

## § 229.83

### § 229.83 Deportation.

The age DIB O/M is not payable for any month after the month the Board receives notice that the employee has been deported for a reason shown in section 202(h) of the Social Security Act. This restriction no longer applies if the employee is later legally admitted to the United States for permanent residence.

### § 229.84 Conviction for subversive activities.

If a person is convicted of subversive activities (under chapter 37, 105, or 115 of title 18 of the U.S. Code or section 4, 112, or 113 of the Internal Security Act of 1950, as amended), the court may order that earnings in the year of the conviction and previous years are to be disregarded in determining whether the person is entitled to social security benefits. These earnings would also be ignored in determining entitlement to the age or DIB O/M.

### § 229.85 Substantial gainful activity by blind employee or child.

A blind employee or child who is 55 years old or older is entitled to an O/M benefit based on disability while he or she is working in substantial gainful activity that does not require skills or ability used in his or her previous work. However, the DIB O/M or child's O/M benefit is not payable for any month in which the employee or child works in any type of substantial gainful activity which requires skills or abilities comparable to those of any gainful activity in which he or she has previously engaged with some regularity and over a substantial period of time.

## Subpart I—Payment of Overall Minimum Rate

### § 229.90 Proportionate shares of overall minimum.

When both the employee and the spouse are entitled to annuities and the overall minimum rate is higher than the railroad formula rate, the overall minimum amount must be divided between the employee and spouse. The employee receives two-thirds of the total O/M rate. The spouse

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receives one-third of the total O/M rate.

### § 229.91 Payment of the overall minimum for part of a month.

(a) *Employee annuity payable for part of a month.* If an employee annuity begins after the first day of the month, the O/M amount payable for the partial month is  $\frac{1}{30}$  of the monthly rate times the number of days in the partial month.

(b) *Spouse annuity payable for part of a month—(1) Spouse not included in O/M before beginning date of spouse annuity and O/M applies as of the spouse annuity beginning date.* If a spouse annuity begins after the first day of a month, and the spouse is not includable in the O/M before the beginning date of the spouse annuity, and the O/M rate paid to the family group, including the spouse, as of the spouse annuity beginning date exceeds the amounts payable using the benefit formulas under the Railroad Retirement Act, the amount payable to the spouse for the partial month is  $\frac{1}{30}$  of the spouse's share of the O/M rate times the number of days in the month beginning with the spouse's annuity beginning date. In such a case, if the employee annuity is payable from the first day of the month, the amount payable to the employee is:

(i) One-thirtieth of the higher of the railroad formula or the O/M rate, without the spouse included, times the number of days in the month before the spouse annuity begins, plus

(ii) One-thirtieth of the employee's share of the O/M rate, with the spouse included, times the number of days in the month beginning with the spouse's annuity beginning date.

(2) *Spouse included in O/M before beginning date of spouse annuity and the O/M continues to apply.* If a spouse annuity begins after the first day of a month, and the spouse is includable in the O/M before the beginning date of the spouse annuity, and the O/M rate paid to the family group, including the spouse, as of the spouse annuity beginning date continues to exceed the amounts payable using the benefit formulas under the Railroad Retirement Act, the amount payable to the spouse for the partial month is  $\frac{1}{30}$  of the spouse's share of the O/M rate times

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the number of days in the month beginning with the spouse's annuity beginning date. In such a case, if the employee annuity is payable from the first of the month, the amount payable to the employee is:

(i) One-thirtieth of the O/M rate, with the spouse included, times the number of days in the month before the spouse annuity begins; plus

(ii) One-thirtieth of the employee's share of the O/M rate, with the spouse included, times the number of days in the month beginning with the spouse's annuity beginning date.

(3) *O/M rate applies before beginning date of spouse annuity and the railroad formula applies as of the spouse annuity beginning date.* If a spouse annuity begins after the first day of a month and the O/M rate applies to the family group, with or without the spouse included, before the beginning date of the spouse annuity, and the O/M rate paid to the family group, including the spouse, as of the spouse annuity beginning date is less than the amounts payable using the formulas under the Railroad Retirement Act, the amount payable to the spouse for the partial month is  $\frac{1}{30}$  of the spouse's railroad formula rate times the number of days in the month beginning with the spouse's annuity beginning date. In such a case, if the employee annuity is payable from the first day of the month, the amount payable to the employee is:

(i) One-thirtieth of the O/M times the number of days in the month before the spouse annuity begins; plus

(ii) One-thirtieth of the employee's railroad formula rate times the number of days in the month beginning with the spouse's annuity beginning date.

### **PART 230—MONTHS ANNUITIES NOT PAYABLE BY REASON OF WORK**

Sec.

230.1 Statutory provisions.

230.2 Loss of annuity for month in which compensated service is rendered.

230.5 Exception concerning service to a local lodge or division.

AUTHORITY: 45 U.S.C. 231f.

SOURCE: Board Order 60-2, 25 FR 593, Jan. 23, 1960, unless otherwise noted. Redesignated at 47 FR 7656, Feb. 22, 1982.

### **§ 230.1 Statutory provisions.**

No annuity shall be paid with respect to any month in which an individual in receipt of any annuity hereunder shall render compensated service to an employer or to the last person by whom he was employed prior to the date on which the annuity began to accrue. Individuals receiving annuities shall report to the Board immediately all such compensated service. No annuity under paragraph 4 or 5 of subsection (a) of this section shall be paid to an individual with respect to any month in which the individual is under age sixty-five and is paid more than \$100 in earnings from employment or self-employment of any form: *Provided*, That for purposes of this paragraph, if a payment in any one calendar month is for accruals in more than one calendar month, such payment shall be deemed to have been paid in each of the months in which accrued to the extent accrued in such month. Any such individual under the age of sixty-five shall report to the Board any such payment of earnings for such employment or self-employment before receipt and acceptance of an annuity for the second month following the month of such payment. A deduction shall be imposed, with respect to any such individual who fails to make such report, in the annuity or annuities otherwise due the individual, in an amount equal to the amount of the annuity for each month in which he is paid such earnings in such employment or self-employment, except that the first deduction imposed pursuant to this sentence shall in no case exceed an amount equal to the amount of the annuity otherwise due for the first month with respect to which the deduction is imposed. If pursuant to the third sentence of this subsection an annuity was not paid to an individual with respect to one or more months in any calendar year, and it is subsequently established that the total amount of such individual's earnings during such year as determined in accordance with that sentence (but exclusive of earnings for services described in the first sentence of this subsection) did not exceed \$1,200, the annuity with respect to such month or months, and any deduction imposed by reason of the failure to report earnings for such month or months under the fifth sentence of this subsection, shall then be payable. If the total amount of such individual's earnings during such year (exclusive of earnings for services described in the first sentence of this subsection) is in excess of \$1,200, the number of months in such year with respect to which an annuity is not payable by reason of such third and fifth sentences shall not exceed one month for each \$100 of such excess, treating