow(er) will be entitled to a zero annuity rate. Headquarters will process a constructive award and enter a call-up for the ARF.

The entitlement of a widow(er) to any social security benefit does not affect eligibility; however, such entitlement will affect the tier I amount payable.

- F. Application - In order to establish entitlement to a WIA, a widow(er) including a surviving divorced spouse or remarried widow(er), who meets the necessary eligibility requirements, must file an annuity application.

Exception: If a widow(er) is in receipt of a survivor annuity (DWIA, WCIA or WIA) upon attainment of age 60 or remarriage and there is no break in entitlement, a new application is not required to convert the DWIA to a WIA, WCIA to a WIA or a WIA to a remarried WIA. Refer to FOM-I-[405.30.1](#) for information on what application and proofs should be developed.

#### **405.10.2 Effect of Remarriage on Entitlement**

- A. Remarriage occurs before entitlement to an annuity

1. Effective 1-1-1984 and later:

A non-disabled widow(er) or a non-disabled surviving divorced spouse may qualify for an annuity if they remarry:

- a. After age 60;
- b. More than once after the employee's death provided the last marriage occurred after the widow(er) attained age 60; or
- c. Before age 60, provided the marriage terminates. (The annuity cannot begin until the marriage terminates.)

2. Before 1-1-1984:

A non-disabled widow(er) could qualify for an annuity if they remarried:

- a. After age 60;
- b. More than once after the employee's death, provided the last marriage occurred after the widow(er) attained age 60; or
- c. Before age 60 and the marriage terminated. (The annuity could not begin until the marriage terminated.)

A surviving divorced spouse could qualify for an annuity if they remarried after age 60 provided:

- a. They married an individual entitled to a widow(er)'s, mother's, father's, parent's or disabled child's benefit under the RR Act or the Social Security Act (SS Act); or
- b. The marriage to a person not listed in above terminated. (The annuity could not begin until the marriage terminated.)

**B. Remarriage occurs after entitlement to an annuity**

**1. Effective 1-1-1984 and later.**

A non-disabled widow(er) or a non-disabled surviving divorced spouse may continue to receive an annuity consisting of only a tier I component if they remarry:

- a) After the attainment of age 60; or
- b) After the attainment of age 50 but before the attainment of age 60 and they were entitled to a disabled widow(er)'s or disabled surviving divorced spouse annuity at the time of remarriage.

Note: A new application is required whenever there is a break in entitlement.

**2. Before 1-1-1984.**

- a. A non-disabled widow(er) could continue to receive an annuity consisting of a tier I component if they remarried after age 60.
- b. A surviving divorced spouse could continue to receive an annuity provided they married an individual entitled to a widow(er)'s, mother's, father's, parent's or disabled child's benefit under the RR Act or the SS Act.
- c. If the conditions in a. or b. above were not met, the annuity terminated. The surviving divorced spouse could not become re-entitled unless the marriage terminated.

**C. Action Required Upon Notice of a Widow(er)'s Remarriage - SBD should be advised immediately of a widow(er)'s remarriage to permit proper adjustment or termination action to be taken. If a widow(er)'s annuity entitlement terminates upon remarriage, only the date of remarriage and the widow(er)'s new name and address are required. Certain additional information will be required when the legal or de facto widow(er) can qualify for an annuity as a remarried widow(er) or the surviving divorced spouse's annuity entitlement continues. Refer to FOM-I-**

[405.30.3](#) for additional information about development when a widow(er) has remarried.

### **405.10.3 Possible Entitlement Re-entitlement After Annulment**

When a marriage that terminated or prevented entitlement to benefits is annulled, payment of widow(er)'s insurance annuity (including a tier II) may be possible if the annulled marriage was a void or voidable marriage and, where applicable, no alimony is awarded. If a widow(er) inquires about adjustment, reinstatement or entitlement after a marriage is annulled, develop as follows:

1. Secure a copy of the annulment decree. If the decree does not state the ground for the annulment, secure a copy of the complaint filed in the proceedings.
2. If the widow(er) claims that the marriage is void under state law, but has not been annulled by a court, secure a complete statement of facts showing the basis of the contention and evidence of the impediment or condition which made the marriage void.
3. Secure an application. A new application may not be required in all cases. However, due to the diversity in state laws and language used in annulment decrees, it is not always easy to determine when a new application is not required. All annulment cases are referred to the Bureau of Law for determination. For this reason, an application should be secured in every case. This will prevent further development and delay if it is determined an application is required.

Based on the information secured, a determination will be made by an attorney or the General Counsel in Headquarters as to whether an annuity can be paid, and if so, from what date.

### **405.10.4 Widow(er) Remarries Another RR Employee**

If a widow(er) who is eligible for a WIA marries an RR employee, the widow(er) may qualify for an annuity as a remarried widow(er) and as a spouse. However, the widow(er) can only receive one of the two annuities. Generally, the widow(er) will be paid the higher annuity, but they may elect to receive the lesser annuity when a residual lump-sum may be involved.

Refer to [FOM-I-405.30.4](#) for development required when a widow(er) remarries and there is possible eligibility for a spouse annuity.

### **405.15 Amount Of A Widow(er)'s Insurance Annuity**

This section contains basic information about the components of a widow(er)'s insurance annuity. For more detailed information refer to [FOM-I, Article 10, Computations.](#)

### 405.15.1 Widow(er)'s Tier I

#### A. Gross Tier I

Any widow(er), full retirement age or older on the annuity beginning date, is entitled to a tier I component equal to the lesser of:

- 100% of the employee's primary insurance amount (PIA) based on wages and compensation and including any delayed retirement credits earned by the deceased employee; or
- 100% of the widow(er)'s share of the total maximum family benefit.

EXCEPTION: A surviving divorced spouse always receives 100% of the employee's PIA based on wages and compensation because their entitlement is not considered in the family maximum.

NOTE: Tier I benefits are converted to all NSSEB effective with the month (including any part of the month) the beneficiary has been convicted of a criminal offense confined in an institution at public expense for more than 30 continuous days. See [FOM1 150](#) for more information about criminal activity procedures.

- B. Tier I Adjustment For Age Prior to the Year 2000 - A reduction is required in the tier I of any widow(er) who is under full retirement age when first entitled to an annuity based on age. The reduction is equal to  $19/40$  of 1% (.00475) for each month the widow(er) is under full retirement age on the annuity beginning date, and it is the first adjustment made in the gross tier I amount. An aged legal or de facto unremarried widow(er) is deemed to be age 62 when entitlement begins between age 60-62; so the maximum number of reduction months is 36, or 17.1%. No deeming provision applies to other aged widow(er)s (divorced, remarried); their tier I amount is reduced for the actual number of months they are under full retirement age on their original annuity beginning date (maximum of 60 months, or 28.5%.)

Tier I Age Adjustment Effective With the Year 2000 – Beginning in the year 2000, the eligibility age for a full widow(er)'s insurance annuity will gradually rise from 65 to 67. The maximum reduction will ultimately be 20.36% for widow(er)s and remain at 28.5% for surviving divorced spouses, remarried widow(er)s, disabled widow(er)s, disabled surviving divorced spouses and disabled remarried widow(er)s. This change in age reduction does not affect the deeming of age 62 principles which applied prior to the year 2000. Widow(er)s are deemed to be age 62 when entitlement begins between age 60-62. No deeming provisions apply to divorced or remarried widow(er)s.

For widow(er) type annuitants born January 2, 1940 and later, with an annuity beginning date of January 1, 2000 and later, "Full Retirement Age, (FRA) replaces age 65 in the calculation of the number of age reduction months.

The FRA attainment date is determined by the year in which the widow(er) was born as follows:

If the widow(er) was born:	FRA is:
1-2-1940 through 1-1-1941	65 and 2 months
1-2-1941 through 1-1-1942	65 and 4 months
1-2-1942 through 1-1-1943	65 and 6 months
1-2-1943 through 1-1-1944	65 and 8 months
1-2-1944 through 1-1-1945	65 and 10 months
1-2-1945 through 1-1-1957	66
1-2-1957 through 1-1-1958	66 and 2 months
1-2-1958 through 1-1-1959	66 and 4 months
1-2-1959 through 1-1-1960	66 and 6 months
1-2-1960 through 1-1-1961	66 and 8 months
1-2-1961 through 1-1-1962	66 and 10 months
1-2-1962 and later	67

C. Adjusting the Age Reduction for Widow(er)'s Entitled to an SSA DIB.--Under the provisions of the Social Security Act, if an age reduced widow(er) is entitled to a disability benefit based on their own earnings record, they may be entitled to the tier I age adjusted rate. If this provision applies, only the amount of the widow(er)'s tier I which exceeds the amount of the disability annuity is reduced for early retirement.

- This provision applies if the following conditions are met:
- The widow(er)'s annuity is age reduced; and,
- The widow(er) is entitled to a disability insurance benefit (DIB) under the SS Act and the date of entitlement is the same as, or earlier than, the OBD; and,
- The DIB PIA is less than the death PIA (increased for DRC's) or the widow(er)'s share of the maximum, if applicable; and,

- The widow(er)'s tier I is not reduced by an additional amount (i.e., PSP or EE tier I) which, when added to the SS DIB, exceeds the death PIA; and,
- The OBD is 1/1978 or later
- Attainment of Full Retirement Age

Under the SS Act, a disability insurance benefit is converted to a retirement insurance benefit at full retirement age. Therefore, when the widow(er) attains full retirement age, the tier I age reduction is removed.

- Tier II

Entitlement to this provision has no effect on the 1981 Act tier II.

- RIB Limit

If the employee's annuity was age reduced, the RIB limit must be considered. If the tier I age adjusted rate is higher than the RIB limit, either the RIB limit amount or 82.5% of the PIA, whichever is greater, becomes the tier I age adjusted rate. If the RIB limit applies, there is no change in the age reduction at full retirement age.

- Notifying the Widow That the Age Adjusted Rate Applies

Code paragraph 504.5 is included on the award letter. It reads as follows:

“Since you are entitled to a Social Security disability insurance benefit, we have applied an age reduction to only a portion of your Tier I. When you attain full retirement age, your Tier I age reduction will be removed.”

- D. Tier I adjustment for employee's RIB limit - When the deceased employee was entitled to a reduced age annuity the widow(er)'s annuity tier I amount after any adjustment for age is restricted to the amount the employee would have been entitled to at SSA based on combined RR and SS earnings.
- E. Tier I Benefit Reductions - A widow(er)'s tier I is subject to reduction for entitlement to certain other benefits. The tier I is reduced by:
- The amount of any SS benefit to which the widow(er) is entitled;
- EXCEPTION: Remarried widow(er)s awarded an annuity prior to 8-12-1983 are not reduced for any social security auxiliary benefit.
- If either the employee or the widow(er) had railroad earnings prior to 1975, the net tier I amount of any RR retirement annuity the widow(er) is entitled to if the reduction for the employee tier I is first applied on an

award with a final voucher date of 10-1-1988 or later, or the case is reopened 10-1-1988 or later;

- If either the employee or the widow(er) had railroad earnings prior to 1975, the tier I amount before age reduction of any RR retirement annuity the widow(er) is entitled to through 9-30-1988, and the net tier I of any RR retirement annuity the widow(er) is entitled to 10-1-1988 and later, if the reduction for the employee tier I is first applied on an award vouchered prior to 10-1-1988;
- If neither the railroad employee nor the widow(er) had railroad earnings prior to 1975, the tier I of the widow(er)'s annuity will be reduced by the total employee annuity to which the widow(er) is entitled (net tier I, net tier II and vested dual benefit);
- The amount of any public service pension payable to:
  1. Non-dependent widowers who filed for an annuity after 11-30-1977;
  2. Non-dependent widows who become eligible for a public service pension after 11-30-1982;
  3. Non-dependent surviving divorced wives married to the employee for at least 20 years who become eligible for a public service pension after 11-30-1982;
  4. Non-dependent surviving divorced spouses married to an employee less than 20 years and all non-dependent surviving divorced husbands regardless of when they become eligible for the public service pension;
  5. Non-dependent remarried widow(er)s who become eligible for a public service pension after 11-30-1982;
  6. Dependent widow(er)s who become eligible for a public service pension after 6-30-1983;
  7. Dependent remarried widow(er)s who become eligible for a public service pension after 6-30-1983;
  8. Dependent surviving divorced spouses who become eligible for a public service pension after 6-30-1983.

Note: For months prior to 12-1-1982, the tier I of a dependent surviving divorced wife who was married to the employee for less than 20 years and any surviving divorced husband is subject to reduction for a public service pension. However, beginning 12-1-1982, any reduction is removed providing the survivor submits proof of dependency.

The tier I of annuitants subject to a PSP reduction is reduced by 100% of the PSP if they first became eligible for the PSP before 7- 1-1983. Annuitants who became eligible for a PSP 7-1-1983 or later are subject to a tier I reduction of 66 2/3% of the PSP.

Refer to [FOM-I-120.40](#) for additional information on public service pension reduction.

### **405.15.2 Widow(er)'s Tier II**

Only an unremarried, widow(er) is entitled to a tier II. Remarried widow(er)s or surviving divorced spouses are not eligible for a tier II. Once a legal widow(er) remarries, they are no longer eligible for a tier II even if the subsequent marriage terminates.

NOTE: A widow(er) who remarries and the marriage is subsequently annulled may again be eligible for a tier II.

A widow(er)'s tier II is equal to 30% of the widow(er)'s tier I after reduction for age and any public service pension amount when the widow(er)'s insurance amount (WIA) is awarded before 10-1-1986 and the employee died or retired before 10-1-1981. In all other cases, the widow(er)'s tier II is equal to 50% of the employee annuity tier II amount computed as of the WIA beginning date. When a widow(er)'s tier II is based on the employee's tier II amount, a reduction for age similar to that made in tier I is required.

A widow(er) who is eligible for a tier II may receive an additional tier II amount when a spouse minimum guarantee rate applies or when a widow or dependent widower is entitled to an RR employee annuity and qualifies for an employee restored amount.

Effective February 1, 2002, a widow(er) who is paid under the 1981 Amendments may receive an additional tier II amount called the "Widow(er)'s Initial Minimum Amount", (WIMA). The WIMA guaranty provides that the widow(er)'s annuity will be calculated using 100 percent of the tier II that would have been used to compute the annuity for the deceased employee on the survivor OBD.

### **405.15.3 Widow(er)'s Vested Dual Benefit**

A widow or dependent widower who filed for and was awarded an annuity before August 13, 1981 is entitled to a vested dual benefit (VDB) if:

- The annuitant is the unremarried, legal or de facto widow or dependent widower of a deceased employee;
- The deceased employee had 10 years of service before 1-1-1975; and
- The widow(er) was insured at SSA based on their own earnings as of 12-31-1974; and

- The VDB date of entitlement is before August 13, 1981.

The VDB is basically a guarantee that annuities for widow(er)s meeting the above requirements will not be reduced below the rate they would have received if the 1974 RR Act were not enacted. Refer to FOM-I-405.75 for additional information about VDB entitlement. A surviving divorced spouse or remarried widow(er) cannot qualify for a VDB.

The 1981 amendments to the RR Act eliminated new VDB entitlement for widow(er)s effective August 13, 1981.

## 405.20 Annuity Beginning Date

The beginning date and retroactivity of a widow(er)'s insurance annuity (WIA) is explained in [FOM-I-111.20](#), [FOM-I-111.51](#) and [FOM-I-112.9.2](#).

## 405.25 Annuity Conversions

There are two types of annuities which may be converted to a widow's insurance annuity (WIA): a spouse annuity and a widow(er)'s current insurance annuity (WCIA).

### 405.25.1 Spouse Annuity in Force when Employee Dies

Spouse annuity payments, including payments to divorced spouses and husbands with child(ren) in care, may continue after notice of the employee's death, provided the employee died fully insured under the Railroad Retirement Act (RR Act).

- A. Spouse annuity payments will continue pending development and award of a widow(er)'s annuity if:
- The employee is insured under the RR Act at death (has 120 months of RR service or 60 months of railroad service after 1995), and a current connection); and
  - All information indicates that the spouse is obviously eligible for a WIA; and
  - Development necessary for the payment of the WIA is completed within 6 months of the employee's death.

When the employee's spouse was receiving an annuity which was reduced for entitlement to a spouse's social security benefit based on the employee's earnings record, the interim widow(er)'s rate will be adjusted to remove the social security offset if they will be eligible based on age.

If the RRB is paying the spouse's social security benefit, the amount of the spouse's SS benefit is automatically added onto the spouse's railroad annuity rate.

If SSA is paying the spouse's social security benefit, the interim widow(er)'s rate cannot automatically increase. The examiner will, however, either pay the widow(er)'s annuity within 120 days or manually re-certify the spouse annuity to remove the reduction for SS entitlement provided there are no outstanding not-due employee checks.

In all cases, the spouse annuity payments made after the employee's death are deducted from the survivor annuity accrual.

- B. Spouse annuity payments will be stopped pending development and award of a widow(er)'s annuity if an application is not submitted within 6 months of the employee's death.

Effective August 1, 1990, it is no longer necessary for a spouse to file for conversion to a WIA. Therefore, the determining factor for the 6-month restriction is now the submission of proof of death for the employee.

- C. If a widow(er) met all requirements for entitlement to and receipt of a WIA, other than the filing of an application or submitting proof of the employee's death, spouse annuity payments made to the widow(er) after the employee's death are not erroneous. This rule applies regardless of the reason for failure to file and, if the widow(er) died, regardless of the date of death.

If the widow(er) dies before the annuity conversion is processed, any difference between the WIA amount and the spouse annuity rate being paid at the time of the widow(er)'s death would represent an accrued survivor annuity due, but unpaid at death.

#### **405.25.2 Widow(er)'s Current Insurance Annuity (WCIA) in Force When Widow(er) Attains Age 60**

When the widow(er) of an employee who died completely insured for survivor benefits under the 1974 Act (see FOM-I-230.15) is receiving a WCIA at age 60, the WCIA rate is usually paid until one of the following events occurs:

- The widow(er) ceases to qualify for a WCIA; or
- The widow(er) attains FRA; or
- The widow(er) requests to be paid an age reduced widow(er)'s insurance annuity.

It is policy not to initiate conversion of a WCIA to a WIA before one of the above events occurs to allow the least possible age reduction in the WIA rate.

A new application is not required when converting a WCIA to a WIA as long as there is no break in entitlement. That is, the widow(er) must be entitled to a WIA in the month

eligibility to a WCIA ceases. If there is any break between the last month of entitlement to a WCIA and the first month of WIA entitlement, a new application is required.

NOTE: If a widow(er) is between age 60 and FRA when initially entitled to benefits and has care of a minor or disabled child, refer to FOM-I-415.35.

A. Conversion to WIA when widow(er) ceases to qualify for a WCIA

1. Conversion from a WCIA to a WIA will usually be effective with the first month the widow(er) no longer qualifies for a WCIA. An earlier beginning date is only advantageous when both the following conditions exist:
  - The widow(er) is under age 62 when WCIA entitlement ends; and
  - Maximum benefits were not being paid when the WCIA terminated.
2. The claims examiner determines the beginning date for the WIA based on information in file. An award is processed and a letter is released advising the widow(er) that they have been awarded a WIA and the effective date of the award. The letter will also advise the widow(er) that the annuity is reduced for months they are under FRA; if they do not wish to receive a reduced annuity, they can return the check. A copy of the award letter is sent to the servicing field office.
3. If proof of the widow(er)'s age is not in file when the WCIA terminates, the field office will be asked to secure proof of age (POA); otherwise, no field action is required for the conversion.

B. Conversion to WIA when widow(er) attains FRA

1. When a widow(er) attains FRA, they are paid a WIA regardless of whether there are entitled children in the widow(er)'s care. Conversion to a WIA at FRA means that the WIA is not reduced for age, and, therefore, the total amount of benefits being paid are not reduced. However, the individual annuity rates may change when the widow(er) is entitled to a larger share of the maximum.
2. An award is processed to pay the widow(er) a WIA, and an award letter is prepared notifying the affected beneficiaries of the adjustment. A copy of the award letter is sent to the servicing field office.
3. If proof of the widow(er)'s age is not in file, the field office will be asked to secure POA; otherwise, no field action is required.

C. Conversion to WIA upon widow(er)'s request - A widow(er) age 60-FRA who is receiving a WCIA can be converted to an age reduced WIA upon written request over their signature, providing acceptable proof of the widow(er)'s age has been submitted. The WIA is paid effective with the latest of the following:



Total benefits payable: \$707.72

Rates payable when widow paid a WIA:

<u>WIA</u>		<u>CIA</u>	
Gross Tier I	\$324.20 (100% share)	Tier I	\$243.20 (75% share)
Tier I After Age Reduction	268.80	Tier II	\$ 72.96
Tier II	80.64	CIA Rate	\$316.16
<hr/>		<hr/>	
WIA Rate	\$349.44		

Total benefits payable \$666.10

Another consideration would be whether a slight increase now is more advantageous than a more substantial increase which could be paid when the widow(er) attains FRA or WCIA entitlement ends. In these cases, the advantages must be weighed by each widow(er) based on their own financial and/or personal circumstances. When the advantage is not obvious follow the guidelines listed in the next section.

2. Field action upon receipt of inquiry or request from widow(er) to be paid a WIA
  - a. Advise widow(er) that rate information will be requested; and
  - b. Encourage widow(er) not to make a formal request for payment of the WIA until rate information is secured. Because of many factors (family maximum, number of family members, amount of age reduction) it may be disadvantageous for a widow(er) to be paid a WIA. If a widow(er) insists on being paid the WIA rate after being advised of the possible disadvantages, secure a statement from the widow(er) requesting that the WIA rate be paid.

Send a memo to SBD advising that the widow(er) is inquiring about or requesting payment of the WIA rate. If widow(er) wants to be furnished family rates if they are paid a WIA, ask SBD to advise rates. Also ask SBD to furnish WIA rate that could be payable (at current COL rate level) if the widow(er) waits until the WCIA terminates to receive a WIA.
3. SBD handling of field office request
  - a. Upon request, SBD will compute and furnish rates for all family members. After furnishing rate information SBD will not control the file for a response.
  - b. When the widow(er) requests to be paid a WIA without first being furnished rate information, SBD will make any necessary

adjustments to award WIA. The field office will receive a copy of the award letter as notification that adjustment has been made.

4. Field action upon receipt of rate information from SBD
  - a. Contact the widow(er) to furnish and explain rate information.
  - b. If widow(er) wishes to be paid a WIA, secure a statement over the widow(er)'s signature requesting payment. Forward the statement to Headquarters.
  - c. If widow(er) wishes to continue receiving the WCIA no action is required.

## 405.30 Evidence And Development

### 405.30.1 Evidence Requirements for WIA

Evidence	When required
Application	Always, unless converting from an MA or WCIA. <ol style="list-style-type: none"> <li>a. No longer necessary, if the spouse is not caring for a minor or disabled child.</li> <li>b. Use AA-17 in all other cases provided that the applicant is not also applying for insurance annuities on behalf of children.</li> <li>c. When the applicant, regardless of age, is also applying for benefits on behalf of children, form AA-18 is the appropriate application.</li> </ol>
Proof of employee's death	Always.
Proof of one-half support (G-134)	Always when dependency is claimed and the widower is eligible, or may be eligible in the future, for an employee annuity. Also secure when a widow(er), surviving divorced spouse, or remarried widow(er) claims dependency and could be exempt from PSP offset if dependency is established.
Proof of widow(er)'s age	Always.
Proof of marriage to employee	Always.

Widow(er)'s SS account number	Always. Request widow(er) to secure one unless they reside outside the U.S.
Public service pension information (G-208)	Required when indicated by the response on form AA-17. Also secure when a widow(er) annuitant becomes entitled to a remarried widow(er)'s annuity with no break in entitlement, unless the widow(er) has been continuously entitled to an annuity based on the employee's record since before 12-1-1977.
Application for substitution of payee (AA-5)	Required when a representative payee is newly selected.
Documentation for prior service (AA-15)	Only when less than 120 months of subsequent service can be verified.
Proof of employee's age	<p>In "A" cases POA is always required if the employee's DOB has not been previously verified through submission of the employee's proof of birth. Assume DOB has been verified in the following situations:</p> <ul style="list-style-type: none"> <li>• The employee received an annuity</li> <li>• The employee filed for and received Medicare</li> <li>• The employee's POA is on APPLE</li> </ul> <p>Note: If none of the above conditions apply, but the AFCS systems indicate that a folder was established, the field may first contact RBD to verify whether the employee's POA was submitted before obtaining the proof from the widow.</p> <p>Effective 03-01-2004 POA of deceased employee is required in all "D" cases when a survivor recurring application is filed.</p>
Proof of legal adoption of child	Only when widow(er) seeks to qualify on that basis
Proof of military service	Only when employee's M/S after 1936 would be creditable under either the RR or SS Act.

Proof of termination of prior marriage	If there is reasonable doubt whether a prior marriage of employee or widow(er) was ended and the widow(er) cannot qualify as a de facto widow(er).
Proof of divorce from employee	Always from a surviving divorced spouse.
Proof of remarriage(s)	Always from: <ul style="list-style-type: none"> <li>• Widow(er)</li> <li>• Surviving divorced spouse when annuity entitlement may continue after remarriage</li> </ul>
Proof of termination of subsequent marriage(s)	Always from: <ul style="list-style-type: none"> <li>• Widow(er) who remarried before age 60</li> <li>• Surviving divorced spouse who may be entitled or re-entitled after a subsequent marriage terminates</li> </ul>
Check list - form G-659a	Always. Forward original to SBD; retain copy for field office file.

### 405.30.2 General Development

Initiate development for a WIA when:

- The employee was insured under the Railroad Retirement Act at death; and
- A widow(er) survives who meets the eligibility requirements listed in FOM-I-[405.10.1](#); and
- An inquiry has been received, or SBD has requested development.

Develop a claim for a widow(er)'s annuity by personal contact if possible, by mail if necessary. When practical, arrange by telephone to obtain or develop the application or required proofs. When contact is made by telephone or mail be sure to send the widow(er) an RB-17 booklet.

RL-55 series letters can be used to ask a prospective applicant to call at a field office, or at a specified itinerant point, to receive assistance in filing a survivor application. Form

letter RL-57B-F may be used to trace and furnish an application to an applicant who fails to call at a field office or itinerant point as requested.

When you will not be able to meet with the employee's legal widow(er) who was receiving a spouse annuity and a social security benefit based on the employee's earnings record that was being paid by SSA, within 30 days of the employee's death, develop proof of death, earnings information, etc., by telephone or mail. Call the supervisor in the survivor module whenever an interim widow(er) claims hardship because SSA terminated their spouse benefit.

In other cases, if it is not possible for an applicant to call at a field office or itinerant point, an RL-56 series letter can be used to mail the application. Use the telephone, when possible, to complete the application in whole or in part, then mail the application for signature of the applicant.

Trace on a request for an application or evidence after 15 days. An RL-57 series letter can be used to trace an application. If the application or evidence is not submitted within 30 days of the tracer action, and there are no apparent extenuating circumstances, abandon development. Notify the Survivor Benefits Division (SBD) when you abandon development in cases where an application has been submitted or when SBD is expecting reports on development.

- A. Development of Wage Record (G-90) - Field offices should request SURGE On-Line wage records in cases where the employee died some time ago, the widow(er) or other beneficiary is now entitled or re-entitled, and a FAST First Notice of Death entry is not being completed. See RCM 9.11 for instructions on completing SURGE screens. (A FAST FNOD will automatically initiate a SURGE G-90 request.)

If the application is paid by headquarters, the procedure in the above paragraph will ensure the wage record is available by the time the application is received. NOTE: If unable to request a survivor wage record during the application process, notate specifying the reason in the remarks section of Form G-659a.

- B. Development of P/S - It may be necessary in some cases to develop for P/S because as a part of the requirements for an insured status under the RR Act, the employee must have had 120 months of creditable service. Develop information with respect to P/S as follows:
1. When an application is received by mail, assume that no P/S was performed if the deceased employee was born after 1921. For any other case in which the employee had less than 120 months of service after 1936, develop Form AA-15 to claim the employee's P/S, if any, unless they had been awarded a retirement annuity before they died.

2. In some cases, SBD will release Form G-659a to request a field office to develop Form AA-15 from a survivor of the employee when less than 120 months has been verified.
3. When Form AA-15 is used with a survivor claim, modify the form by inserting in the text in the upper right corner between the words "your" and "railroad," the word "deceased" followed by the relationship borne by the deceased employee to the person who is completing the Form AA-15 as "deceased spouse's."

C. Development of POA - POA is required of an applicant for a widow(er)'s insurance annuity.

When a widow(er) filing an application believes that POA has been previously submitted, so state on form G-659a. In such a case, do not request further evidence of age unless SBD has requested field development and has not shown that POA was previously submitted, or unless SBD has requested that POA be obtained. If the application has been forwarded to SBD before the applicant advises that POA was previously furnished, inform SBD by memorandum of the applicant's statement.

### 405.30.3 Developing From Widow(er) Who Has Remarried

Certain widow(er)s can qualify or continue to qualify for an annuity after remarriage. The following widow(er)s can receive an annuity after remarriage:

- A widow(er), a surviving divorced spouse or a remarried widow(er) who remarries after age 60. Before 1-1984, entitlement was lost unless the marriage was to an individual entitled to RR or SS benefits as a widow(er), parent, father, mother or disabled child.
- A widow(er), a surviving divorced spouse or a remarried widow(er) receiving a DWIA who remarries after age 50 and after the disability onset date. Before 1-1984, the marriage must have been to an individual entitled to RR or SS benefits as a widow(er), parent, father, mother, or disabled child.
- Any surviving divorced spouse or remarried widow(er) whose marriage has terminated.

A. Action when widow(er) is in receipt of an annuity at time of remarriage.

1. Use FAST/ST to terminate the annuity of a widow(er). The effective date is the month of remarriage. The termination code is 44.
2. Do not terminate a remarried widow(er) or a surviving divorced spouse annuity.

3. If a widow(er), remarried widow(er) or a surviving divorced spouse marries and entitlement will continue, develop as follows:

- After the widow(er)'s annuity has been terminated, send an e-G-115 to SBD per current procedure. As a heading use WIDOW TO RW CONVERSION - HANDLE IMMEDIATELY. The following information must be:
  - The employee's name
  - The employee's claim number
  - The widow(er)'s new name and address
  - The date of remarriage
  - The date the termination was processed
  - The new spouse's SS number
- Proof of remarriage must be secured. When you have the proof, enter the remarriage information on APPLE.

Advise widow(er) who is receiving a full WIA (tier I, tier II, and possibly a vested dual benefit) that any annuity payment received after remarriage that has not been returned may result in an overpayment due to the adjustment that is required in their annuity rate since they are no longer eligible for a tier II or vested dual benefit amount. A surviving divorced spouse or remarried widow(er) who is only receiving a tier I amount before remarriage needs to be advised there may be a change in the annuity rate if the widow(er) applies for Social Security benefits on the earnings record of their new spouse.

B. With the exception of the date the termination was processed continue to send the above information for a surviving divorced spouse or remarried widow(er) on a G-115. As their benefits are not terminated, an e-mail is unnecessary.

C. Development when widow(er) not receiving an annuity when remarriage occurs.

Secure information from the widow(er) to determine whether they can qualify for an annuity. Basically, a remarried widow(er) can establish initial entitlement to an annuity only if the marriage(s) since their marriage to the deceased employee has terminated, or if the latest marriage occurred after they attained age 60.

1. If the widow(er) cannot qualify for an annuity, advise them of the eligibility requirements and explain why they do not meet those requirements. Further advise the widow(er) that they cannot qualify for an annuity unless their marriage terminates. Do not develop an application.

2. If it appears the widow(er) can qualify for an annuity, develop the following information and evidence:
- Application (AA-17);
  - Proof of the widow(er)'s age;
  - Proof of the widow(er)'s marriage(s) after marriage to the deceased employee;
  - Proof of termination of marriage(s) after marriage to the deceased employee;
  - Public service pension information if indicated by the response on the AA-17

Submit all the above information to SBD via form G-626

#### **405.30.4 Developing From Widow(er) Who Remarries A Railroad Employee Annuitant**

A widow(er) or remarried widow(er) who marries a railroad employee and meets the entitlement requirements for a spouse annuity may qualify as a remarried widow(er) or a spouse, but can be paid only one type of annuity. Normally, they will receive the higher of the annuities payable. However, it may be to a widow(er)'s advantage to elect the lesser annuity because of an RLS that would be payable, or to permit payment of greater total benefits to the family group. More information regarding the election of a lesser annuity can be found in FOM-I-405.55.2.

- A. Development when widow(er) is in receipt of an annuity at time of remarriage - If the widow(er) may immediately be entitled as a spouse, develop for a spouse annuity as usual. Proof of the spouse's age need not be secured as it can be taken from the widow(er)'s annuity file.

Enter the AA-3 and proofs. Notate in the remarks that the widow(er) has married a railroad employee annuitant and that a spouse annuity application and proofs are attached.

SBD will request the retirement file and have the remarried widow(er) and/or spouse annuity rates computed. WIA payments that include a Vested Dual Benefit (VDB) and/or tier II amount will be suspended pending action to determine whether spouse or remarried widow(er)'s annuity will be paid. Headquarters will award either a remarried widow(er) or spouse annuity and advise the annuitant appropriately. Any WIA overpayment for months after remarriage will be recovered from the remarried widow(er) or spouse annuity payments.

- B. Development when widow(er) is not in receipt of an annuity at time of remarriage  
 - If a widow(er) at the time of filing can qualify as a remarried widow(er) on one account and as a spouse on another account, develop for both annuities. Enter both applications and notate in the remarks that the widow(er) can qualify for a remarried widow(er) and spouse annuity. Complete a G-230 for the AA-3 and a G-659a for the AA-17, explain multiple eligibility, and request payment of the most advantageous annuity rate.

Note: In either A or B above, if it can be determined based on information in the F/O which annuity will be payable, develop only for that annuity. However, if any doubt exists as to which type of annuity will produce the higher rate, develop for both annuities. Refer to [RCM 2.1](#) for more information.

### 405.35 Reduction For Public Service Pension

Refer to section [120.40](#) of the FOM for all public service pension information.

The Social Security Fairness Act was signed into law on January 5, 2025. The law ended Public Service Pension (PSP) statutory Tier I reductions for widow(er)s who are receiving public pensions from work not covered by social security effective January 1, 2024. As a result, the RRB will no longer offset Tier I annuity payments for PSP beginning with benefits due January 1, 2024 (paid in February 2024). The PSP policies in this manual apply to Tier I annuity payments of widow(er)s before January 1, 2024.

### 405.40 WIA Rate Is Zero

A widow(er)'s insurance annuity (WIA) rate can be reduced to zero when a widow(er) is not entitled to a tier II or when a widow(er)'s tier II is zero. In the following situations the WIA rate will be zero:

- A widow(er) who is not eligible for a tier II component is entitled to other benefits that are deductible from tier I and which exceed the widow(er)'s tier I amount; or
- A widow(er) who is subject to a public service pension reduction is entitled to a pension which exceeds the tier I amount, and the widow(er)'s annuity is awarded before 10-1-1986 and the employee died or retired before 10-1-1981. The WIA rate is zero in this case because the tier II of a WIA awarded before 10-1-1986 where the employee retired or died before 10-1-1981 is 30% of the widow(er)'s tier I after reduction for age and any public service pension. Consequently, if the widow(er)'s tier I is wiped out by a public service pension, the tier II would also be zero.

The 1981 amendments to the Railroad Retirement Act changed the computation of a widow(er)'s tier II. The change prevents the tier II of a WIA from being zero because it is now based on the employee's tier II and is not reduced for anything other than a

widow(er)'s age. A 1981 tier II applies in cases where the employee did not retire or die before 10-1-1981 and in all annuities awarded after 9-30-1986.

If an age reduced remarried widow(er) or surviving divorced spouse is entitled to other benefits which reduce the annuity to zero, and the possibility of an adjusted reduction factor (ARF) exists, Headquarters will code the case for call-up at age 62 and/or FRA to see if the ARF will increase the rate above zero.

#### **405.40.1 Payment of a RLS When Annuity Rate is Zero**

When the WIA rate of other than a surviving divorced spouse is zero, and no other beneficiaries are or will be entitled to monthly benefits, the residual lump-sum (RLS) can be paid to the widow(er) provided the widow(er) is otherwise entitled to the RLS (i.e. widow(er) living with employee at death and employee did not designate a beneficiary for RLS other than the widow(er)). Payment of the RLS in such a situation does not affect the widow(er)'s eligibility for Medicare coverage at RRB. The widow(er) continues to be considered a qualified annuitant for Medicare purposes.

#### **405.45 More Than One Person Claims Benefits As Legal Widow(er)**

When more than one person claims benefits as the employee's legal widow(er), each claim must be resolved under applicable state law. (See Article 9, Proofs, "Marriage-Divorce," for details on such cases.)

In some situations, it is possible for more than one legal widow(er) to qualify under the RR Act on the same earnings record; i.e., one claimant meets the valid marriage test, and another meets the inheritance test. Putative marriages which meet the inheritance test are recognized in the following states: Arizona, California, Colorado, Illinois, Louisiana, and Minnesota (see Article 9, Appendix D - Common-Law and Similar Marriages.) A putative marriage is a void marriage where the spouse acquires inheritance rights because they believed the marriage to be valid until the employee's death. When a putative marriage is claimed, headquarters will obtain a legal decision in the case.

Effective January 1, 1991, based on applications filed after December 31, 1990, a deemed widow(er) may be entitled, regardless of the existence or status of a legal widow(er). In this situation, both widow(er)s will be paid. The deemed widow(er) is paid within the tier I family maximum and the legal widow(er) is paid outside the tier I family maximum. Both the legal widow(er) and the deemed widow are paid within the tier II maximum.

For applications filed prior to January 1, 1991, the deemed widow(er) loses entitlement as explained [FOM 405.65](#).

## 405.50 Work Restrictions

### 405.50.1 Restricted Employment

A WIA is not payable for any month the widow(er) works for an employer covered by the RR Act. There are no other restrictions in the type of employment in which a widow(er) may engage.

### 405.50.2 Earnings Restrictions

The annuity of a widow(er) who will attain full retirement age during the year will lose \$1 for every \$3 of excess earnings over the annual exempt amount. However, only the earnings through the month before the month of attainment will be counted. Once the widow(er) attains full retirement age, there is no further deductions for earnings. A widow(er) under full retirement age is subject to a \$1 for \$2 deduction for excess earnings over the annual exempt amount. Refer to Article 11 for more detailed information regarding survivor annuity work deductions.

## 405.55 Widow(er) Entitled To Other RR Act Annuity

### 405.55.1 Entitled to RR Act Retirement Annuity

An individual may be simultaneously entitled to an employee annuity on their own earnings records and a widow(er)'s annuity on a different railroad earnings record. The individual must file an annuity application on each claim number to become "entitled" to each of these annuities.

There is a reduction in the widow(er)'s annuity on the different RRB claim number for entitlement to an employee annuity on the widow(er)'s own earnings record:

1. Railroad Service Before 1975 - If either the widow(er)'s annuity on the different RRB claim number or the employee annuity on their own earnings record is based on any railroad service before 1975, the **tier I** portion of the survivor's annuity is reduced for the **net tier I** of the survivor's own employee annuity.

However, if either the widow(er)'s annuity on the different RRB claim number or the employee annuity on their own earnings record is based on 10 years of railroad service before 1975, there is a restoration in the widow(er)'s annuity tier II, part or all of the reduction amount, as the "Employee Annuity Restored Amount."

**NOTE:** If the widow(er) annuitant is not entitled to receive the tier II component of a widow(er)'s annuity (i.e. surviving divorced spouses or remarried widow(er)s), they cannot receive an "Employee Annuity Restored Amount".

**Example:** Jane Doe is the surviving divorced spouse of John Smith. Jane has 12 years of railroad earnings prior to 1975 and is receiving an employee annuity on her own earnings record. Jane is now applying for a surviving divorced spouse annuity on her ex-husband's earnings record. Jane would have her surviving divorced spouse annuity reduced by the net tier I of her own employee annuity and would receive no "Employee Annuity Restored Amount".

2. No Railroad Service Before 1975 - If neither the widow(er)'s annuity on the different RRB claim number nor the employee annuity on their own earnings record is based on any railroad service before 1975, (i.e., both annuities are based solely on service after 1974), the widow(er)'s **total net annuity rate** (tier I and tier II) is reduced, but not below zero, by the **total amount** of the employee annuity (net tier I and tier II) and there is no Employee Annuity Restored Amount payable in the widow(er)'s tier II:
- If the employee annuity is higher, entitlement continues on the earnings record for the widow(er)'s annuity, even though the widow(er)'s annuity rate is zero. SBD will not deny the widow(er)'s annuity application. The widow(er)'s annuity must remain in a "suspended" or "constructive award" status with an annuity rate of "zero."
  - If the widow(er)'s annuity is higher, the widow(er)'s annuity rate will be the amount of the difference between the widow(er)'s annuity before adjustment for the employee annuity and the amount of the employee annuity.
  - Even if the widow(er)'s annuity is reduced to zero by a dual employee annuity, a Widow(er)'s Initial Minimum Amount (WIMA) is still payable if the annuitant is otherwise entitled to the WIMA. This is because the WIMA is computed without accounting for reductions or restorations due to dual annuities. In this situation, the WIMA increase amount will gradually decrease to zero with each COLA. For more information on the WIMA, see [RCM 8.9 Special Situation 17](#).

The employee annuity is not reduced by the widow(er)'s annuity under any circumstances.

### **405.55.2 Entitled to RR Act Spouse Annuity and/or Other Survivor Insurance Annuity**

A widow(er) may not receive more than one survivor annuity, or both a survivor and spouse annuity; normally, they will receive only the highest of the annuities payable. It may be to a widow(er)'s advantage to elect to receive a lesser annuity because of an residual lump-sum (RLS) that would be payable on the other record, or to permit payment of greater benefits to the family group.

- A. Election of lesser annuity - The election to receive a smaller annuity is revocable. A signed statement by the applicant is sufficient proof of election. This differs from an election to receive an RLS, which is an irrevocable election and must be made on Form G-126.

Headquarters will determine when an election should be solicited. If it appears that it would be to a widow(er)'s advantage to receive the lesser annuity, examiners will release a memo to the field office relating the facts of the case and requesting a contact with the annuitant. If the widow(er) wants the smaller annuity, the district office will be asked to secure a signed statement that establishes that the widow(er) is aware of electing the smaller benefit.

If the widow(er) elects the smaller annuity in order to receive an RLS on the other account, the statement should include the fact that the election of the smaller annuity is made in order to receive the RLS and that the applicant does not intend to revoke it. A G-126 election form is not needed.

- B. Revocation of election - If the annuitant later changes their mind and withdraws their election of the smaller annuity, the RLS must be recovered from the larger annuity. No annuity would be payable until the RLS is recovered.
- C. LSDP entitlement - A lump-sum death payment is not payable on the account that the annuity is not paid on, because there is eligibility to a monthly benefit, whether or not it is paid.

## 405.60 RLS Previously Paid

### 405.60.1 Widow(er) Elected RLS

A WIA is not payable if the widow(er) previously elected and was awarded the residual lump-sum (RLS). The fact that the widow(er) elected the RLS prevents the payment of a widow(er)'s insurance annuity (WIA) since the election of that payment was an agreement by the widow(er) to give up rights to future benefits under the Railroad Retirement Act (RR Act). In addition, an annuity is not payable to a surviving divorced spouse if the widow(er) has elected the RLS because payment of the RLS based on an election prevents payment of further benefits based on railroad earnings. In such cases, however, the widow(er) may qualify for an annuity at the Social Security Administration if the employee was insured under the Social Security Act solely on the basis of wages.

EXCEPTION: If a remarried widow(er) filed a modified election (employee was insured based on wages only) to receive the RLS, they may be paid a remarried widow(er)'s annuity. However, the RLS must be recovered before the annuity can be paid.

### 405.60.2 RLS Paid Without An Election

If the widow(er) received the RLS without electing it (because they could not qualify for a WIA under the RR Act at that time), they may receive a WIA if otherwise qualified. However, the RLS must be recovered from the WIA.

EXAMPLE: A widow born 10-12-1916 was not living with the employee at the time of his death in 08-1966. Since living with was required for a WIA before 11-1-1966, she could not qualify for a WIA. However, since she was also the designated beneficiary of the RLS she was paid the RLS. In 10-1976, she files for a WIA as a "not living with" widow. Her WIA beginning date is 10-1-1976 (month age 60). However, before she can actually receive her annuity, the RLS must be recovered.

If the RLS was paid to someone other than the widow(er), the RLS is not recovered. Also, if only a portion of the RLS was paid to the widow(er), only the amount of the RLS actually paid to the widow(er) would be recovered from the widow(er)'s annuity.

### 405.60.3 Widow(er) Waived Future Eligibility To Permit Payment of RLS

An annuity is not payable to a widow(er) who waived future annuity eligibility to permit payment of the RLS to eligible person(s).

### 405.65 When Entitlement Ends

A widow(er)'s insurance annuity (WIA) ends with the month preceding the month in which:

- the widow(er) dies;
- the widow(er) remarries;

NOTE: The annuity of a widow(er) terminates upon remarriage; but the widow can qualify for remarried widow(er)'s insurance annuity. Refer to [FOM-I-405.10.2](#).

- the surviving divorced spouse remarries before 1-1-1984, unless they marry an individual entitled to benefits under the Railroad Retirement Act (RR Act) or Social Security Act as a widow(er), father, mother, parent or disabled child. Beginning 1-1-1984, entitlement continues when a surviving divorced spouse annuitant remarries;
- the widow(er) becomes entitled to another survivor or spouse annuity under the RR Act which is greater than the WIA;
- the remarried widow(er) or surviving divorced spouse becomes entitled to a retirement insurance benefit which equals or exceeds the deceased employee's primary insurance amount;

- the remarried widow(er) or surviving divorced spouse becomes entitled to any social benefit or combination of social security benefits which zero out the annuity rate and no possibility of an adjusted reduction factor exists.

Prior to 1-1-1991, the deemed widow(er) lost entitlement if another individual was found to be the legal widow(er). The last month of the deemed widow(er)'s entitlement was the month prior to the month in which an authorizer approved the legal widow(er)'s award.

The fact that the employee was survived by a legal spouse did not preclude the surviving spouse by deemed marriage from qualifying if the legal spouse was not entitled to any type of survivor benefit based on the earnings record of the employee. Similarly, potential future entitlement of a legal spouse did not bar a spouse's entitlement to a deemed marriage.

If the legal widow(er) filed and was found entitled under the RR Act to any survivor benefit on the employee's earnings record, the widow(er) of a deemed marriage was not considered eligible for any type of survivor benefit under the RR Act. Moreover, if the claim of the legal widow(er) was pending before an award to the de facto widow(er) was approved, action on the latter was withheld until the entitlement of the legal widow(er) was determined. In this situation, if it was determined that the legal widow(er) was entitled beginning either with the month the authorizer approved an award to the legal widow(er) or an earlier month, the deemed marriage provision did not apply. It is immaterial that the legal widow(er)'s first month of entitlement was for a later month than the month the widow(er) by deemed marriage would have been entitled.

## **405.75 Windfall (Vested Dual Benefit) Entitlement**

### **405.75.1 General**

Under the 1937 Railroad Retirement Act (RR Act), all survivor annuitants could receive both RR and SS benefits (dual benefits) without restriction as long as they met all of the eligibility requirements under each Act and filed a timely application for each benefit. Under the 1974 RR Act, the only survivor annuitants who may receive the full amount of these dual benefits are legal or de facto widows and dependent widowers, and this is only if they are "dually vested" as of 12-31-1974, on the rolls as of 8-13-1981, and windfall (vested dual benefit - VDB) entitlement began before 8-13-1981.

A widow(er) was dually vested as of 12-31-1974 if they were on our rolls on 12-31-1974 with an SS insured status on that date, or if they had sufficient quarters for a fully insured status under the SS Act as of 12-31-1974, and the employee had at least 10 years of RR service before 1-1-1975. In the case of a widow(er) receiving a disability insurance benefit (DIB) at the Social Security Administration (SSA), this vested status determination could, at times, depend upon whether they qualified for a disability freeze.

### 405.75.2 Widow(er) on the Rolls on 12-31-1974

The dual benefit rights of widow(er)s on our rolls as of 12-31-1974, who were either receiving SS benefits on that date, or who were fully insured under the SS Act as of that date, were preserved.

An aged widow(er) on the rolls as of 12-31-1974 who is transitionally insured under the SS Act is also entitled to a VDB. A widow(er) is transitionally insured if they attained age 72 prior to 1969 and are not insured at SSA under the regular rules, but have at least 3 quarters of coverage (QCs).

### 405.75.3 Widow(er) on the Rolls After 12-31-1974

A widow(er) who came on the rolls after 12-31-1974 is vested for a VDB computation if the following requirements are met:

- The deceased employee had 10 years of RR service before 1-1-1975; and
- The widow or dependent widower had a permanently or transitionally insured status under the SS Act as of 12-31-1974; and
- The widow or dependent widower was entitled to the VDB before August 13, 1981.

NOTE: A non-dependent widower whose annuity beginning date (ABD) is 3-1-1977 or later is not entitled to a VDB because the VDB is based on the RR annuity payable on 12-31-1974 and no such benefit was payable to this class of beneficiaries on that date.

- A. Definition of Permanently Insured Status, 1974 Act - The widow(er) must be permanently or transitionally insured under the SS Act on 12-31-1974 to be entitled to a VDB. The 1974 act defines the widow(er) to be permanently insured if they are fully insured solely on the basis of QCs from SS earnings acquired before 1-1-1975 when they attain age 62.

### 405.75.4 VDB Date of Entitlement

The VDB date of entitlement is the earlier of the month and year the widow or dependent widower:

- Attains age 62; or
- Becomes entitled to a DIB at SSA.

However, the VDB date of entitlement could be no earlier than:

- The widow's ABD, if the case was initially paid under the 1974 act; or

- 1-1-1975, if the case was initially paid under the 1937 act and converted to the 1974 act computation.

NOTE: The survivor VDB was a guarantee that the annuity of an eligible vested widow or dependent widower would not be less than the widow(er) would have received had the 1974 RR Act not been enacted. A widow(er)'s annuity computed under the 1974 RR Act should always be higher than the same annuity computed under the 1937 RR Act until there is a reduction required because of entitlement to other benefits. Consequently, the VDB computation was not made until the widow(er) actually became entitled to an SS retirement insurance benefit/DIB.

#### **405.75.5 Cost-of-Living Increase**

VDB benefits are frozen at the 1974 benefit levels. However, they are initially increased by the cumulative percentage of the cost-of-living increases that occur in the period from 1-1-1975 to the later of the widow's SS RIB/DIB date of entitlement or the widow(er)'s insurance annuity ABD, but not after 6-1-1981.

#### **405.80 When Entitlement To A Windfall Benefit (Vested Dual Benefit) Ends**

Windfall dual benefit (VDB) payments end with the month in which:

- The widow(er) dies; or
- The widow(er) remarries; or
- The legal widow(er) becomes entitled and a de facto widow(er) is on the rolls (the last month of the de facto widow(er)'s entitlement is the month before the month in which headquarters approves the legal widow(er)'s award even though the legal widow(er) may be entitled for earlier months); or
- The SS DIB is terminated. When a widow(er)'s DIB terminates, entitlement to the WF ends effective with the month and year that SSA terminates the DIB, IF the widow(er) is not permanently insured on 12-31-1974 without a disability freeze, or the widow is permanently insured on 12-31-1974 without a disability freeze but is under age 62 when the DIB terminates.

NOTE: The WF benefit is not terminated when one SS benefit is terminated because the annuitant becomes entitled to a new type of SS benefit (e.g., RIB to WIB) or if the widow becomes entitled to a different type of RR widow's annuity (i.e., WCIA to WIA or DWIA). Furthermore, there is no provision to recompute the WF when the type of benefit changes at SSA or at RRB.

