

325.5 Overall Minimum Defined

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

In determining the O/M amount, all persons in the family group who could qualify for benefits under the SS Act are taken into account. The additional amount provided under the O/M is prorated between the employee and the spouse if the spouse is eligible for a railroad annuity. If the spouse is not eligible for an annuity, the amount of the increase under the O/M is included in the employee's annuity. A divorced spouse's O/M share is not prorated, because her O/M benefit is not reduced for the family maximum.

The term "spouse" in this chapter does not include a divorced spouse unless there is a specific reference to a divorced spouse.

325.5.1 Retirement Overall Minimum Provisions of the 1937 RR Act

The retirement O/M provision of section 3(e) of the 1937 RR Act guarantees that, effective 6-1-59, the total annuities payable for a full month to an employee and his family will not be less than 110% of the monthly amount which would be payable under the SS Act if railroad service after 1936 were credited as employment under the SS Act.

To be entitled to this retirement O/M computation, the employee must have filed his annuity application and have an annuity beginning date (ABD) before January 1, 1975. These benefits were converted to 1974 RR Act rates effective 1-1-75.

325.5.2 Retirement Overall Minimum Provisions of the 1974 RR Act

- A. 110% grandfather retirement overall minimum -- The 110% retirement O/M provision of section 3(f)(2) of the 1974 Railroad Retirement Act guaranteed that, when an employee's annuity under the 1974 RR Act began to accrue after December 31, 1974, but before January 1, 1983, the total monthly annuities (including any supplemental annuity payable before age 65 but excluding any vested dual benefit) payable to an employee and his family would not be less than the total amount that would have been payable under the retirement O/M provisions of the 1937 RR Act as in effect on December 31, 1974.

To be entitled to this retirement O/M computation, the employee must have filed his annuity application or have an annuity beginning date after December 31, 1974.

This provision no longer applied in most cases beginning 6-1-1976. Cumulative cost of living increases by 6-1-1976 caused the 100% retirement O/M rate to exceed the 12-31-1974 retirement O/M rate.

- B. 100% retirement overall minimum -- The 100% retirement O/M provision of section 3(f)(3) of the 1974 RR Act guarantees that the total monthly benefits payable (including any vested dual benefit but excluding any supplemental annuity) to an employee and his family will not be less than the monthly amount which would be payable under the SS Act if railroad service after 1936 were credited as employment under the SS Act. To be entitled to this O/M computation, the employee must have filed his annuity application or have an annuity beginning date after December 31, 1974.

325.10 Types of Overall Minimum

There are three types of retirement overall minimum (O/M) payments possible, depending on the status of the employee.

325.10.1 Full Overall Minimum

The employee may be entitled to the full age and service (A&S) retirement O/M computation if he has attained Social Security Act (SS Act) retirement age before the retirement O/M effective date.

The spouse must have attained age 62 or have an eligible child of the employee in care to be included in the full retirement O/M computation. If the spouse is under SS Act retirement age and does not have an eligible child of the employee in care on the date the spouse is included in the full retirement O/M computation, the spouse retirement O/M share is reduced for age.

A divorced spouse may be included in the retirement O/M only if she is entitled to a divorced spouse annuity. See FOM-I-325.20. The employee and divorced spouse must have attained age 62. A divorced spouse is not eligible before age 62 based on a child in care. The divorced spouse's retirement O/M share is reduced for age if she is under SS Act retirement age, even if she does have a child in care.

325.10.2 Reduced Overall Minimum

The employee may be entitled to a reduced age and service retirement O/M computation if he has attained age 62. The employee's retirement O/M share is reduced for the months the employee is under SS Act retirement age on the retirement O/M effective date. If the employee is under SS Act retirement age on his/her ABD, the employee's retirement O/M share is reduced for age, regardless of the number of railroad service months (s)he may have.

The spouse must have attained age 62 or have an eligible child of the employee in care to be included in the reduced retirement O/M computation. If the spouse is under SS

Act retirement age and does not have an eligible child of the employee in care on the date the spouse is included in the reduced retirement O/M computation, the spouse retirement O/M share is reduced for age.

A divorced spouse may be included in the retirement O/M only if she is entitled to a divorced spouse annuity. See FOM-I-325.20. The employee and divorced spouse must have attained age 62. A divorced spouse is not eligible before age 62 based on a child in care. The divorced spouse's retirement O/M share is reduced for age if she is under SS Act retirement age, even if she does have a child in care.

325.10.3 Disability Retirement Overall Minimum

The disability retirement overall minimum (DIB O/M) may be paid to the employee with a disability freeze and a DIB (disability insurance benefit) insured status at any age up to SS Act retirement age without an age reduction. The DIB retirement O/M is converted to a full age retirement O/M in the month the employee attains SS Act retirement age, if the retirement O/M is still applicable.

The spouse must have attained age 62 or have an eligible child of the employee in care to be included in the DIB retirement O/M computation. If the spouse is under SS Act retirement age and does not have an eligible child of the employee in care on the date the spouse is included in the DIB retirement O/M computation, the spouse retirement O/M share is reduced for age.

A divorced spouse may be included in the DIB retirement O/M only if she is entitled to a divorced spouse annuity. See FOM-I-325.20. The employee and divorced spouse must have attained age 62. A divorced spouse is not eligible before age 62 based on a child in care. The divorced spouse's DIB retirement O/M share is reduced for age if she is under SS Act retirement age, even if she does have a child in care.

325.15 Requirements for Employee Retirement Overall Minimum Increase

325.15.1 Retirement Overall Minimum Based on Age and Service

In order to have an annuity increased under the retirement overall minimum (O/M) based on age and service, the employee must:

- A. Have filed an annuity application; and,
- B. Have 120 or more months of railroad service; or at least 60 months of railroad service after 1995; and,
- C. Have ceased all RR service; and,
- D. Have relinquished all rights to return to the service of employers under the Railroad Retirement Act (RR Act); and,

- E. Have attained age 62. Effective 9-1-81, an employee must be age 62 for a full month before he is eligible for the Retirement O/M.

The employee is age 62 for a full month if his 62nd birthday is on the first or second day of the month. If his 62nd birthday is on or after the third day of the month, the retirement O/M may not begin until the first day of the following month.

Before 9-1-81, the employee was eligible for the retirement O/M the first day of the month in which he attained age 62; and

- F. Be fully insured under the Social Security Act (SS Act) using the employee's combined railroad service after 1936 and wages (PIA 9). The employee's railroad service is treated as employment covered under the SS Act when determining the employee's insured status for the retirement O/M computation. For example, an employee who needs 28 quarters of coverage (QCs) for an insured status under the SS Act is insured for the retirement O/M if he has 28 compensation (railroad) quarters of coverage.

The fully insured status of the employee also entitles his spouse, divorced spouse annuitant or children to be included in the retirement O/M computation as long as they meet the other requirements for retirement O/M entitlement.

The retirement O/M fully insured status determination is separate from the determination of vested dual benefit (VDB) insured status. VDB insured status is based on wages only, as explained in FOM 230.

- G. The employee must not be subject to suspension due to criminal activity, be a fugitive felon, or a probation or parole violator, or be removed/deported from the United States. Please see FOM1 150 for information on how to determine whether any of these suspension events applies and, if so, how to handle the case from that point on.

325.15.2 Retirement O/M Based on Disability

In order to have an annuity increased under the retirement O/M based on disability, the employee must:

- A. Have filed an application for a disability annuity; and
- B. Have 120 or more months of railroad service; or at least 60 months of railroad service after 1995; and
- C. Have ceased all RR service; and
- D. Be totally and permanently disabled within the meaning of the SS Act (i.e., he must have a disability freeze). Felony conviction may affect the disability rating for the Disability O/M; see FOM-I-1305.20. Payment of disability or retirement

O/M benefits may be withheld and the tier 1 may be withheld or taxed as all NSSEB if the employee is subject to any of the suspension rules found in FOM1 150, Criminal Activity Cases, or is removed/deported from the U.S.

- E. Have a disability insured status under the SS Act using the employee's combined railroad service after 1936 and wages. The employee's railroad service is treated as employment covered under the SS Act when determining the employee's disability insured status for the retirement O/M computation.

To have a disability insured status, an employee must be fully insured under the SS Act (railroad compensation is treated as wages) and must have at least 20 quarters of coverage in a period of 40 consecutive calendar quarters ending with the quarter in which the disability onset is established. (Disability insured status requirements are outlined in FOM-I-230.)

The employee's disability insured status also entitles his spouse, divorced spouse annuitant, or children to be included in the disability retirement O/M computation as long as they meet the other requirements for retirement O/M entitlement; and

The disability insured status determination for the disability retirement O/M is separate from the determination of VDB insured status. VDB insured status is based on wages only, as explained in FOM 230.

- F. Serve a waiting period, if required. Under SS Act rules, an employee must have been under a continuous period of disability for 5 full calendar months before entitlement to the disability O/M. A waiting period is not required if the annuitant's previous disability freeze (DF) or disability ended within 60 months before the month his current disability began. (The waiting period requirements are outlined in FOM-I-230.)

325.20 Ineligible Person Included Defined

A spouse who is not receiving a railroad retirement spouse annuity or a child may be included in the retirement overall minimum (O/M) as an "ineligible person included" (IPI), if she would be entitled to an auxiliary social security benefit if the employee's railroad service were covered under the Social Security Act (SS Act) and she is not excluded under the Railroad Retirement Act (RR Act).

An auxiliary beneficiary under the SS Act is a person in a retirement case, other than the wage earner, who would be entitled to benefits on the wage earner's account if the Social Security Administration had jurisdiction of payments.

The 1972 Technical Amendments to the 1937 RR Act and section 3(f)(3)(i) of the 1974 RR Act exclude a divorced spouse and a not living with spouse from the retirement O/M computation. Any divorced or not living with spouse who was included in the retirement O/M prior to 10-5-72 continued to be included until the retirement O/M no longer

applied, the annuity was terminated or the spouse could no longer qualify for a benefit under the SS Act.

Beginning 10-1-81, a divorced spouse may be included in the retirement O/M only if she is entitled to a divorced spouse annuity. A divorced spouse who is not entitled to an annuity cannot be included in the retirement O/M as an IPI, because of the 1972 Technical Amendments.

325.25 Eligibility of Spouse Under The Overall Minimum

If the employee has attained age 62 or is entitled to a disability freeze (DF) and is insured under the Social Security Act (SS Act) (RR service after 1936 is treated as SS Act employment in determining insured status), the spouse may be included in the family group for the purpose of computing the retirement O/M if she meets the following requirements:

325.25.1 Age Requirement

A male or female spouse is entitled at any age if he or she has the employee's minor or disabled child in care; see FOM-I-325.25.5.

A male or female spouse may be entitled to a reduced spouse benefit at age 62 or a full spouse benefit at SS Act retirement age under the retirement O/M computation.

Beginning 9-1-81, the employee and spouse must be age 62 for a full month before the spouse may be included in the O/M. If her 62nd birthday is on the first or second day of the month, she may be included beginning the first day of that month. If her 62nd birthday is on or after the third day of the month, she may not be included until the first day of the following month. If the employee is a disability annuitant or has a DF, the spouse may be included in the retirement O/M the first day of the month in which the employee attains age 62. The spouse, however, always has to be age 62 for a full month.

Before 9-1-81, the spouse was eligible for the retirement O/M the first day of the month in which she attained age 62.

If you receive an inquiry from a spouse who is eligible for a reduced spouse benefit under the retirement O/M but is not eligible for an RR spouse annuity because the employee does not meet the age requirement to qualify the spouse for an annuity, refer to FOM-I-325.150 - "Spouse Retirement O/M Elections."

If a spouse meets the age requirements and other eligibility requirements (e.g., ceases last person service) for an RR spouse annuity and the employee is old enough to qualify the spouse for an RR spouse annuity, the spouse should file an application Form AA-3 (Application for Spouse/Divorced Spouse Annuity).

325.25.2 Marriage Requirement

To be included in the family retirement O/M computation, the spouse must be:

- A. The legal or deemed spouse; and either
- B. The natural parent of the employee's child (the child need not still survive); or
- C. Married to the employee for at least one year; or
- D. Eligible for a widow(er), parent, or disabled child insurance annuity under the RR Act in the month before the month the spouse married the employee.

A spouse is considered eligible under the RR Act if the spouse meets all the requirements for entitlement under that act, other than the filing of an application and the attainment of the required age; or

- E. Entitled or potentially entitled to a widow(er)'s, parent's, or disabled child's benefit under the SS Act in the month the spouse married the employee.

A spouse is considered potentially entitled under the SS Act if the spouse meets all the requirements for entitlement under that act, other than the filing of an application and the attainment of the required age.

325.25.3 Living With Requirement

The 1983 RR amendments eliminated the living with requirement except when:

- A. The spouse could be included in the retirement O/M as a de facto (deemed) spouse; or
- B. The spouse could be included prior to 8-12-83. The spouse must, on the retirement O/M effective date:
 - 1. Be a member of the employee's household; or
 - 2. Receive regular contributions from the employee toward support; or
 - 3. Have a court order requiring the employee to contribute towards her support.

325.25.4 Dependency Requirement

A husband must have been dependent on the railroad employee for one-half of his support in order to be included in the retirement O/M before 3-1-1977.

325.25.5 Eligibility Based on Child in Care

A spouse may be included in the retirement O/M at any age if he or she has the employee's minor or disabled child in care. A male spouse with a child of the employee in his care became eligible for inclusion in the retirement O/M effective December 1, 1978.

The child must meet the eligibility requirements listed in FOM-I-325.30.2 - 325.30.5. The 1981 SS Act amendments changed the child's age requirements for the spouse's eligibility. The age requirements for the child's eligibility in FOM-I-325.30.1 are unchanged.

The amendments also require that a spouse have a child in care for a full month, unless the spouse was born before 9-2-19. The child must be eligible for a full month before he may be included in the O/M.

A. Child's age requirement for spouse's eligibility

1. When the spouse is first eligible based on a minor child in care 9-1-81 or later, the child must be under age 16.
2. When the spouse is eligible in August 1981 based on a minor child in care, the child must be under age 18. However, the spouse's eligibility terminates 8-31-83 if the child has attained age 16. Beginning 9-1-83, a spouse must have in care a child under age 16.
3. A spouse may be included in the retirement O/M if she has a disabled child in care. The child must be age 16 or over, with a permanent disability that began before age 22 and prevents any kind of regular employment. A child may be rated disabled at age 16-18 to qualify a spouse, if the spouse is not eligible because the minor child is age 16-18.

- B. Full month care requirement - Under the 1981 SS Act amendments, a spouse must have a child in care throughout the entire month before she may be included in the O/M. The requirement does not apply if the spouse attained age 62 before 9-1-81 (date of birth before 9-2-19).

The child must also meet the eligibility requirements for a full month (see FOM-I-325.30.5) before the spouse is eligible based on having the child in care.

325.26 Eligibility Of Divorced Spouse Under The Overall Minimum

A divorced spouse must be entitled to a divorced spouse annuity to be included in the overall minimum (O/M). All the requirements in FOM-I-320.11 must be met.

The employee and divorced spouse must be age 62 for a full month before the divorced spouse may be included in the retirement O/M. If the employee has a disability freeze

(DF), the divorced spouse could be included in the retirement O/M the first day of the month in which the employee attains age 62. The divorced spouse, however, always has to be age 62 for a full month.

A divorced spouse is not eligible before age 62 based on having a child in care.

325.30 Eligibility Of Child Under The Retirement Overall Minimum

The 1937 and 1974 Railroad Retirement Acts (RR Acts) does not currently provide a child's annuity in retirement cases. However, if the employee has attained age 62 or is entitled to a disability freeze (DF) and is insured under the Social Security Act (SS Act) (RR service after 1936 is treated as SS Act employment in determining insured status), a child may be included in the family group for the purpose of computing the retirement O/M if he meets the requirements outlined below.

325.30.1 Age Requirement

The child must be:

- A. Under age 18; or
- B. Age 18 or over and either:
 - 1. A full-time student (FTS) as defined in FOM-I-5; or
 - 2. Disabled before age 22.

325.30.2 Relationship Requirement

The child must be the child, stepchild, grandchild or step-grandchild of the wage earner. The child meets this requirement if he meets one of the conditions below. The child must be:

- A. A natural, legitimate child who is:
 - 1. A child of a valid ceremonial marriage; or
 - 2. A child of a voidable marriage; or
 - 3. A child of a void marriage, in some states; or
 - 4. A child legitimated under applicable state law; or
 - 5. A legitimate child under state law even though there has been no marriage or act of legitimation; or

- B. An illegitimate child, if the child would have rights under applicable state law for the purpose of inheriting the employee's intestate (without a will) personal property; or
- C. A stepchild. The marriage of the employee and the child's parent must take place one year before the child otherwise qualifies for inclusion in the O/M. The month in which the first anniversary date occurs is the first month the stepchild may be included in the O/M; or
- D. A legally adopted child. The child may be adopted at any time. However, if the child is adopted after the employee would be entitled to an age or disability benefit under the SS Act if his RR service were wages under that act, the special dependency requirements in FOM-I-325.30.3 must be met; or
- E. An equitably adopted child; or
- F. A deemed child; or
- G. A grandchild. Effective 1-1-73, a grandchild of an employee is deemed to be the employee's child to qualify for the retirement O/M if:
 1. The grandchild began living with the employee before the grandchild became age 18; and
 2. The grandchild was living with the employee and receiving one-half support from the employee for the year before the month the employee became entitled to the retirement O/M or the year before a DF began which continued until the retirement O/M effective date; and
 3. The grandchild's parents were either dead or disabled in the month the employee became entitled to the retirement O/M or the month a DF began which continued until the retirement O/M effective date.

325.30.3 Dependency Requirement

The child must be dependent on the employee for the 1-year period before the month the child may otherwise be included in the O/M, or in the month the employee would be entitled to an age or disability benefit under the SS Act if his RR service were wages under that act, or in the month the employee's DF begins, if the DF continues until the employee would be entitled to an age or disability benefit under the SS Act.

- A. When dependency may be deemed
 1. Natural child or Adopted Child - Deem a child dependent upon the employee when the employee is his natural parent. If dependency is deemed, an indication that a child is actually dependent on someone other than the employee is immaterial.

A legally adopted child (including an adopted grandchild) who is adopted by the employee during his lifetime is deemed dependent to be included in the computation of the employee's annuity under the retirement O/M, if the following requirements are met:

- a. Months after 9-1972 - Deem a legally adopted child dependent upon the employee when the employee is his legally adoptive parent. This is true even when the child is living with and chiefly supported by his stepfather. A child will not be removed from the employee's retirement O/M computation if he is subsequently adopted by someone other than the employee.
- b. Months after 1-1968 and prior to 10-1972 - A child is deemed dependent upon the employee as for months after 9-1972 unless the child is subsequently adopted by someone other than the employee.

See FOM-I-945.10.9 if an employee legally adopts a grandchild after the employee would be entitled to an SS benefit.

2. Illegitimate child - An illegitimate child is deemed a child of the employee if the child has inheritance rights under state law.
 3. Child of invalid ceremonial marriage - Deem the dependency of such a child upon his natural parent as for a legitimate child. Since the dependency of such a child is deemed, it is not necessary to determine whether the child has inheritance rights under applicable state law.
 4. Illegitimate child deemed a child - Deem the dependency of such a child upon the parent as for a legitimate child upon the parent as for a legitimate child.
- B. Equitably adopted child - Do not deem a child's dependency upon an equitably adopting parent as in the case of a legally adopting parent. To establish dependency upon an equitably adopting parent, he or she must be either:
1. Be living with the equitably adopted child; or
 2. Be contributing to the equitably adopted child's support.
- If a child is equitably adopted after the employee would be entitled to an age or disability benefit under the SS Act if his RR service were wages under that act, the child may not be included in the retirement O/M.
- C. Stepchild - Do not deem a child's dependency upon a stepparent. To establish dependency upon a stepparent, he or she must meet the following requirements:

1. Months after July 1, 1996 - The employee must be contributing at least one-half of the stepchild's support. "Living-with" is no longer an option for meeting dependency.
 2. Prior to July 1, 1996 - The stepparent must either:
 - a. Be living with the stepchild; or
 - b. Be contributing one-half of the stepchild's support.
- D. Grandchild - In establishing the dependency of a grandchild on the employee, the grandchild must have:
1. Begun living with the employee before the grandchild attained age 18;
 2. Currently living with the employee; and
 3. Receiving at least one-half support from the employee; and,
 4. The child's parents must be deceased or disabled.

The grandchild must have been living with and receiving at least one-half support from the employee for the entire year before the beginning date of the retirement O/M. If the grandchild was born during this 1-year period, the dependency requirements are deemed to be met if the grandchild lived with the employee in the U.S. and received at least one-half support from the employee for substantially the entire period between the date of his birth and the retirement O/M beginning date.

325.30.4 Marriage Requirement

The child must be unmarried at the time the child is otherwise qualified for the O/M. A widowed or divorced child or a child whose marriage is void or has been annulled is considered unmarried.

325.30.5 Full Month Eligibility Requirement

Beginning 9-1-1981 a child who was not entitled on any earnings record before September 1981 must meet the 1981 SS Act amendment full month requirement. The conditions for eligibility must be met on the first day of the month and throughout the month before eligibility is established. If this requirement is not met, entitlement begins the first day of the following month. This provision does not apply to surviving children of a deceased employee.

Following are some examples of the full month entitlement requirement:

- A. A child must be born, adopted, have inheritance rights or otherwise meet the definition of a child on the first day of the month.

EXCEPTION: A deemed child is eligible from the first day of the month in which the employee acknowledged the child in writing, or was decreed by a court to be the child's parent or was ordered by the court to contribute to the child's support. If the child's relationship is deemed on the basis of other evidence, the conditions for entitlement must be met throughout the entire month. This exception is effective 9-1-1981 for age and service annuitants, and for disability annuitants paid final 4-20-1983 or later.

- B. A child must be dependent throughout the first month of entitlement; or
- C. A child must be unmarried throughout the first month of entitlement; or
- D. A child must be a full-time student or be disabled throughout the first month of entitlement. A child qualifying as a student must be in full-time attendance (FTA) throughout the first month of entitlement. A secondary school student is deemed to meet this requirement.

325.30.6 Child Entitled Under Two Railroad Earnings Records

A child can usually be included in the computation of benefits payable on only one RR earnings record. The dually entitled child should be paid on the RR earnings record with the higher PIA, unless this would result in the family as a whole receiving less total monthly benefits (the RR rate must be considered in retirement cases). Once a determination is made as to which record produces the higher benefit as of the latest ABD, eligibility cannot switch to the other record.

If both the employee and spouse are railroad employees, a child may be eligible for inclusion in the retirement O/M on one record and qualify that employee for a spouse annuity on the other earnings record, on the basis of having a child in care. However, it is possible that the retirement O/M will not apply. If a beneficiary is simultaneously entitled to both an employee annuity on one wage record and a spouse annuity on another wage record, the total retirement O/M benefits payable on both wage records must exceed the total railroad formula rates payable on both wage records for the retirement O/M to apply in either case.

325.31 The Family Maximum Benefit (FMB) Amount

The social security formula limits the maximum amount of monthly benefits which may be payable for any month on any one wage record. This maximum amount is called the Family Maximum Benefit (FMB) amount. When the retirement overall minimum (O/M) amount is calculated for payment, by law PIA 9 is used. Since the field offices do not have access to and/or a method to compute PIA 9, the field offices should use the tier I PIA in place of PIA 9. Therefore, the final retirement O/M amount might be different due to the fact that PIA 9 may be higher or lower than the tier I PIA the field offices is using.

NOTE: The tier I PIA AND PIA 9 are not always the same. The tier I PIA is based on the employee's annuity beginning date (ABD) year, and PIA 9 is based on the

employee's actual age. Therefore in the following cases, the tier I PIA used by the field offices may be greater than the PIA 9 that would be used to pay the O/M-full 60/30, full 60/30 with a disability freeze (DF), a disability annuity with no DF and a disability annuity with the DF year after the ABD or RR disability year.

325.31.1 Age and Service Retirement O/M

PIA 9 (Field offices use tier I PIA) and the corresponding FMB amount are used to determine the amount to pay. The family maximum bend points and formulas for age and service retirement O/M and disability retirement O/M cases can be found in FOM 1010. The employee's share of the rate payable to the family is PIA 9 reduced for any months before the employee attains Social Security Act (SS Act) retirement age (field offices use the tier I PIA).

Note: When the employee claims only one minor/disabled child, the FMB amount does not apply. However, the most the employee can receive is 150% of the tier I PIA.

325.31.2 Disability Annuity with No Disability Freeze

The retirement O/M is not payable until the employee attains age 62 and qualifies for the age and service retirement O/M. The computation is then the same as 1 above.

325.31.3 Disability Annuity with Disability Freeze

The disability (DIB) retirement O/M can be paid to the employee, as long as all of the eligibility requirements are met. The 1980 Social Security DIB Amendments established separate rules limiting the family maximum for DIB retirement O/M cases when the disability onset is after 1978 and the DIB Retirement O/M effective date is 7-1-80 or later. Before the amendments, the age and service and DIB retirement O/M family maximum computations were the same.

Under this provision, the DIB retirement O/M is the higher of 100% of the Primary Insurance Amount (PIA) or 85% of the AIME (Average Indexed Monthly Earnings), but not to exceed 150% of the PIA. The family maximum bend points and formulas for age and service retirement O/M and disability retirement O/M cases can be found in FOM 1010.

325.32 Reduction for Worker's Compensation And Public Disability Benefits

An annuity paid under the DIB (disability) retirement O/M is reduced for any month in which a disabled worker is entitled to state or Federal periodic worker's compensation (WC) benefits. Beginning 3-2-1981, offset may also apply for entitlement to a public disability benefit. Black lung benefits paid under the Federal Coal Mine and Safety Act, applied for on or after July 1, 1973, are considered worker's compensation and are used

as an offset against the DIB retirement O/M beginning January 1, 1974. FOM-I-120 defines WC payments and public disability benefits.

325.32.1 Conditions for Reduction for Current Cases

The DIB retirement O/M effective date and the disability freeze date affect the conditions for applying the WC/public disability benefit reduction. If the DF date is 3-2-1981 or later, offset applies under the following conditions:

- A. Offset is removed when the employee attains age 65;
- B. Offset applies for public disability benefits, as well as WC payments and black lung benefits; and
- C. Offset applies in any month the WC/public disability benefit is payable, regardless of when the RRB received notice.

325.32.2 Applying the Reduction

The initial worker's compensation or public disability benefit reduction is equal to the difference between:

- A. The total family DIB Retirement O/M plus the amount of the WC/public disability benefit; and
- B. The higher of the total family DIB Retirement O/M or 80% of the employee's average current earnings (ACE) before his disablement. The ACE is defined in FOM-I-120.

The reduction equals zero if the total family DIB retirement O/M plus the WC/public disability benefit is lower than 80% of the ACE. The reduction is never greater than the amount of the WC/public disability benefit.

The reduction is first applied to the retirement O/M shares of any auxiliary beneficiaries. The employee's share is reduced only if the WC/public disability benefit is larger than the auxiliaries' retirement O/M shares. The reduction is applied after adjustment for the family maximum, but before reduction for other benefits or excess earnings. If the family composition changes the reduction is recomputed as if the new family composition had existed when the reduction was originally calculated.

If the employee is receiving an SS benefit that is reduced for worker's compensation, the SS benefit that is being paid after the worker's compensation reduction is used for reduction.

The applicant may have the option of receiving his worker's compensation in a lump-sum payment in lieu of periodic payments. Electing such a lump-sum payment will not exempt his worker's compensation from offset; it will simply be prorated for offset purposes, based on the periodic rate to which he would have been entitled if he had

selected installment payments. Generally, most lump-sum settlements are in lieu of periodic payments.

325.32.3 Developing Worker's Compensation Information

The application Forms AA-1 and AA-1d ask if the employee has received or expects to receive workman's compensation (WC) or public disability benefits. Form G-204 (Verification of WC/Public Disability Benefit Information) should be released to the payer of the benefit when the response is "Yes."

You should also release a Form G-204 if a disability retirement O/M annuitant in pay status reports receipt of a WC/PDB or the Headquarters adjudicating unit requests release based on a report from the Social Security Administration or the annuitant.

If the employee has an award notice or other verification of the WC/public disability benefit that includes the information necessary to make an offset determination (see FOM -I-1720), submit a copy and do not release a Form G-204. If the award letter or other verification provides some, but not all information, submit a copy but also release a Form G-204. Until the payment is verified, the Headquarters adjudicating unit will use the maximum WC rate payable by the state of the employee's residence for the offset amount, or the claimed public disability benefit amount, if it is higher. The Headquarters adjudicating unit will adjust the amount of the reduction, if necessary, after verification is received.

If the amount of the employee's monthly worker's compensation payment, or public disability benefit increases or decreases, notify the Headquarters adjudicating unit. The retirement O/M payment will be adjusted effective with the date of the change.

325.33 Securing Public Service Pension Information

A spouse or divorced spouse included in the retirement overall minimum (O/M) may be subject to reduction for a public service pension (PSP). The PSP must be based on the spouse's or divorced spouse's own earnings that are not covered under the Social Security Act (SS Act) (Federal Insurance Contribution Act taxes were not deducted on the last day the individual was employed in that position).

The offset only applies to spouses and divorced spouses who:

- A. Do not meet the January 1977 SS Act eligibility requirements. That includes divorced wives married to the employee less than 20 years, non-dependent husbands, husbands entitled based on a child in care and divorced husbands.
- B. Are first eligible for the PSP 12-1-1982 or later, and are not dependent (or deemed dependent) on the employee; or
- C. Are first eligible for the PSP 7-1-1983 or later. Dependency does not matter.

The retirement O/M share is reduced for only 66 2/3% of the PSP instead of 100% of the PSP if the annuitant is first eligible for the PSP 7-1-1983 or later. Effective 12-1-1984, the reduction in the retirement O/M share is 66 2/3% of the PSP, including any beneficiary whose previous reduction was 100% of the PSP.

The guidelines for determining one-half support, to qualify the spouse for an exemption, are in FOM-I-945.10. Form G-134 (Statement Regarding Contributions and Support) is used to prove the dependency to qualify the spouse for an exemption to the PSP offset. The dates that the dependency requirement may be tested are any of the following times:

The employee's annuity beginning date; or

When the employee's disability began. This date can be used only if the disability continued until the employee attained age 65; or

Secure Form G-208 (Public Service Pension Questionnaire) when Form G-319 indicates that the spouse is entitled to a public service pension unless the pension is payable by a state or local government entity and FICA taxes were deducted on the last day of employment.

Proof of the PSP rate must be submitted if the PSP reduction applies and a net tier I or retirement O/M share is payable after offset for the PSP. When the spouse or divorced spouse who meets the January 1977 SS Act requirements is eligible for the PSP before 12-1-82, but the PSP does not begin until 12-1-82 or later, she must submit proof that she was eligible for the PSP before 12-1-82. A spouse or divorced spouse who is eligible for the PSP before 7-1-83 and claims dependency must prove eligibility before 7-1-83 if her PSP begins 7-1-83 or later. If an individual's eligibility for the PSP was postponed until December 1982 or July 1983 because of a condition that eligibility requirements had to be met for a full month, she is deemed to be eligible for the PSP in either November 1982 or June 1983, and must submit proof. This exemption is effective 12-1-84.

Proof of payment of FICA tax on the date last worked for the PSP employer must be submitted if this qualifies the spouse or divorced spouse to an exemption.

Note: The 1% "Medicare Only" tax for employees covered under the Civil Service Retirement System does not qualify the spouse or divorced spouse to an exemption to the PSP reduction.

More information about the PSP offset is in FOM-I-120.

325.34 Securing SS Benefit Information

RBD always develops social security benefit information from the Social Security Administration when information on the retirement Overall minimum development forms or in the claim file indicates that a minor child, disabled child or full time student is

entitled to or has filed for social security benefits on his own, his mother's, the employee annuitant's or any other wage record.

325.35 Overall Minimum (O/M) Testing

Use Form G-301 on RRAILS for overall minimum (O/M) testing. When the O/M amount is calculated for payment, by law PIA 9 is used. Since the field offices do not have access to and/or a method to compute PIA 9, the field offices should use the tier 1 PIA in place of PIA 9. Therefore, the final O/M amount might be different due to the fact that PIA 9 may be higher or lower than the tier 1 PIA.

Check APPLE for eligible family members on the Employee Family screen. If there are no eligible minor or disabled children or full-time students, the O/M will probably not apply.

Check for social security benefits. Reduce the O/M rate by the total social security benefits received by the family. This includes any social security benefits the employee and the included beneficiaries are receiving on any Social Security Administration (SSA) claim number, plus benefits paid on the employee's number, whether the person(s) receiving those benefits are included as beneficiaries in the O/M test or not. Remember to include SSA benefit reductions for both O/M and RR rates when testing for O/M payability.

NAVIGATING THE G-301 ON RRAILS

Choose G-301 from the Form section of RRAILS. Double click and the form will open up.

- Enter the claim number.
- Tab to the TYPE OF EMPLOYEE ANNUITY to highlight the field, and then tab again.
- From the shaded field below the TYPE OF EMPLOYEE ANNUITY, a pop up box will ask 'Is the employee a DIB?' If the answer is YES, the blank field under the TYPE OF EMPLOYEE ANNUITY will display **DISABILITY TEST**. Move to the **DISABILITY TEST** section on the right side of the form.
- If the answer is NO, a pop up box will ask 'Is the employee age 62?' If the answer is NO, the field under the TYPE OF EMPLOYEE ANNUITY will display **O/M DOES NOT APPLY**. Terminate the test.
- If the answer is YES, a pop up box will ask 'Did the employee claim more than 1 child?' If the answer is YES, the blank field under the TYPE OF EMPLOYEE ANNUITY will display **FMB TEST**. Move to the **FMB TEST** on the top left side of the form.

- If the answer NO, the blank field under the TYPE OF EMPLOYEE ANNUITY will display **150% PIA 1 TEST**. Move to the **150% PIA 1 TEST** in the middle of the left side of the form.
- The fields are self-explanatory. Some of the computations will be done for you. The program will use standard rounding procedures.
- Once you have completed the form, route it to IMAGING through RRAILS.

EXAMPLES

EXAMPLE 1: The employee is over FRA and indicates one disabled child in care. SS benefits are not involved. The employee's date of birth (DOB) is 12-23-25 and his annuity beginning date (ABD) is 01-01-92.

FULL O/M—150% of PIA 1

- A. Enter the ABD annuity rate
(T1 = 1041.00, T2 = 647.31, VDB = 200.21): \$1,888.51
- B. Enter the tier 1 PIA amount: 1,041.80
- C. Enter the ABD age reduction factor: 0.00
- D. The program will compute the amount from Item B. times Item C.: 0.00
- E. The program will compute 150% of PIA 1: 1,562.70
- (1) Enter the SS BEN the employee is receiving: 0.00
- (2) Enter the SS BEN the included beneficiary is receiving: 0.00
- (3) Enter the SS BEN other beneficiaries are receiving on the employee's number: 0.00
- (4) The amount from Item D. will prefill: 0.00
- F. The program will total E(1) + E(2) + E(3) + E(4): 0.00
- G. The program will compute Item E. minus Item F.: \$1,562.70

Since A. is greater than G., the "O/M does not apply."

EXAMPLE 2: The employee is age 62 and indicates he has two minor children in his care. SS benefits are involved. Each of the children is receiving \$90.00 per month on the spouse's wage record as of 08-01-91. The employee's DOB is 07-03-1930, and his ABD is 08-01-1992. His eligibility year is 1992.

REDUCED RETIREMENT O/M - FMB

- A. Enter the ABD net annuity rate
(T1 = 554.00, T2 = 11.41, VDB=92.15): \$657.56
- B. Enter the tier 1 PIA amount: 687.80
- C. Enter the age reduction factor: 19444 (Notice the factor is entered as 5 digits without a decimal or per cent sign.)
- D. The program will compute Item B. times Item C.: 133.80
- E. Enter the FMB amount: 1266.90 (See FOM1 1010.20.)
- (1) Enter the SS BEN the employee is receiving: 0.00
- (2) Enter the SS BEN the included beneficiary is receiving: 180.00
- (3) Enter the SS BEN the other beneficiaries are receiving on the employee's number: 0.00
- (4) The program will prefill the amount from Item D.: 133.80
- F. The program will total E(1) + E(2) + E(3) + E(4): 313.80
- G. The program will compute item E minus Item F: \$953.10

Since A. is less than G., the "O/M may apply." Code RASI REV on the APPLE Summary Screen with an "O". Do not develop any O/M forms until you receive an email from headquarters indicating the O/M will definitely apply. See NOTE below before continuing.

EXAMPLE 3: The employee is over age 62 but under FRA. The employee indicates two minor children in his care. SS benefits are not involved. The employee's DOB is 11-22-29, and his ABD is 11-01-92. His eligibility year is 1992.

REDUCED RETIREMENT O/M - FMB

- A. Enter the ABD net annuity rate
(T1 = 696.00, T2 = 794.13): \$1,490.13
- B. Enter the tier 1 PIA amount: 804.10
- C. Enter the ABD age reduction factor: 13333 (Notice the factor is entered as 5 digits without a decimal or per cent sign.)
- D. The program will compute Item B. times Item C.: 107.20

- E. Enter the FMB amount: 1,458.90 (See FOM1 1010.20.)
- (1) Enter the SS BEN the employee is receiving: 0.00
 - (2) Enter the SS BEN the included beneficiary is receiving: 0.00
 - (3) Enter the SS BEN other beneficiaries are receiving on the employee's number: 0.00
 - (4) The program will prefill the amount from Item D.: 107.20
- F. The program will compute the total of E(1) + E(2) +E(3) +E (4): 107.20
- G. The program will compute Item E minus Item F.: \$1,351.70

Since A is greater than G, the "O/M does not apply."

EXAMPLE 4: The employee filed for a disability annuity, and indicates a minor child in his care. SS benefit is involved. The minor child is receiving \$250.00 per month on the spouse's wage record as of 10-01-91.

DIB O/M TEST

- A. Enter the ABD annuity rate
(T1 = 950.00, T2 = 34.13): \$984.13
- B. Enter the tier 1 PIA 950.10
- C. The program will compute 150% of the PIA 1: 1425.10
- (1) Enter the SS BEN the employee is receiving: 0.00
 - (2) Enter the SS BEN the included beneficiary is receiving: 250.00
 - (3) Enter the SS BEN other beneficiaries are receiving on the employee's number: 0.00
- D. Enter the total of C.(1) + C.(2) + C.(3): 250.00
- E. Item C minus Item D.: \$1,175.10

Since A is less than E, the "O/M may apply." Code RASI REV on the APPLE Summary Screen with an "O". Do not develop any O/M forms until you receive an email from headquarters indicating the O/M will definitely apply. See NOTE before continuing.

NOTE: Occasionally, you will see 'special interest cases.' These could be terminally ill (TERI) cases, Compassionate Allowance (CAL) cases, Congressionals, etc., that invite additional scrutiny. If the O/M may apply, follow these steps.

Code the RASI REV on the APPLE Summary Screen with an "O".

Develop the G-319 **for natural minor children only** at the time you take the application.

Image the completed G-319 and send to RBD via **Imaging Active Workflow**. RBD will pay the case with the O/M as soon as it is appropriate. If there is a six month or more lapse between the date of the application and the date the case is ready to pay, RBD will instruct the field to contact the employee and make sure the family information has not changed.

Development for disabled, step, grand, and adopted children will still be deferred IN ALL CASES until RBD determines the O/M will definitely apply.

If unsure, consult with your manager to determine if you have a 'special interest case'.

325.36 Retirement Overall Minimum (O/M) Development Procedure

When taking an application (age & service or disability), if the employee states that a minor child, disabled child, student or spouse (not entitled to a spouse annuity) is in his/her care, the contact representative should make an initial determination as to whether the retirement overall minimum (O/M) could apply. Use the G-301 on RRAILS. See the instructions in FOM1 325.35 above.

The field offices should identify these cases by coding RASI REV on the APPLE Summary Screen with an "O". Do not develop any O/M forms until you receive an email from headquarters indicating the O/M will definitely apply. See the NOTE in FOM1 325.35 for 'special interest cases'.

In disability cases, the disability freeze (DF) rating will generate a DF G-90 (wage record) at the end of the month. Examiners in RBD will screen each G-90 in the month after the freeze is granted to determine if either an increase in the railroad annuity is due, or if the O/M could apply. If RBD determines that the O/M is payable, an email will be sent to the field office to develop for the G-319 and G-320. Actionable G-90s are controlled on STAR.

If, after the rating is made, the annuitant contacts the field office regarding payment of the O/M, and the claims representative knows the O/M will be payable, do not wait for the field assignment. Secure the forms and send them to RBD.

In age and service cases, the RBD examiner will review each case with the award message "O/M May Be Payable" after the annuitant is paid final. If the examiner determines that the O/M is payable, an email will be sent to the field office to develop the G-319 and the G-320. As with disability G-90s, possible age and service O/M cases are controlled on STAR.

The RBD assignment should always give the type of O/M payable, the O/M effective date, the amount of the increase, and the number of auxiliary beneficiaries needed to provide the maximum benefits. Usually, development only needs to be made for one or two of the employee's youngest children since this will result in the maximum O/M benefit.

NOTE: Effective July 1, 1996, a stepchild can no longer qualify for an annuity based on "living with" the employee. A stepchild must be or have been receiving one-half of his/her support from the employee to be eligible for a survivor annuity or to be included in the O/M computations. For survivor annuities, the dependency requirement must be met at the time of the employee's death, unless the employee had a DF. In that case the dependency requirement can be met at the time of the period of disability or when the employee would have qualified for social security benefits. In O/M cases where stepchildren are involved and the employee has a DF, develop a dependency determination for each stepchild regardless as to whether or not the stepchild is the qualifying dependant. (It is not necessary to develop dependency for stepchildren in age and service O/M cases unless the child is needed to increase the O/M rate. That is because dependency in non-freeze cases must be re-established at the time of the employee's death to pay survivor benefits.) Making a dependency determination will protect each stepchild's eligibility to future survivor benefits.

The forms to be included with the initial retirement O/M development are:

Form G-319, "Statement Regarding Family and Earnings For Special Guaranty Computation"; and,

Booklet G-179, "Special Guaranty in Employee and Spouse Annuities."

If the family group includes a child age 18-19, RBD will request the field office to develop for student benefits. See FOM1 525.10 for evidence requirements for students.

If the family group includes a disabled child, RBD will also request the field office to develop a Form AA-19a, "Application For Determination of Child Disability." Booklet RB-19a, "Child Disability Benefits," should be given to the applicant to explain the child disability requirements. The child's disability rating will be handled by DSUBD. DSUBD will initiate development of medical evidence or contact the Social Security Administration for copies of their medical evidence.

325.37 Handling Inquiries at The Field Office

When an inquiry is received about a possible increase under the retirement overall minimum (O/M):

- A. Determine if a switch to the O/M is possible; and
- B. Determine if the O/M rate could exceed the tier formula rate(s); be sure to consider the reduction for the family's Social Security Act benefits. A divorced

spouse's annuity is included in the total RR rate for the O/M test. However, the family maximum is not adjusted to include the divorced spouse.

If the O/M rate is the lesser figure, the O/M does not apply. Advise the annuitant accordingly.

If the estimated O/M rate is the higher figure, the O/M may apply. Forward the inquiry to the Headquarters adjudicating unit for necessary attention. Wait until the Headquarters adjudicating unit determines if the O/M applies before developing evidence and statements.

325.38 Evidence Requirements

In addition to evidence required for an age and service or disability annuity, the following evidence is required for increasing an annuity under the overall minimum (O/M): (The RRB forms G series and AA series are available on RRAILS).

Statement Regarding Family and Earnings for Special Guaranty Computations (G- 319, Employee, Spouse)

Form G-319 is always required from the employee (and spouse). Form G-319 is required from the spouse when no AA-3 application has been filed in the past 6 months and the spouse is eligible for inclusion in the O/M. Statement by Employee Annuitant regarding Student Age 18-19 (G-320)

If an FTS age 18-19 is to be included in the O/M.

Student Questionnaire (G-315)

If FTS age 18-19 can be included in O/M.

Statement by School Official of Students Full-Time School Attendance (G-315a)

If FTS age 18-19 can be included in retirement O/M and the full time student was not verified on Form G-315.

Notice of Cessation of Full-Time School Attendance (G-315a.1)

If FTS age 18-19 can be included in O/M. This form is released to the school after the full time attendance is verified.

Application for Determination of Child's Disability (AA-19a)

If an alleged disabled child age 18 or over (or attaining age 18 within 3 months) is to be included in the retirement O/M or is filing for early disability Medicare. It is also required for spouse's eligibility based on a child in care age 16-18 and disabled.

Public Service Pension Questionnaire (G-208)

If a spouse is to be included in the O/M and social security taxes were deducted from the spouse's earnings on the last day of employment by a state or local government entity. If the spouse was a federal employee, the G-208 must be secured.

Proof of public service pension rate or exemption

If the spouse Retirement O/M share after public service pension (PSP) rate or reduction is greater than zero. Proof of any exemptions to the PSP reduction is required, when applicable.

Statement Regarding Contributions and Support (G-134)

If a spouse may be exempt from a PSP reduction based on dependency.

Proof of age of spouse

If the spouse is to be included in the retirement O/M based on age, or if the spouse will attain age 62 before her eligibility based on a child in care terminates.

Proof of marriage

If the spouse, or the employee's stepchild is to be included in the O/M.

Marital Relationship of Child's Parents

If child is stepchild of employee annuitant or when child's natural mother is eligible for spouse's annuity and does not file, or when "child" is born of an invalid ceremonial marriage.

Proof of living with

If the spouse is to be included in the retirement O/M as a de facto (deemed) spouse, or if the spouse could be included before 8-12-83.

Proof of termination of marriage prior to the marriage to the employee

If there is reasonable doubt whether the prior marriage of either the employee or spouse was ended.

Proof of age and relationship of children

If children may be included in the O/M.

Proof of dependency of child (G-134)

If an equitably adopted child, grandchild, or a stepchild is included in the O/M.

Proof of termination of marriage of child

If a child has been married but is widowed or divorced at the time the initial application is filed, he may be considered unmarried. Secure proof of the termination.

"Child in care"

Only when a spouse under FRA may be included in the retirement O/M on the basis of having a child in care.

Proof of child's disability

If an alleged disabled child age 18 or over (or will attain age 18 within 3 months) is to be included in the retirement O/M or is filing for early disability Medicare. May be required for spouse's eligibility based on a child in care age 16-18, and disabled.

Proof of death or disability of grandchild's parents

If a grandchild is to be included in the retirement O/M as a child IPI who has not been adopted by the employee.

325.40 Switch From RR Rate To Retirement Overall Minimum (O/M) Rate Permitted

Amendments effective 10-5-1972 restricted the times when the annuity may be switched from the RR formula rate to the retirement overall minimum (O/M) formula rate.

325.40.1 Initial Change To Retirement O/M Formula On Annuity Beginning Date Or Month Immediately After Disability Waiting Period

Practically all retirement annuities are initially awarded under the RR formula. The retirement O/M computation increase, if applicable, is awarded later by means of a recertification award.

The spouse and children may be included in the family group at this time if they meet the eligibility requirements and the retirement O/M effective date is the annuity beginning date (ABD), or the first day of the month following the month in which a disability waiting period ends.

A divorced spouse may be included at this time only if she qualifies for a divorced spouse annuity.

325.40.2 Change to Retirement O/M Effective After ABD or Month Not Immediately After Disability Waiting Period

If it was initially determined that the retirement O/M was not applicable on the ABD, or on the first day after the month in which a disability waiting period ends, the retirement O/M can be tested again effective the month in which:

- A. The employee attains age 62; or
- B. The spouse who was married to the employee when the employee's annuity attains age 62 and the employee is eligible for the retirement O/M computation. Any eligible children listed in the claim file will be included in the retirement O/M test. If the retirement O/M does not apply, no development will be initiated to determine if other children not listed in the claim file may be eligible for inclusion in the O/M; or
- C. The spouse who married the employee after the employee's annuity began becomes entitled to an RR spouse annuity and both the employee and spouse are eligible for the retirement O/M computation. Only the employee and spouse may be included in the family group. Children may not be included, even if a spouse is entitled based on children in care. This situation may occur when the employee acquires an eligible child after the employee was initially entitled to the O/M; or
- D. There is a general benefit or cost-of-living increase which increases the retirement O/M rates, and the retirement O/M formula rates exceed the RR formula rates. Only the employee, a divorced spouse annuitant, and either an eligible spouse who was married to the employee when the employee's annuity began or an eligible spouse who married the employee after the employee's annuity began but is receiving an RR spouse annuity, may be included. Children may not be included, even if a spouse is entitled based on children in care. This situation may occur when the employee acquires an eligible child after the employee was initially entitled to the O/M.

325.45 Continuous Retirement Overall Minimum (O/M) Entitlement

When a terminating event occurs for an auxiliary beneficiary in a retirement O/M case, the retirement O/M may continue to apply for the employee alone or for the employee and other family members. If the retirement O/M continues to apply after a terminating event, an eligible auxiliary beneficiary may be included in the retirement O/M computation.

If the RR formula is actually paid for 1 or more months after the terminating event, and retirement O/M entitlement is restored back to the month in which the terminating event occurred, the annuity may be switched back to the O/M.

EXAMPLE: A full time student ceases full-time attendance (FTA) and is removed from the retirement O/M computation. As a result, the annuity is switched to the RR formula. Later, the child resumes FTA and is deemed to be in FTA during the period of non-attendance. The annuity may be switched back to the retirement O/M retroactive to the month the annuity was switched to the RR formula.

325.50 Switch From RR Rate To Retirement Overall Minimum (O/M) Rate Prohibited

Effective 10-5-72, the annuity rate may not be changed from the RR formula to the retirement overall minimum (O/M) computation if it was initially determined that the retirement O/M did not apply or the retirement O/M did apply but later was removed, breaking the continuity of the retirement O/M computation. Switching is prohibited in the following situations, even though the retirement O/M rate may be higher than the RR rate (this list is not exhaustive):

- A. The employee marries after the annuity beginning date (ABD) and the spouse is not receiving a spouse annuity. The spouse may not be included until she becomes entitled to a spouse annuity; or
- B. The employee adopts a child after the ABD; or
- C. A child who was previously removed from the retirement O/M computation becomes re-entitled in a month after a month in which the RR formula applies (e.g., a child returns to full-time school attendance); or
- D. A child who qualified a wife for a spouse annuity which was paid under the RR formula attains age 18 and is a full time student; or
- E. A spouse who qualified for a spouse annuity based on having children in her care, which was paid under the RR formula, dies.

325.55 Changes From Retirement Overall Minimum (O/M) Rate To RR Rate Permitted

The annuity rate may be changed from the retirement overall minimum (O/M) to the RR formula rate whenever the RR rate yields a higher monthly benefit. The RR rate may be paid, subject to Railroad Retirement Act work deductions, if that rate is higher after work deductions are applied to the O/M.

The annuity rate may also be switched from the retirement O/M rate to the RR rate, even if the retirement O/M is still applicable, to prevent an overpayment or to conduct an investigation to determine continuing retirement O/M entitlement. The RR rate may be paid, for example, when investigating the continuance or cessation of disability.

325.60 Effective Date of Retirement Overall Minimum

Entitlement to the retirement overall minimum (O/M) increase begins with the first month in which all the requirements are met, unless the employee limits the retroactivity of his application.

325.60.1 Retirement O/M Based on Age and Service

The effective date of the retirement O/M based on age and service is the later of:

- A. The first full month the employee is age 62; or
- B. The employee's annuity beginning date (ABD).

325.60.2 Retirement O/M Based on Disability

The effective date of the retirement O/M based on disability is the later of:

- A. The first day of the month following the month in which the disability waiting period ends, in a case requiring a waiting period; or,
- B. The first day of the first month in which the employee is disabled and meets the disability insured status requirements under the Social Security Act, if no waiting period is required. Railroad service after 1936 is treated as social security employment in determining the disability insured status.

A waiting period is not required if the employee previously had a disability freeze or a disability which ended within 60 months before the month his current disability began; or,

- C. The ABD.

325.65 Effective Date Of Spouse Retirement Overall Minimum Benefit

325.65.1 Married When Employee Filed for Annuity

A spouse who was married to the employee at the time he filed for the employee annuity may be included in the family group for the retirement overall minimum (O/M) computation on the later of:

- A. The employee's annuity beginning date (ABD); or
- B. The first day of the month after the month in which a disability waiting period ends; or

- C. The first full month the employee is age 62. If the employee is a disability annuitant or has a disability freeze (DF), the retirement O/M may begin the first day of the month the employee attains age 62; or
- D. The first full month the spouse attains age 62.

325.65.2 Married After Employee Filed for Annuity

A spouse who was married to the employee after he filed for the employee annuity may be included in the family group for the retirement O/M computation on the later of:

- A. O/M Computation rate in force when spouse becomes eligible - If the total retirement O/M computation rates exceed the total RR formula rates for the month before the month in which the spouse meets the eligibility requirements, the spouse may be included in the family group as soon as she meets the eligibility requirements.

Example: The family group on the employee's ABD of 5-1-77 consists of the employee and a full time student (FTS). The retirement O/M is in force. On 8-1-78, the spouse meets the eligibility requirements and may be included in the family group.

- B. RR formula rate in force when spouse becomes eligible - A spouse who was married to the employee after he filed for the employee annuity and is at least age 62 or has the employee's child in care, may be included in the family group for the retirement O/M computation on the later of:
 1. The first day of the month after the month in which a disability waiting period ends; or
 2. The first full month the employee is age 62. If the employee is a disability annuitant or has a DF, the spouse may be included in the retirement O/M the first day of the month the employee attains age 62; or
 3. The spouse ABD.

325.66 Effective Date of Divorced Spouse Retirement Overall Minimum Benefit

A divorced spouse annuitant may be included in the retirement overall minimum (O/M) on the later of:

- A. October 1, 1981; or
- B. The employee's annuity beginning date (ABD); or

- C. The first full month the employee is age 62. If the employee has a disability freeze, the retirement O/M may begin the first day of the month in which the employee attains age 62; or
- D. The divorced spouse's ABD.

325.70 Effective Date Of Child's Retirement Overall Minimum Benefit

325.70.1 Child Eligible on Annuity Beginning Date or After Disability Waiting Period

If the child meets the eligibility requirements on the employee's annuity beginning date (ABD), or on the first day of the month following the month in which the disability waiting period ends, the child may be included in the family group for the retirement overall minimum (O/M) computation.

EXAMPLE: The family group on the employee's ABD consists of the employee and two eligible full-time students. The students may be included in the retirement O/M computation.

325.70.2 Retirement O/M in Force When Child Becomes Eligible

If the total retirement O/M computation rates exceed the total RR formula rates for the month before the month in which the child meets the eligibility requirements, the child may be included in the family group for recomputing the retirement O/M rates.

EXAMPLE: The family group on the employee's ABD of 5-1-80 consists of the employee, spouse, and minor child. The retirement O/M computation is in force. On 9-1-80, a second child becomes a full time student (FTS). This child may be included in the family group for the retirement O/M computation.

325.70.3 RR Rate in Force When Child Becomes Eligible

If the total RR formula rates exceed the total retirement O/M rates for the month before the month in which the child meets the eligibility requirements, the child may not be included in the family group for computing the retirement O/M rates.

If an alleged disabled child may not be included in the O/M, develop a Form AA-19a and medical evidence for Medicare eligibility only.

EXAMPLE 1: The family group on the employee's ABD consists of the employee and RR spouse annuitant with a minor child in her care. The RR formula employee and spouse rates exceed the total retirement O/M formula rates. The child attains age 18 in 9-79 and the spouse annuity terminates. Although the child is an FTS, he may not be included in the family group for the retirement O/M computation.

EXAMPLE 2: The family group on the ABD 1-1-80 consisted of the employee and FTS. The retirement O/M formula applied. The child ceased full time attendance (FTA) on 5-13-80. This caused the employee annuity to revert to the RR formula. When the child returned to FTA on 1-1-81, the child's benefit may not be considered in the retirement O/M computation to cause an increase from the RR formula to the O/M, because of the break in the continuity of the retirement O/M formula.

325.75 Developing Child's Disability at Age 16

If a spouse is included in the retirement overall minimum (O/M) computation based on a minor child in care, 4 months before a child attains age 16, a computer-prepared Form Letter RL-175 is released to the employee. This advance notice is sent out before payments are suspended to develop the possibility of continuing eligibility. The employee is advised to contact the field office if the child is disabled.

If the spouse is not eligible for an unreduced spouse annuity based on her age and claims that the child in her care is disabled, develop a Form AA-19a and medical evidence for the child. A new Form G-319 is not required. If a child is rated disabled at age 16, only disability monitoring would be required after that date. It is not necessary to re-establish the child's disability at age 18.

If the spouse is eligible for an unreduced annuity based on her age when the child attains age 16, a determination on the alleged disability of that child is not required until the child attains age 18.

If the spouse files for a spouse annuity and the combined employee and spouse annuity tier rates exceed the retirement O/M rate, retirement O/M no longer applies. If the child is disabled, a disability determination should be made only for the child's eligibility for Medicare coverage.

325.80 Developing Child as Full Time Student After Age 18

Form letter RL-175 is released to the employee 4 months before a child will attain age 18. This advance notice is sent out before payments are suspended to enable the employee to contact the RRB field office to develop the possibility of continuing eligibility after the child attains age 18. The form shows the month the child attains age 18 and advises the employee to call the nearest RRB field office if the child is disabled or is attending school full-time.

Diary cards are also forwarded to RBD for action. Listed below are the possible messages for children included in the retirement O/M:

CHILD IPI ATTAINING AGE 18 OR 19

CHILD IPI OVER AGE 18 OR 19

If the retirement O/M is in force when the child attains age 18, and the child is entitled as an FTS, the RRB field office will only need to develop current information on Form G-320 and the Form G-315 series forms. The other information on Form G-319 should already be in the claim file.

Develop Form AA-19a if the child attaining age 18 is disabled and the disability has not yet been established in the claim file. A new Form G-319 is not required.

If a child may be eligible as either a full time student (FTS) or a disabled child, develop entitlement as a disabled child. However, if there will be a delay in establishing the child's eligibility as a disabled child, develop entitlement as an FTS as well. The child can then continue to be included in the retirement O/M while disability is being developed.

325.85 Suspension Of Employee Retirement Overall Minimum Annuity

When the employee's annuity is not payable, benefits are not payable for the spouse, divorced spouse or child based on the employee's wage record. If the employee's annuity is suspended to recover an overpayment, the annuity is still considered to be payable. If the retirement overall minimum (O/M) increase is not payable, in some cases, the employee's annuity may continue to be paid under the RR formula (e.g., when work deductions apply).

325.85.1 Railroad Retirement Act Provisions

- A. The retirement O/M increase is not payable if the employee does not agree to keep the RRB informed of any event that affects the inclusion of an ineligible person included (IPI) who is not living with the employee.
- B. The employee annuity under either the retirement O/M or RR computation is not payable for months in which the employee works in RR employment.
- C. The DIB retirement O/M is subject to the work restrictions under the RR Act, i.e., no annuity is payable for any month in which a disability annuitant earns more than the monthly earnings amount (see FOM1.1125.5.2) in employment or self-employment of any type, except employment under the Domestic and Volunteer Service Act of 1973. Programs under this act, including VISTA, are listed in FOM-I-310.40.1.

The disability retirement O/M is not subject to excess earnings deductions under the SS Act limit. However, disability may cease if the beneficiary is performing or is able to perform substantial gainful activity (SGA). See FOM-I-310.65 and 325.95.

- D. The age and service retirement O/M is subject to the SS Act annual exempt amount earnings limitation while the employee is under age 70 (age 72 before 1983). The retirement O/M may be suspended if the employee has earnings

over the annual exempt amount. However, the RR rate will continue to be paid, but with a reduction for excess earnings if the employee has a work deduction insured status.

325.85.2 SS Act Provisions

The employee annuity may not be increased under the retirement O/M when any of the following events occur. These non-payment provisions would apply under the SS Act, and therefore may affect the payment of the O/M.

- A. Vocational rehabilitation deductions - A vocational rehabilitation (VR) deduction is imposed against the disability retirement O/M for any month in which the employee refuses, without good cause, to accept VR service available to him under an approved VR program; or
- B. SGA suspension for blind workers over age 55 - An employee who is entitled to the disability retirement O/M as a blind worker over age 55 will continue to be entitled for months in which he is engaging in "non-comparable" SGA. Disability for these workers is defined as inability because of blindness to engage in SGA requiring skills or abilities comparable to those of any gainful activity in which they have previously engaged with some regularity and over a substantial period of time. SGA that is "non-comparable" does not disqualify a blind worker from entitlement under this provision. However, retirement O/M payments to the employee or his auxiliaries will be suspended for any month in which the employee engages in comparable SGA. Payment may be initiated or reinstated for any month in which it is determined the employee is not engaging in comparable SGA; or
- C. Deductions for work outside the U.S. - Beginning 5-1-83, work deductions may apply to the age and service retirement O/M if the employee works outside the U.S. for more than 45 hours in a month. For months before May 1983, a 7-day work test (see FOM-I-11) was applied to the age and service retirement O/M if the employee worked outside the U.S. Beginning 9-1-84, work deductions may apply to the shares of the spouse and child auxiliary beneficiaries when the employee works outside the U.S. for more than 45 hours in a month. For months before September 1984, a 7-day work test was applied to the shares of the spouse and child when the employee worked outside the U.S.; or
- D. Removal/Deportation P.L. 108-203 changed the term deportation to removal effective as if enacted on April 1, 1997. Payment of age and service or disability retirement O/M benefits may be withheld if the employee is removed/deported from the U.S. after 9-1-54; or if removed/deported 11-10-88 or later, due to associations with the Nazi government of Germany during World War II; or
- E. Conviction for subversive activities - Payment of the age and service or disability retirement O/M may be affected when the employee has been deprived of certain

benefit rights by sentence of a court after conviction on a charge involving espionage, sabotage, treason, sedition or subversive activities; or

- F. Confined to a penal or correctional facility - O/M benefits are suspended or Tier 1 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 and is confined in an institution at public expense for more than 30 continuous days. See FOM1 150, Criminal Activity Cases for more information.

325.90 Termination of Employee Retirement Overall Minimum Annuity

When the employee's annuity is not payable, benefits are not payable for the spouse, divorced spouse or child based on the employee's wage record.

The employee benefit under the retirement overall minimum (O/M) computation terminates with the last day of:

- A. The month before the month in which the employee dies; or
- B. The second month after the month the disabled employee annuitant medically recovers from his disability; or

NOTE: Beginning December 1, 1980, disability retirement O/M payments will not be terminated or suspended when the annuitant's impairment ceases because of substantial gainful activity (SGA), if the annuitant is participating in an approved vocational rehabilitation program. The Headquarters adjudicating unit will determine if continuation in the program is likely to increase the possibility that the annuitant will eventually be permanently removed from the disability rolls. Information about vocational rehabilitation is requested on Form G-254 (Continuing Disability Report).

- C. The 36th month after the trial work period, if disability ceased after December 1987 because the disabled employee is performing SGA, but has not medically recovered from disability. The old (15-month) rule still applies when a retroactive SGA cessation is being processed prior to January 1988. The 15-month trial work period cannot begin any earlier than December 1, 1980. See the following section.

325.95 Trial Work Period Extension

Public Law 96-265 changed the termination date for an annuitant receiving the DIB retirement O/M or for a disabled child included in the O/M. Prior to the amendment, retirement O/M benefits were terminated 2 months after disability ceased, whether because of medical recovery or because of the ability to perform SGA. Beginning 12-1-80, if disability has not ceased before that date, a trial work period extension (TWP EXT) may apply when disability ceases because of the ability to perform SGA.

325.95.1 TWP EXT Defined

A DIB retirement O/M annuitant or a disabled child included in the retirement O/M who has not medically recovered is allowed a 9-month trial work period (see FOM-I-310.65.2). If the work performed during the TWP shows that the individual's impairment is no longer severe enough to prevent him from performing SGA, it is determined that the disability has ceased. The TWP EXT begins after the end of the TWP and does not end for at least 36 months if the beneficiary is not medically recovered. Effective 1/92, the TWP EXT begins the month after the 9th service month completed within 60 consecutive months. The TWP EXT ends according to the following rules:

- A. If the beneficiary performs SGA during the 36 months following the TWP, the TWP EXT ends the last day of the month before the first month the beneficiary performs SGA after the 36-month period; or
- B. If the beneficiary does not perform SGA during the 36 months following the TWP, the TWP EXT continues until the second month after the month the beneficiary first performs SGA; or
- C. If the beneficiary medically recovers from his disability during the TWP or the following 36 months, the TWP EXT ends the last day of the second month after the month of medical recovery.

The following chart gives an example of how the first two rules are applied.

9-month TWP (April 87 - December 87)	
SGA in next 36 months? (January 88 - December 90)	
<u>YES</u>	<u>NO</u>
TWP extends at least 36 months (Jan 88 - Dec 90)	TWP extends at least 36 months (Jan 88 - Dec 90)
1st month of SGA after 36 months (January 91)	1st month of SGA after 36 months January 91
TWP extension date last day of month preceding SGA (December 31, 1990)	TWP extension ends 2 months later (February 28, 1991)

If the applicant in this example medically recovers in June 88, the TWP EXT ends August 31, 1988.

325.95.2 Payment of Retirement O/M

RR annuities paid under the retirement O/M continue to be payable for the first 2 months after it is determined that disability ceased because of SGA (i.e., the beneficiary is paid for the first 3 months after the TWP). The retirement O/M is not payable for any month SGA is performed in the next 12 months of the TWP EXT. If the beneficiary does not perform SGA in any of the next 12 months, the retirement O/M may still be paid for those months if the RR annuity is payable. Entitlement to the retirement O/M terminates the last day of the 36th month of the TWP EXT, even though the TWP EXT may not have ended then.

The RR annuity must still be suspended if the annuitant earns more than the monthly earnings amount (see FOM1.1125.5.2); the retirement O/M cannot be paid if the annuity is in suspense. Even though the annuity is suspended according to RRB rules, the end of the retirement O/M entitlement must still be determined according to SSA's TWP EXT rules, unless annuity entitlement ends first. The TWP EXT will not affect the DIB retirement O/M in most cases because the RR annuity will be suspended because of earnings over the monthly earnings amount, or terminated because a total and permanent disability annuity is terminated 2 months after disability ceases because of work performance. However, the TWP EXT will always apply to an A&SA who is receiving the DIB retirement O/M or a disabled child included in the O/M, as long as the retirement O/M is otherwise payable. The TWP EXT also will apply to a widow or child who are found disabled and are receiving survivor annuities.

325.95.3 Termination of Disability Freeze

The date the disability freeze terminates depends on the pattern of SGA during the 36 months after the TWP. The DF can terminate before the trial work period extension ends.

- A. If the beneficiary performs SGA during the 36 months following the TWP, AND if he engages in SGA for every subsequent month in the 36 months, the DF ends the last day of the month before the retirement O/M is suspended.

Example: Joe Jones completes a TWP in December 87. It is determined that his disability ceased because of SGA in January 88, so the DIB Retirement O/M is payable for January, February and March 88. He is performing SGA in January 88, and continues to do so through December 88 (36 months after the TWP) and thereafter. The DF terminates March 31, 1988, the month before the month the retirement O/M is suspended. The TWP EXT ends December 31, 1990 (the month before the first month of SGA after the 36 months of the TWP EXT).

1987 A M J J A S O N D TWP ends in Dec

1988 J F M A M J J A S O N D Retirement O/M susp. April; DF ends March 31

1989 J F M A M J J A S O N D

1990 J F M A M J J A S O N D TWP EXT ends December 31

1991 J F

If Joe did not perform any SGA in January 88 through December 90, the DIB retirement O/M would be payable through December 90. If he performs SGA in every month June 90 through December 90 (remaining months of the 36 months after TWP) and thereafter, the DF would terminate December 31, 1990 because the retirement O/M is suspended beginning January 91.

- B. If the beneficiary does not perform SGA during the 36 months following the TWP or if he does perform SGA but then has 1 or more months of no SGA before 36 months have passed, the DF ends the date the TWP EXT ends.

Example 1: Mary Smith completes a TWP in December 87, and the TWP EXT begins January 88. She does not perform any SGA until January 91. Her TWP EXT ends March 31, 1991 (the second month following the first month of SGA after the TWP); the DF also ends March 31, 1991 (the last month of the TWP EXT).

1987 A M J J A S O N D TWP ends in Dec

1988 J F M A M J J A S O N D

1989 J F M A M J J A S O N D

1990 J F M A M J J A S O N D Retirement O/M terminated Dec. 31

1991 J F M A TWP EXT, DF end March 31

If Mary did not perform SGA until March 91, her TWP EXT and DF would end May 31, 1991.

Example 2: Jane Brown completes a TWP in January 88 and her TWP EXT begins February 88. She performs SGA in May and June 88, does not perform SGA in July 88, then performs SGA in August 88 through February 91. The TWP EXT ends January 31, 1991 (the month before the first month of SGA after the 36 months of the TWP EXT). The DF also ends January 31, 1991.

1987 A M J J A S O N D

1988 J F M A M J J A S O N D Retirement O/M susp. May 1; Retirement O/M payable July 88

1989 J F M A M J J A S O N D

1990 J F M A M J J A S O N D

1991 J F M A TWP EXT, DF end Jan. 31; Retirement O/M term.

325.95.4 Handling TWP EXT Cases

If a disabled beneficiary ceases SGA during the TWP EXT, or if the earnings fall below the level deemed to be SGA (\$500.00 a month) during the TWP EXT, the retirement O/M can be reinstated without developing a new application, when the annuity is still payable. When disability ceases because of SGA and the TWP EXT applies, DMOD will notify the annuitant (copy to field office) that the retirement O/M may still be payable, and furnishes the date the TWP EXT ends. DMOD also informs the annuitant of the date Medicare will terminate; the TWP EXT gives at least 39 months additional Medicare coverage.

The annuitant is instructed to notify the field office when he works. Report the work information to DMOD; you will be advised if additional development is necessary.

325.100 Suspension of Spouse Retirement Overall Minimum Benefit

325.100.1 Railroad Retirement Act Provisions

The retirement overall minimum (O/M) is not payable for any month in which the employee's annuity is suspended. If the spouse is entitled to a spouse railroad annuity under either the retirement O/M or RR computation, the annuity is not payable for months in which the employee or spouse works in RR service. The spouse may not be included in the retirement O/M for months she works in employer service. If the spouse annuity or retirement O/M share is in suspense due to work in RR service, the spouse's share under the retirement O/M may be redistributed among the other auxiliaries.

The spouse annuity is subject to the earnings limitations under the Social Security Act (SS Act) while the spouse is under age 70 (age 72 before 1983). The retirement O/M may be suspended if the spouse has earnings over the annual exempt amount. However, if the spouse is entitled to an RR annuity, the RR rate will continue to be paid, but with a reduction if the spouse has a work deduction insured status or earnings from Last Pre-retirement Non-railroad Employer (LPE). The employee's excess earnings can also be charged against the spouse's retirement O/M share or the spouse's RR annuity. However, a divorced spouse who has been divorced from the employee for at least 2 years will not be subject to work deductions based on the employee's earnings, beginning 1-1-85.

325.100.2 SS Act Provisions

The spouse retirement O/M benefit is not payable for any month in which the employee's retirement O/M benefit is not payable due to the events described in FOM-I-325.85.2.

In addition, the spouse retirement O/M benefit is not payable for any month in which the following events occur:

- A. Deductions for work outside the U.S. - Beginning 5-1-83, work deductions may apply if the spouse works outside the U.S. for more than 45 hours in a month. For months before May, a 7-day work test (see FOM-I-11) is applied if the spouse works outside the U.S.; or
- B. Conviction for subversive activities - The spouse retirement O/M benefit is not payable when the spouse has been deprived of certain benefit rights by sentence of a court after conviction on a charge involving espionage, sabotage, treason, sedition or subversive activities; or
- C. Confined to a penal or correctional facility - O/M benefits are suspended or Tier 1 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 and is confined in an institution at public expense for more than 30 continuous days. See FOM1 150, Criminal Activity Cases for more information.

325.105 Termination of Spouse Retirement O/M Benefit

The spouse benefits are taken into account in figuring the family retirement O/M computations only for those months in which the spouse would have been eligible for benefits under the Social Security Act. The spouse benefits end with the last day of the month before the month in which:

- A. The spouse dies; or
- B. The marriage between the spouse and the employee is ended by absolute divorce or, in some cases of putative marriage, by knowledge that the marriage was invalid. When California law is applicable, and the parties undertake in good faith to legalize their marriage within a reasonable time after learning of the defect, benefits do not end. Entitlement is not ended by a limited decree of divorce nor by an interlocutory or preliminary decree until such decree becomes final. The divorced spouse may continue to be included in the retirement O/M if she is entitled to a divorced spouse annuity; or
- C. The employee's annuity terminates due to death or medical recovery from disability; or

- D. The spouse does not have in care a minor or disabled (before attaining age 22) child of the employee and the spouse is under age 62.

The Retirement O/M share of a spouse who was eligible in August 1981, based on a child in care, ends the earlier of:

1. The month before the month in which the youngest child attains age 18; or
2. August 31, 1983, if the youngest child is over age 16. Otherwise, the spouse is entitled until the child attains age 16.

A spouse who was first eligible 9-1-81 or later, based on a child in care, is entitled until the youngest child attains age 16.

325.106 Suspension and Termination Of Divorced Spouse's Retirement Overall Minimum Benefit

The suspension events stated in FOM-I-325.100 also apply to a divorced spouse.

A divorced spouse is included in the retirement overall minimum (O/M) only if she is entitled to a divorced spouse annuity. A divorced spouse's entitlement terminates with the last day of the month before the month in which:

- A. The divorced spouse dies; or
- B. The employee's annuity terminates due to death or medical recovery from disability; or
- C. The divorced spouse becomes entitled to an SS retirement or disability insurance benefit that is based on a PIA (primary insurance amount) that equals or exceeds one-half of the employee's PIA; or
- D. A divorced wife remarries.

325.110 Suspension of Child's Retirement Overall Minimum Benefit

325.110.1 Railroad Retirement Act Provisions

The retirement overall minimum (O/M) is not payable for any month in which the employee's annuity is suspended. If the child is in employer service, the child may not be included in the retirement O/M and the child's share may be redistributed among the other auxiliaries.

The child's retirement O/M share is also subject to the Social Security Act (SS Act) annual exempt amount earnings limitation. The retirement O/M will be adjusted if a minor child or full time student (FTS) earns over the annual exempt amount. A disabled

child is not subject to the earnings limitation, but earnings may indicate recovery from disability.

325.110.2 SS Act Provisions

The child's retirement O/M share is not payable for any month in which the employee's retirement O/M benefit is not payable due to the events described in FOM-I-325.85.2.

In addition, the child's retirement O/M share is not payable for any month in which the child's benefits would not be payable under the SS Act, due to the following events:

- A. Vocational rehabilitation deductions - A vocational rehabilitation (VR) deduction is imposed against the disabled child's retirement O/M share for any month in which the disabled child refuses, without good cause, to accept VR service available to him under an approved VR program; or
- B. Substantial Gainful Activity suspension for blind workers over age 55 - If the child is a disabled adult child based on the special provisions for blind persons over age 55, the disabled child's retirement O/M share may be affected when the child engages in substantial gainful activity (SGA); or
- C. Deductions for work outside the U.S. - Beginning 5-1-83, work deductions may apply if the child works outside the U.S. for more than 45 hours in a month. For months before May, a 7-day work test (see FOM-I-11) is applied if the child works outside the U.S.; or
- D. Conviction for subversive activities - Payment of the child's share may be affected when the child has been deprived of certain benefit rights by sentence of a court after conviction on a charge involving espionage, sabotage, treason, sedition or subversive activities; or
- E. Confined to a penal or correctional facility - O/M benefits are suspended or Tier 1 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 and is confined in an institution at public expense for more than 30 continuous days. See FOM1 150, Criminal Activity Cases for more information.

Benefits for the other family members are payable as if the confined person were receiving benefits.

325.115 Termination of Child's Retirement Overall Minimum Benefit

The child's benefits are taken into account in figuring the family retirement overall minimum (O/M) computations only for those months in which the child would have been eligible for benefits under the Social Security Act (SS Act) rules.

A child's retirement O/M benefit terminates:

- A. the last day of the month before the month in which the child dies; or
- B. the last day of the month before the month in which the child attains age 18, unless the child is determined to be disabled before attaining age 22 or is an full time student (FTS); or
- C. the last day of the second month after the month in which the disabled child medically recovers from his disability.

NOTE: Beginning December 1, 1980, retirement O/M benefits for a disabled child will not be terminated or suspended when the child's impairment ceases because of substantial gainful activity (SGA), if the child is participating in an approved vocational rehabilitation program. The Headquarters adjudicating unit will determine if continuation in the program is likely to increase the possibility that the child will eventually be permanently removed from the disability rolls. Information about vocational rehabilitation is requested on Form G-254; or

- D. the 36th month after the trial work period (TWP), if disability ceased after December 1987 because the disabled child is performing SGA, but has not medically recovered from disability. The old (15-month) rule still applies when a retroactive SGA cessation is being processed prior to January 1988. Beginning December 1, 1980; if disability has not ceased before that date, a TWP EXT may apply when disability ceases because of the ability to work. See FOM-I-325.95; or
- E. the last day of the month in which the child ceases to be an FTS; or
- F. the last day of the month before the month in which the child marries.

EXCEPTION: Under the SS Act, a disabled child age 18 or over may marry any SS beneficiary, other than a child beneficiary under age 18 or a child beneficiary age 18-22 entitled because he is a FTS, without loss of benefits. However, if a female disabled child married a man entitled to a child's disability benefit or to a disability insurance benefit (DIB), the female child's entitlement ended the same month her husband's benefits ended (e.g., recovery from disability), unless the husband's entitlement (either child's disability benefits or DIB) ended because of death or (in the case of a DIB only) entitlement to an RIB.

Effective 6-1-83, the female disable child's entitlement on her husband's E/R does not end, even if he recovers from his disability; or,

- G. In the case of a stepchild of the employee, the month after the month in which the divorce between the employee and the natural parent becomes final.

325.135 Assignment Of Payment Cases

The employee may authorize the RRB to pay part of his total retirement overall minimum (O/M) computation annuity rate to another person by completing an "Assignment of Payment Statement" (a special form provided by the Headquarters adjudicating unit). If a garnishment is involved, see FOM-I-325.140. It is necessary for the person to be included in the retirement O/M computation for the assignment to be made. Usually the amount authorized by the employee to be paid to the assignee is equal to the amount the employee retirement O/M computation increases because of that person. However, the employee may designate an amount that is not necessarily attributable to the ineligible person.

The employee may request that this retirement O/M assignment amount be increased or decreased at any time. It is not the RRB's responsibility to solicit changes in the amount of the assignment whenever there is a cost-of-living increase or change in family group composition. The assignment amount should continue to be paid until the employee completes a new assignment or until the person may no longer be included in the retirement O/M computation. However, if the RR formula exceeds the retirement O/M formula, but the person for whom the assignment was made is still eligible to be included in the O/M, the Headquarters adjudicating unit will ask the field office to contact the employee to ask if there should be a change in the assignment.

Do not suggest assignment of payment or solicit a specific request for an assignment payment. When a request for an assignment payment is received, refer the inquiry to the Headquarters adjudicating unit. The "Assignment of Payment Statement" will be prepared by the Headquarters adjudicating unit and forwarded to the field office for completion by the employee.

325.140 Assignment In Lieu Of Garnishment

Beginning with the passage of the Social Services Amendments of 1974 (Public Law 93-647), assignments may also be made with the approval of the Bureau of Law when an RR formula rate is payable, only if a request is made because garnishment of the annuity or a court order for alimony or child support is threatened. Assignments in retirement overall minimum (O/M) formula cases may still be made if requested by the employee; question the employee for the reason for the assignment to determine if a garnishment is involved. If the assignment is in lieu of garnishment, the procedure in this section applies.

An annuitant may assign a specific amount of an annuity to be paid directly to the spouse or to someone else, even if that person is not included in the retirement O/M computation. The assignment must be in accordance with state law provisions concerning garnishment, which generally require that the annuitant must be in arrears in making court ordered payments for alimony or child support. The amount assigned must meet the Federal exemption rules outlined in the following section, and the employee must file an acceptable assignment of payment statement with the RRB.

325.140.1 Federal Exemption Rules

A portion of retirement benefits payable is exempt from garnishment by Federal law. If the state in which the legal process is issued also provides for an exemption, the larger exemption will apply in the case.

In the absence of a state law providing for a higher exemption, the Federal law exempts 35% of benefits from garnishment. The amount of the exemption is:

- A. Increased by 10% if the beneficiary is supporting a spouse or child other than the spouse or child for whose support the legal process is issued; or
- B. Increased by 5% if the support or alimony arrearage which caused the garnishment order is less than 12 weeks old.

If both of these conditions exist, the maximum retirement benefit subject to garnishment is 50%, unless an applicable state law provides a higher exemption.

The amount of the retirement benefits considered for possible garnishment is the rate after any necessary reductions, such as withholding by the RRB for recovery of an overpayment or deduction of Medicare premiums. Any applicable exemptions are applied to the reduced benefits actually being paid.

325.140.2 Statement for Assignment

When an annuitant expresses the desire to assign a portion of an annuity in lieu of having the benefit garnished or attached, legal assistance in preparing the assignment statement may be suggested or you may assist in preparing the statement to be sent to the Bureau of Law. The statement of assignment which you assist in preparing must include:

- A. That this statement is intended to be in accord with appropriate state law and in lieu of garnishment;
- B. That a court order for payment of alimony or child support which is the obligation of the annuitant exists and a copy of the order is attached;
- C. That the annuitant is in arrears in making the ordered payments and the amount of the arrearage;
- D. Declaration of the amount to be assigned per month, and the name and address of the party to whom the assigned payment is to be made;
- E. The signature, address, and telephone number of the annuitant; and
- F. The notation that the annuitant was "Assisted in preparation by (your name and district office location)."

The Bureau of Law handles all matters and makes all decisions related to the appropriateness and acceptability of assignment requests in lieu of garnishment. In these cases the critical claims and reconsideration unit implements the decision of the Bureau of Law. This includes any subsequent rate adjustments in the employee's annuity. Any action that does not directly affect the annuity rate or relate to or cancel a garnishment (e.g., a change of address) is handled in the regular adjudication units.

325.145 Inquiries About Ineligible Person Included (IPI) Shares

The additional amount payable due to the inclusion of ineligible person included (IPI) is an increase in the employee's annuity. The additional amount cannot in itself be regarded as payable to the IPI spouse or child; the annuity remains the employee's benefit, even if the employee assigns part of his annuity to someone else.

In providing information on the amount of the increase due to a spouse or child, the amount should be that person's share of the increased retirement O/M amount payable above the employee's RR rate or the employee alone retirement O/M rate, whichever is higher.

325.150 Spouse Retirement Overall Minimum Elections Defined

The Social Security Act (SS Act) was amended effective 11-1-56 to provide reduced benefits for wives, ages 62-64, if the wage earner was at least age 62 or eligible for a disability freeze (DF). At that time, the Railroad Retirement Act (RR Act) stated that the spouse of an RR annuitant, age 65 or over, could not qualify for an RR Act spouse annuity until age 65, unless the spouse had a minor or disabled child of the employee in care.

The spouse election procedure was initiated to permit the inclusion of spouses ages 62-64 who would have qualified under Social Security Administration rules in the retirement overall minimum (O/M) computation, provided the employee had attained age 62 or was entitled to a DF. The employee's annuity increased under the retirement O/M to include a share for the spouse until the spouse became entitled to an RR spouse annuity at age 65. By filing an election, the spouse agreed to have the spouse annuity permanently reduced by a specific amount in order to permit the employee's annuity to be increased under the O/M.

325.155 Spouse Elections Under The 1974 Railroad Retirement Act

The benefits payable under the 1974 Railroad Retirement Act eliminated the need for a spouse election in most cases, and the RRB discontinued soliciting spouse elections. Spouse election information is released only when an inquiry concerning benefit entitlement or adjustment is received from an eligible employee or age 62-64 spouse.

A spouse election is not required to include an age 65 spouse or a spouse with a child in care in the overall minimum.

325.160 When A Spouse Election May Apply

Assuming the spouse meets all other retirement overall minimum (O/M) eligibility requirements, a spouse election is currently required to increase the employee's annuity under the retirement O/M computation only in the following cases:

325.160.1 Employee's Annuity Beginning Date and Filing Date Before 1-1-75

The spouse is not eligible for a railroad spouse annuity until the employee attains age 65 if the employee's reduced age annuity or disability annuity:

- A. Began before July 1, 1974; or
- B. Began between July 1, 1974 and December 31, 1974 and the employee had less than 30 years of railroad service.

The spouse age 62-64 (without the employee's minor or disabled child in care) may file a spouse election to be included as an IPI in the retirement O/M computation if the employee either has attained age 62 or qualifies for a disability freeze.

325.160.2 Employee's Annuity Beginning Date or Filing Date is 1-1-75 or Later with Less Than 30 Years Service

The spouse is not eligible for a railroad spouse annuity until the employee attains age 62 if the employee is receiving an annuity based on disability. A spouse age 62-64 (without the employee's minor or disabled child in care) may file a spouse election if the employee is under age 62 but has a DF.

325.160.3 Employee's Annuity Beginning Date is 7-1-74 or Later with 30 or More Years Service

The spouse is not eligible for a railroad spouse annuity until the employee attains age 60 if the employee under age 60 is receiving an annuity based on disability. A spouse age 62-64 (without the employee's minor or disabled child in care) may file a spouse election if the employee has a DF.

325.165 Development Of Spouse Election

325.165.1 Field Office Handling of Inquiries

Upon receipt of an inquiry from the annuitant or an age 62-64 spouse who meets the conditions specified in FOM-I-325.25, develop the necessary information concerning the annuitant and spouse and forward their inquiry to the Headquarters adjudicating unit. The RRB does not solicit spouse elections.

NOTE: It would not be advantageous to the annuitant or spouse to file an election if either of them are receiving SS benefits or expect to receive SS benefits in the near

future, or if either is working and has earnings in excess of the current annual exempt amount.

325.165.2 Headquarters Adjudicating Unit Action on Report of Inquiry

Upon receipt of information from a field office indicating that an annuitant's spouse wants to file an election, the Headquarters adjudicating unit will test the O/M. If the inclusion of the annuitant's spouse as an IPI in the retirement O/M computation would increase the monthly amount otherwise payable to the annuitant, the Headquarters adjudicating unit will prepare and release dictated letters and statements to the field office for personal delivery to the employee and spouse.

325.165.3 Field Office Action upon Receipt of Election Letters from Headquarters Adjudicating Unit

Schedule an appointment with the employee and spouse. Date and deliver the dictated spouse election letters, and explain their contents. Also, furnish the employee and spouse with Form G-319 plus the dictated statements for their signature. Advise the employee and spouse that an election will not be accepted if it is made more than 30 days after the date of the letters.

If the spouse wishes to make an election, help the employee and spouse complete the Form G-319 and the statements. Secure the required proofs.

If the spouse does not wish to make an election or is not sure if she wishes to make an election, advise the Headquarters adjudicating unit of the date on which you delivered the letters.

325.170 Forms Required In Spouse Election

325.170.1 Spouse Requirements

In order to process a spouse election, the spouse must file Form G-319 plus a signed statement witnessed by an RRB representative indicating that she understands that:

- A. The amount of the spouse's annuity she may receive in the future will be permanently reduced to take into account the additional amount paid to the employee before she becomes entitled to a spouse annuity; and
- B. This election will not cause a reduction in any annuity payable to her as a widow(er); and
- C. This election may not be revoked or changed in any way after the employee's annuity has been increased.

325.170.2 Employee Requirements

The employee must file Form G-319 plus a signed statement witnessed by an RRB representative indicating that he understands that, as a result of the election made by the spouse:

- A. His annuity will be increased and he will receive at least the amount his spouse and he would receive if his railroad service were covered by the Social Security Act; and
- B. The amount of the spouse annuity that the spouse may receive in the future will be permanently reduced to take into account the additional amount paid to him before his spouse became entitled to a spouse annuity; and
- C. All or part of the increase will not be payable if:
 - 1. While under age 70 (age 72 before 1983), the spouse
 - (a) Works outside the U.S.; or
 - (b) Works in the United States and earns over the annual earnings exempt amount; or
 - 2. The employee or spouse receives social security benefits; or
 - 3. The marriage is terminated by death or divorce.

The employee must agree to notify the RRB promptly of the occurrence of any of these events.

NOTE: The Headquarters adjudicating unit will prepare the necessary statements and transmit them to the district office with the request to deliver the dictated letters.

325.175 Evidence Required In Spouse Election Cases

The evidence required in a spouse election case is the same as the evidence listed in FOM-I-35. In addition, the employee and spouse must sign statements agreeing to the increase in the employee annuity and the future actuarial adjustment to the spouse annuity due to spouse election.

325.180 Retroactivity Of Spouse Election

The spouse may be included in the employee annuity retroactive to the first day of the month in which the employee and spouse meet the eligibility requirements, provided the spouse election is filed within 30 days of the date of the spouse election letters.

325.185 Finality Of Spouse Election

Once the retirement overall minimum (O/M) computation rate is paid with the spouse election, the election may not be cancelled. The spouse election reduction may, however, be adjusted for non-payment months when the spouse annuity becomes payable.

The employee's monthly rate may revert back to the RR formula computation whenever this rate exceeds the retirement O/M computation rate.

325.190 Termination Of Increase In Employee Annuity

The increase made in the employee's annuity because of a spouse election will end with the month immediately preceding the month in which:

- A. The marriage of the employee and the spouse is ended by a final divorce decree; or
- B. The spouse dies; or
- C. The spouse is awarded a spouse annuity.

NOTE: If the spouse annuity beginning date (ABD) is after the first day of the month, the spouse election increase is payable up to the day before the spouse annuity ABD.

If the employee is under age 62 and the disability insured status is terminated, the increase made in the employee's annuity because of the spouse election will end the second month after the month in which the disability ceased.

325.195 Spouse Later Does Not Qualify For RR Annuity

A spouse who has filed a valid spouse election is retained in the retirement overall minimum (O/M) computation as long as she meets the Social Security Act eligibility requirements, even though she is later not eligible for a railroad spouse annuity (e.g., working in RR service) or does not file for a spouse annuity.

The additional amount included in the employee annuity under the O/M provision due to the spouse election is made only to the employee with nothing in the statute requiring it to be paid to the spouse or used for her support. The employee must either file an assignment of payment or make regular contributions to the spouse to support her. Such an assignment may be made at the employee's request only.

325.200 Effect Of Spouse Election On Future Widow(er)'S Annuity

The spouse election reduction is never applied to the widow(er)'s annuity. When the spouse made an election to be included in the retirement overall minimum (O/M) computation of the employee's annuity and subsequently does not become entitled to a

railroad spouse annuity in a month before the month in which the employee died, no reduction is required due to the spouse election.

When the spouse made an election to be included in the retirement O/M computation of the employee's annuity and subsequently was paid a spouse annuity that had a spouse election reduction in the month before the month in which the employee died, the spouse minimum rate used in the computation of the widow(er)'s annuity is the spouse annuity rate before the spouse election reduction.

Example: The spouse RR annuity effective 9-1-79 before the spouse election reduction is \$198.44. The reduction of \$5.89 results in a spouse benefit payable of \$192.55. The employee dies 12-3-79. The spouse minimum rate considered in the widow(er)'s insurance annuity computation effective 12-1-79 is \$198.44 (rate before the spouse election reduction).

