

## 1130.5 Effect Of Earnings

### 1130.5.1 General

The overall minimum (O/M) guaranty is a provision of the Railroad Retirement (RR) Act that guarantees the employee and his family to receive the same amount of benefits that would be payable under the Social Security (SS) Act if the employee's railroad earnings were SS Act wages. The O/M applies if benefits payable under the O/M formula exceed the benefits payable to the employee and spouse under the railroad retirement formula.

A work deduction insured status under the RR Act is not required for work deductions to apply. Annuities under the O/M are withheld if the employee or auxiliary beneficiary (spouse, divorced spouse, or non-disabled child) has earnings over the annual exempt amount. The withholding is the same formula used under the SS Act; the individual will lose \$1.00 in annuities for every \$2.00 earned over the annual exempt amount. The reduction for earnings is applied to the O/M rate after adjustment for the family maximum and before reduction for other benefits.

The general SS Act earnings test provisions outlined in [FOM-I-1105](#) apply to O/M work deductions. Work deductions no longer apply beginning the month the beneficiary attains full retirement age. Penalty deductions may be applied under the O/M as they are for retirement annuities. Work deductions may also apply to the O/M under the foreign work test for employment outside the U.S. A reference in this article to a spouse includes a divorced spouse; work deductions are applied to both in the same manner. Beginning 1-1-85, however, the employee's earnings do not affect the annuity of a divorced spouse if she has been divorced from the employee at least 2 years.

### 1130.5.2 RR Act Provisions

Although O/M work deductions are based on SS Act rules, the RR Act also prohibits payment of an annuity for any month the annuitant works in railroad or last person service (prior to 12-1-1988). An employee annuity is not payable under either the RR or O/M formula if the employee works in railroad or last person service (prior to 12-1-1988). A spouse's or child's benefit is not payable for any month the employee's annuity is not payable.

A spouse or child O/M beneficiary only does not have to cease railroad or last person service (prior to 12-1-1988) to be included in the O/M. If a spouse included in the O/M is entitled to a railroad annuity, her annuity is not payable for any month she works in railroad or last person service (prior to 12-1-1988). If the O/M rate was already in force, her share of the O/M may be redistributed among other family members, even though her railroad annuity is not payable.

## 1130.10 O/M Test When Work Deductions Apply

The test to determine if the O/M rate is payable is applied to the total RR formula and O/M computation monthly rates before application of work deductions. The provisions that restrict when the RR formula rate may switch to the O/M are explained in [FOM-I-325.40](#).

- A. If the O/M computation is higher and there are no switching restrictions, the O/M is applicable. The annuity may revert back to the RR formula (subject to RR Act work deductions) on a month-by-month basis if this would result in higher benefits.
- B. If the RR rate is higher, the RR formula is applicable. Work deductions under the RR formula do not allow a switch to the O/M computation.

## 1130.15 Filing for O/M When Auxiliary Beneficiary Has Excess Earnings

When an O/M auxiliary beneficiary has excess earnings, it is not disadvantageous for that individual to file for inclusion in the O/M. That individual's share of the family maximum is simply redistributed among the other family members for the months the working beneficiary is not included. This is unlike survivor annuity family maximum benefits, in which benefits are withheld from the family group when a working member cannot be included.

BRB will determine if the O/M family maximum is payable without the working beneficiary. If the maximum can be paid to the other family members, the working beneficiary will not be included in the O/M computation. That beneficiary will be entitled to the O/M, but simply not included in the computation. This relieves the annuitant of the responsibility of reporting earnings annually, and relieves BRB of the need to make adjustments for work deductions. If the family maximum is not payable without the working beneficiary, that individual will be included in the O/M.

No annual policing form (Form G-19) will be sent if an auxiliary beneficiary with excess earnings is excluded from the O/M for all months and the estimated earnings prevent any payment. The beneficiary must notify us if earnings decrease. If the working member must be included in the O/M for the family maximum to apply after the number of family members in the O/M has decreased, BRB will ask you to contact that individual for an earnings estimate.

A spouse does not have to cease railroad or last person service to be included in the O/M. However, she must cease railroad or last person service to become entitled to a railroad annuity.

## 1130.20 Penalty for Failure To Report Earnings

A penalty deduction may apply under the O/M if the employee fails to make a timely report of earnings for himself or an auxiliary beneficiary and an overpayment results.

### 1130.20.1 Timely Report of Earnings Defined

Ordinarily, a report is considered timely if it is received by April 15<sup>th</sup> of year.

To report earnings after the annuity application is filed, an annuitant (or his representative) should submit a signed statement of the total gross earnings for the year, or net earnings from self-employment (SEI). An estimate of earnings for the current year should always be included when a final report for a previous year is made. The annuitant should be encouraged to make as high an estimate as practical to avoid a possible overpayment.

An oral report of earnings (telephone call or personal visit to the field office) can protect the date of the earnings report. However, the report should be documented in writing and signed by the annuitant.

Effective with 2002 earnings reports (those due on or after April 15, 2003), SSA's report of earnings will also be the RRB's official report of earnings. The earnings report we receive from SSA will be "deemed timely" regardless of when it is received. The annuitant is no longer required to file a report of earnings unless one of the following conditions applies:

- The annuitant stops working;
- The annuitant starts working and expects to earn more than the annual exempt amount;
- The annuitant's employment is not covered under the Social Security Act;
- The annuitant goes to work for a railroad or railroad labor organization; or
- RRB requests the annuitant to report earnings.

This revised process applies for age and service work deduction cases. It has no effect on reports required for:

- LPE earnings,
- Securing earnings information with initial application filing,
- Annuitants who start to work after initially reporting no earnings, or
- Disability earnings reports.

### **1130.20.2 Determining Penalty Deductions**

For the first late report, the penalty deduction is equal to the O/M rate applicable for December of the report year. The full O/M rate is deducted because benefits for an auxiliary beneficiary are not payable under the O/M when the employee O/M annuity is not payable. However, the annuity may be paid under the RR formula, less any work deduction components, for the deducted penalty month. The annuity may revert back to the RR formula (subject to RR Act work deductions) on a month-by-month basis if this results in higher benefits.

For the second late report, the penalty deduction equals two times the O/M rate for December of the report year. For the third and any subsequent late report, the penalty deduction equals three times the O/M rate for December of the report year. The RR formula rate may always be paid when the O/M is not payable because of penalties, but work deduction components must be withheld. The penalty does not increase the amount of the work deduction components withheld.

A penalty deduction may never be less than \$10.00. Penalties for any report year may never exceed the number of months for which the annuitant was entitled to payment in that year.

### **1130.20.3 Applying Penalties**

Penalties may be repaid only by withholding annuities from the annuitant to whom the penalty deduction applies. Penalties are not transferable to any other entitled person. They may not be recovered actuarially or repaid by a temporary partial withholding plan. Cash refund of a penalty deduction is never requested, but will be accepted if offered by the annuitant.

### **1130.25 Non-Disabled Employee Has Excess Earnings**

Work deductions will apply to a non-disabled employee under full retirement age who earns over the annual limit. The deductions are applied to 100% of the total family O/M rate, before reduction for other benefits. The employee's entire O/M rate is affected, as well as the O/M share of any family member included in the annuity computation, regardless of age or work status. The withholding is applied beginning with the first month of the entitlement year and applies to succeeding months until the required amount has been withheld.

When an employee has excess earnings in the year he attains full retirement age, only earnings through the month before the month in which he attains full retirement age are counted (see -1105.20). The spouse's or divorced spouse's O/M share may also be affected by the employee's earnings for the months the employee is under full retirement age. The spouse's or divorced spouse's O/M share in this case may be withheld even if she is over full retirement age, but deductions may be applied only in the same months deductions are applied to the employee O/M. A divorced spouse is not affected by the employee's earnings beginning 1-1-85, if she has been divorced 2

years. The child's O/M may also be withheld only in the months the employee's O/M is withheld.

The employee who is being paid under the O/M is always guaranteed payment of the railroad retirement formula annuity, unless provisions of the RR Act prevent payment. For instance, the annuity may not be paid for any month the employee works in railroad or last person service (prior to 12-1-1988). If the annuity is otherwise payable, the employee is guaranteed to receive the railroad retirement formula, less reduction for the work deduction components, if the employee has a work deduction insured status.

EXAMPLE: The O/M rate for the employee alone is \$2,320.00. His earnings of \$40,000.00 in 2021 require withholding of \$10,520.00 (\$21,040.00 over the annual limit of \$18,960.00). During 2021, the employee's O/M would be withheld for 5 months to deduct \$10,520.00. In those months, however, the employee may be paid the RR formula rate of \$2045.00, minus the work deduction component of \$1095.00 because he has a work deduction insured status.

### 1130.30 Disabled Employee Receiving Disability O/M

A disabled employee under full retirement age who is receiving the disability overall minimum (DIB O/M) rate is not subject to reduction for excess earnings under the SS Act provision. However, all disability annuitants are subject to the RR Act disability earnings restriction, whether paid the O/M or RR rate. A disability annuitant under the RR Act may not earn over \$12,749.99 in 2021. No annuity is payable for any month the disabled employee earns over \$1020.00 in a month in 2021. Benefits for auxiliary beneficiaries are not payable when the employee annuity is not payable. **Exception: Beginning August 17, 2007, a divorced spouse of a disabled employee will not be assessed work deductions for the employee's earnings.** Disability work restrictions are explained in [FOM-I-1125](#).

A disabled employee's earnings may indicate that he is able to perform substantial gainful activity, which may indicate cessation of disability. Development for continuance of disability will be requested when necessary.

An auxiliary beneficiary (except a disabled child) is always subject to work deductions based on his own excess earnings. Consequently, the family shares of the DIB O/M may be deducted if the employee reports excess earnings for auxiliary beneficiaries included in the O/M. The employee's O/M share, however, is not affected by the excess earnings of an auxiliary beneficiary.

A disabled employee receiving the DIB O/M becomes subject to regular retirement work deductions when he attains full retirement age.

## **1130.35 Auxiliary Beneficiary Has Excess Earnings**

### **1130.35.1 Deductions When Auxiliary Beneficiary Has Excess Earnings**

When a spouse, divorced spouse or non-disabled child has earnings over the annual limit, deductions are applied to 100% of that person's O/M share after adjustment for the family maximum and before reduction for other benefits. None of the excess may be withheld from the shares of the employee or any other family member included in the O/M.

The family maximum is readjusted to exclude the working member when excess earnings cause full or partial withholding of the O/M share. If a spouse has excess earnings and may not be included in the O/M, her share of the family maximum is distributed among the other auxiliary beneficiaries included in the O/M. However, the auxiliary beneficiary's share may never exceed the statutory limit (50% of the Primary Insurance Amount).

A spouse or divorced spouse is not subject to work deductions based on her own earnings beginning the month full retirement age is attained.

A disabled child is not subject to an earnings limit at any age. However, earnings that indicate the beneficiary is able to perform substantial gainful activity may indicate the cessation of disability. Development for continuance of disability will be requested when necessary.

If a spouse or divorced spouse included in the O/M is also entitled to an RR Act annuity, she is guaranteed payment of the railroad retirement annuity formula unless provisions of the RR Act prevent payment. For instance, the spouse or divorced spouse annuity may not be paid for any month they work in railroad or last person service (prior to 12-1-1988). If the annuity is otherwise payable, the spouse or divorced spouse will receive the RR formula rate less reduction for the work deduction components if the employee or spouse has a work deduction insured status.

The annuity rate cannot be switched from the RR formula to the O/M computation solely to include a spouse annuitant whose annuity is suspended because she is in railroad service. However, if the O/M was in force prior to the application of work deductions, and the spouse annuity is later suspended because the spouse is in railroad service, the spouse's share of the family maximum, after deductions for excess earnings, may be included in the employee's O/M rate if it yields a higher monthly rate than the RR formula rate.

### **1130.35.2 Deductions When Employee and Auxiliary Beneficiary Have Excess Earnings**

When the employee and an auxiliary beneficiary (except a disabled child) have excess earnings, the employee's excess amount is recovered first. The employee's excess earnings may cause withholding of an auxiliary beneficiary's O/M share. The excess of

the auxiliary beneficiary is then withheld from the remaining O/M share payable to that individual.

## **1130.45 Temporary Work Deductions**

Work deductions are assessed on a "temporary basis" during the current year. The work deductions are temporary because the withholding is based on an estimate of earnings. The withholding is intended as an offset to prevent or reduce an overpayment when the final adjustment is made. Temporary work deductions are required whenever an employee or auxiliary beneficiary under full retirement age expects to have earnings over the annual exempt amount.

When the grace year applies, work deductions are not applied for any month the employee or auxiliary beneficiary did not earn over the monthly exempt amount and did not perform substantial services in self-employment. When the grace year does not apply and the annual earnings test is used, deductions are applied beginning with the first month of the taxable year, regardless of the amount of monthly earnings.

The amount to be withheld from the O/M must first be determined. The excess earnings amount equals \$1.00 for every \$2.00 earned over the annual limit. Payments are always withheld in increments of full months, rather than making a partial payment for a month. For example, if the O/M must be withheld for 3 1/2 months to recover excess earnings, the O/M will be withheld for 4 full months. Any additional amount due the annuitant will be paid in the final adjustment.

### **1130.45.1 Employee Has Excess Earnings**

When an employee annuitant paid under the O/M has excess earnings, temporary work deductions are applied by restricting his annuity payment to the railroad formula rate. If the employee has LPS earnings, work deductions are applied as (discussed in [FOM-I-1121](#)). If the employee has a work deduction insured status, work deductions are applied to the railroad rate by withholding the work deduction components as described in [FOM-I-1120](#). Payment is restricted to the railroad rate to minimize any overpayment that may occur.

When a spouse annuity is payable, that annuity is also restricted to the railroad formula rate. If the employee has a work deduction insured status, the spouse work deduction components will be withheld if the employee has excess earnings.

The employee and/or spouse annuity is usually restricted to the railroad rate for the rest of the year when excess earnings are reported, rather than increasing the annuity again to the O/M rate after sufficient deductions have been made. Any additional annuities payable will be determined when permanent work deductions are applied.

**EXAMPLE:** The employee expected to earn \$17,030.00 in 2021, causing excess earnings of \$2,140.00 (\$4,280.00 over the limit of \$12,750.00). The O/M rate was \$1,004.40; the employee's share was \$573.90 and the spouse's and child's shares were

\$215.30. To assess temporary work deductions, the employee was paid the RR rate of \$836.49, less work deduction components of \$123.16.

### **1130.45.2 Auxiliary Beneficiary Has Excess Earnings**

When a spouse, divorced spouse or child has excess earnings, only that person's O/M share may be withheld to recover excess earnings. If a spouse is included in the O/M and is entitled to an annuity, temporary work deductions are applied by restricting the spouse annuity to the railroad formula rate. If the spouse has a work deduction insured status, her retirement formula work deduction components are deducted from the annuity as explained in [FOM-I-1120](#). The employee's annuity will also be paid under the railroad formula if it is determined that the O/M rate will not apply without including the spouse. However, if the O/M rate without the spouse exceeds the combined railroad rates of the employee and spouse, the O/M rate will still be paid to the employee.

If a spouse or divorced spouse is not entitled to an annuity, 100% of the auxiliary beneficiary's O/M share is withheld until the excess earnings are recovered. For the months the auxiliary beneficiary is not included in the O/M, the family maximum is redistributed to the other family members. The annuity is paid at the O/M rate that excludes the working member, but the employee's railroad rate may be paid if it is higher.

Generally, the working auxiliary beneficiary is excluded from the O/M for every month in the year that excess earnings are reported. The O/M share will be reinstated if the beneficiary ceases work and the monthly earnings test applies. Any additional annuities payable will be determined when permanent work deductions are applied.

**EXAMPLE:** The family group included in the O/M in 2021 was the employee, spouse, and minor child. In March, the spouse reported that she would earn approximately \$19,880.00, excess earnings of \$460.00 (\$920.00 over the limit of \$4,080.00). The spouse's O/M share was \$158.70. Even though her excess earnings would be recovered in 3 months, she is put in temporary work deduction status for the remainder of the year.

The child's O/M share was also \$158.70. However, the family maximum was recomputed without the spouse when her share was deducted for excess earnings. Consequently, when the spouse dropped out, the child's O/M share was increased to \$176.40, which equals 50% of the employee's PIA (Primary Insurance Amount). The O/M rate continued to be payable because the O/M rate for the employee and child (\$529.20) exceeded the employee's RR rate of \$495.00.

### **1130.45.3 Employee and Auxiliary Beneficiary Have Excess Earnings**

When an employee and an auxiliary beneficiary are subject to work deductions, the employee's excess earnings are recovered first. The excess earnings of the spouse,

divorced spouse or child may be applied only to the auxiliary benefit remaining after applying deductions for the employee's excess earnings.

In assessing temporary work deductions, the employee and the spouse annuity, if any, would be recertified to pay the RR formula rate. Work deduction components would be deducted from the annuity if the employee and/or spouse have a work deduction insured status.

## 1130.50 Permanent Work Deductions

Permanent work deductions are computed after the end of the year, when the actual earnings amount has been reported. Based on the actual earnings, the final withholding amount is determined. The correct amount payable is compared with the annuities that were paid, and an overpayment or an accrual may result.

When the employee has excess earnings, the withholding amount is deducted from 100% of the family O/M rate. Withholding begins with the first month of the taxable year, unless the monthly earnings test applies. If the report year is a grace year, no deductions may apply to a month the worker did not earn over the monthly exempt amount and did not render substantial services in self-employment.

Since the employee's earnings cause withholding of the O/M shares for other family members, the excess earnings of an auxiliary beneficiary are recovered after the employee's deductions. The earnings of an auxiliary beneficiary do not affect the O/M shares for other beneficiaries. However, the family maximum may be recomputed to distribute that individual's share among the other family members.

EXAMPLE 1: The O/M family group consists of an age and service annuitant, spouse and minor child. The 1-1-2021 O/M rates payable before work deductions are:

Employee	Spouse	Child
\$573.10	\$215.00	\$215.00

The employee had earnings of \$23,680.00 and earned over \$1,580.00 each month. No temporary work deductions had been assessed in 2021. His excess earnings of \$2360.00 (\$4,720.00 over the exempt amount of \$3,720.00) cause the full withholding of the family O/M rate (\$1003.10) for January and February 1980, and \$353.80 must be withheld for March. That leaves a partial benefit of \$649.30 payable to the family for March.

However, the employee's RR formula rate is \$731.26 effective 1-1-80. He does not have a work deduction insured status. Therefore, his RR rate is payable for January through March 2021 (\$2,193.78 for 3 months), because his RR rate is higher. His

overpayment for excess earnings is only \$815.52 (3 x \$1003.10 - 3 x \$731.26) instead of \$2,360.00. The rate summary after work deductions is:

<b>Employee</b>	<b>Spouse</b>	<b>Child</b>
1-1-2021	\$731.26	-
2-1-2021	731.26	-
3-1-2021	731.26	-
4-1-2021	573.10	\$215.00

The family group is entitled to the regular family maximum rates for the remaining months in 2021.

**EXAMPLE 2:** The family group consists of the disabled employee, spouse, full-time student (FTS) and minor child in the spouse's care. The PIA effective 1-1-2021 is \$359.50 with a family maximum of \$653.50, and effective 12-1-2021 is \$380.80 with a family maximum of \$692.10.

The O/M rates payable before applying work deductions are as follows:

	<b>Employee</b>	<b>Spouse</b>	<b>FTS</b>	<b>Child</b>
1-1-2021	\$359.50	\$ 98.00	\$ 98.00	\$ 98.00
6-1-2021	380.80	103.80	103.80	103.80

The spouse earned \$19,210.00 in 2021 and had excess earnings to be withheld of \$125.00. The FTS earned \$19,730.00 in 2021 and had excess earnings of \$385.00. The rates payable after work deductions are as follows:

	<b>Employee</b>	<b>Spouse</b>	<b>FTS</b>	<b>Child</b>
1-1-2021	\$359.50	\$ -	\$ -	\$179.80
2-1-2021	359.50	71.00	-	179.80
3-1-2021	359.50	147.00	-	147.00
4-1-2021	359.50	143.50	7.00	143.50

5-1-2021	359.50	98.00	98.00	98.00
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The family group is entitled to the regular family maximum rates for the remaining months in 2021.

The spouse's excess earnings of \$125.00 are recovered by deducting \$98.00 for 1-2021 and \$27.00 for 2-2021. The FTS' excess earnings of \$385.00 are recovered by deducting \$98.00 for 1-2021, 2-2021, and 3-2021 and \$91.00 for 4-2021. For the months the spouse and FTS are excluded, the child's O/M share increases but may not exceed 50% of the PIA (\$179.80). For 3-2021 and 4-2021, when the FTS has work deductions, the amount of the family maximum remaining after the employee's share is considered (balance of the family maximum is \$294.00), is redistributed among the family members included each month. For 3-2021, the spouse and child each get half of \$294.00. For 4-2021, the FTS is paid \$7.00, and the remaining balance (\$287.00) is divided between the spouse and child.

The employee's RR rate is only \$363.55 effective 1-1-2021, so the O/M rate exceeded the RR rate in all months.

### **1130.55 Effect Of Social Security Entitlement**

When an employee paid under the O/M has excess earnings, \$1.00 of his O/M benefit is withheld for every \$2.00 of earnings over the annual limit. If the employee is receiving a social security benefit, he also loses \$1.00 of the social security benefit for every \$2.00 of earnings over the annual limit. The effect could be that the employee would lose \$1.00 in benefits for every \$1.00 earned over the limit, because he is reduced twice for the same earnings.

However, the employee is guaranteed to receive his railroad formula rate, less the applicable work deduction components. In most cases, this will prevent the \$1.00 for \$1.00 loss because of excess earnings. Also, additional SS benefits will be payable to the employee if auxiliary benefits are payable. Therefore, filing for social security benefits is generally not disadvantageous to an employee who has excess earnings and is paid under the O/M.

