

payment of benefits (see subpart F). However, for purposes of charging excess earnings for taxable years beginning after December 1960 or ending after June 1961, see paragraph (b) of this section and § 404.437 for reductions that apply before such charging.

(b) *Reductions, nonpayments.* (1) Reduction because of the *maximum* (see § 404.403) is made:

(i) Before reduction because of simultaneous entitlement to old-age or disability insurance benefits and to other benefits (see § 404.407);

(ii) Before reduction in benefits for age (see §§ 404.410 through 404.413);

(iii) Before adjustment necessary because an error has been made in the payment of benefits (see subpart F of this part);

(iv) Before reduction because of entitlement to certain public disability benefits provided under Federal, State, or local laws or plans (see § 404.408);

(v) Before nonpayment of an individual's benefits because he is an alien living outside the United States for 6 months (see § 404.460), or because of deportation (see § 404.464);

(vi) Before the redetermination of the amount of benefit payable to an individual who has been convicted of certain offenses (see § 404.465); and

(vii) Before suspension of benefits due to earnings (see § 404.456), for benefits payable or paid for months after December 1995 to a non-working auxiliary or survivor who resides in a different household than the working auxiliary or survivor whose benefits are suspended.

(2) Reduction of benefits because of entitlement to certain public disability benefits (see § 404.408) is made before deduction under section 203 of the Act relating to work (see §§ 404.415, 404.417, 404.451, and 404.453) and failure to have care of a child (see §§ 404.421 and 404.451).

(3) Reduction of the benefit of a spouse who is receiving a Government pension (see § 404.408(a)) is made after the withholding of payments as listed in paragraph (d)(1) of this section and after reduction because of receipt of

certain public disability benefits (paragraph (b)(2) of this section).

(c) *Alien outside the United States; deportation nonpayment—deduction.* If an individual is subject to nonpayment of a benefit for a month under § 404.460 or § 404.464, no deduction is made from his benefit for that month under § 404.415, § 404.417, or § 404.421, and no deduction is made because of that individual's work from the benefit of any person entitled or deemed entitled to benefits under § 404.420, on his earnings record, for that month.

(d) *Order of priority—deductions and other withholding provisions.* Deductions and other withholding provisions are applied in accordance with the following order of priority:

(1) Current nonpayments under §§ 404.460, 404.464, 404.465, 404.467, and 404.469;

(2) Current reductions under § 404.408;

(3) Current reductions under § 404.408a;

(4) Current deductions under §§ 404.417 and 404.421;

(5) Current withholding of benefits under § 404.456;

(6) Unpaid maritime tax deductions (§ 404.457);

(7) Withholdings to recover overpayments (see subpart F of this part);

(8) Penalty deductions under §§ 404.451 and 404.453.

[40 FR 30813, July 23, 1975, as amended at 44 FR 29047, May 18, 1979; 48 FR 37016, Aug. 16, 1983; 48 FR 46148, Oct. 11, 1983; 56 FR 41789, Aug. 23, 1991; 60 FR 8146, Feb. 10, 1995; 68 FR 15659, Apr. 1, 2003; 68 FR 40122, July 7, 2003]

**§ 404.403 Reduction where total monthly benefits exceed maximum family benefits payable.**

(a) *General.* (1) The Social Security Act limits the amount of monthly benefits that can be paid for any month based on the earnings of an insured individual. If the total benefits to which all persons are entitled on one earnings record exceed a maximum amount prescribed by law, then those benefits must be reduced so that they do not exceed that maximum.

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(2) The method of determining the total benefits payable (the *family maximum*) depends on when the insured individual died or became eligible, whichever is earlier. For purposes of this section, the year in which the insured individual becomes eligible refers generally to the year in which the individual attains age 62 or becomes disabled. However, where eligibility or death is in 1979 or later, the year of death, attainment of age 62, or beginning of current disability does not control if the insured individual was entitled to a disability benefit within the 12 month period preceding current eligibility or death. Instead the year in which the individual became eligible for the former disability insurance benefit is the year of eligibility.

(3) The benefits of an individual entitled as a divorced spouse or surviving divorced spouse will not be reduced pursuant to this section. The benefits of all other individuals entitled on the same record will be determined under this section as if no such divorced spouse or surviving divorced spouse were entitled to benefits.

(4) In any case where more than one individual is entitled to benefits as the spouse or surviving spouse of a worker for the same month, and at least one of those individuals is entitled based on a marriage not valid under State law (see §§ 404.345 and 404.346), the benefits of the individual whose entitlement is based on a valid marriage under State law will not be reduced pursuant to this section. The benefits of all other individuals entitled on the same record (unless excluded by paragraph (a)(3) of this section) will be determined under this section as if such validly married individual were not entitled to benefits.

(5) When a person entitled on a worker's earnings record is also entitled to benefits on another earnings record, we consider only the amount of benefits actually due or payable on the worker's record to the dually-entitled person when determining how much to reduce total monthly benefits payable on the worker's earnings record because of the maximum. We do not include, in total benefits payable, any amount not paid because of that person's entitlement on another earnings record (see

§ 404.407). The effect of this provision is to permit payment of up to the full maximum benefits to other beneficiaries who are not subject to a deduction or reduction. (See § 404.402 for other situations where we apply deductions or reductions before reducing total benefits for the maximum.)

*Example 1:* A wage earner, his wife and child are entitled to benefits. The wage earner's primary insurance amount is \$600.00. His maximum is \$900.00. Due to the maximum limit, the monthly benefits for the wife and child must be reduced to \$150.00 each. Their original benefit rates are \$300.00 each.

Maximum—\$900.00  
Subtract primary insurance amount—\$600.00  
Amount available for wife and child—\$300.00  
Divide by 2—\$150.00 each for wife and child

The wife is also entitled to benefits on her own record of \$120.00 monthly. This reduces her wife's benefit to \$30.00. The following table illustrates this calculation.

Wife's benefit, reduced for maximum—\$150.00  
Subtract reduction due to dual entitlement—\$120.00  
Wife's benefit—\$30.00

In computing the total benefits payable on the record, we disregard the \$120.00 we cannot pay the wife. This allows us to increase the amount payable to the child to \$270.00. The table below shows the steps in our calculation.

Amount available under maximum—\$300.00  
Subtract amount due wife after reduction due to entitlement to her own benefit—\$30.00  
Child's benefit—\$270.00

*Example 2:* A wage earner, his wife and 2 children are entitled to benefits. The wage earner's primary insurance amount is \$1,250.00. His maximum is \$2,180.00. Due to the maximum limit, the monthly benefits for the wife and children must be reduced to \$310.00 each. Their original rates (50 percent of the worker's benefit) are \$625.00 each. The following shows the calculation.

Maximum—\$2,180.00  
Subtract primary insurance amount—\$1,250.00  
Amount available for wife and children—\$930.00  
Divide by 3—\$310 each for wife and children

The children are also entitled to benefits on their own records. Child one is entitled to \$390.00 monthly and child two is entitled to \$280.00 monthly. This causes a reduction in the benefit to child one to 0.00 and the benefit to child two to \$30.00. Again, the following illustrates the calculation.

Benefit payable to child 1 reduced for maximum—\$310.00

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Subtract reduction due to dual entitlement—\$390.00  
 Benefit payable to child 1—\$0.00  
 Benefit payable to child 2, reduced for maximum—\$310.00  
 Subtract reduction for dual entitlement—\$280.00  
 Benefit payable to child 2—\$30.00

In computing the total benefits payable on the record, we consider only the benefits actually paid to the children, or \$30. This allows payment of an additional amount to the wife, increasing her benefit to \$625.00. This is how the calculation works.

Amount available under maximum for wife and children—\$930.00  
 Subtract amount due children after reduction due to entitlement to their own benefits—\$30.00  
 Amount available for wife—\$900.00  
 Amount payable to wife (original benefit)—\$625.00

*Example 3:* A wage earner, his wife and 4 children are entitled to benefits. The wage earner's primary insurance amount is \$1,250.00. His maximum is \$2,180.00. Due to the maximum limit, the monthly benefits for the wife and children must be reduced to \$186.00 each. Their original rates are \$625.00 each. This is how the calculation works.

Maximum—\$2,180.00  
 Subtract primary insurance amount—\$1,250.00  
 Amount available for wife and children—\$930.00  
 Divide by 5—\$186.00 each for wife and four children

Two children are also entitled to benefits on their own records. Child one is entitled to \$390.00 monthly and child two is entitled to \$280.00 monthly. This causes a reduction in the benefit to child one to \$0.00 and the benefit to child two to \$0.00. This calculation is as follows.

Benefit to child 1, reduced for maximum—\$186.00  
 Subtract reduction due to dual entitlement—\$390.00  
 Benefit payable to child 1—\$0.00  
 Benefit to child 2, reduced for maximum—\$186.00  
 Subtract reduction for dual entitlement—\$280.00  
 Benefit payable to child two—\$0.00

In computing the total benefits payable on the record, we disregard the \$372.00 we cannot pay the children. This allows payment of an additional amount to the wife, and the two remaining children as follows:

Amount available under maximum for wife and children—\$930.00  
 Subtract amount due child one and child two after reduction due to entitlement to their own benefits—\$0.00

Amount available for wife and the other two children—\$930.00  
 Amount payable to the wife and each of the remaining two children—\$310.00

(b) *Eligibility or death before 1979.* Where more than one individual is entitled to monthly benefits for the same month on the same earnings record, a reduction in the total benefits payable for that month may be required (except in cases involving a *saving clause*—see § 404.405) if the maximum family benefit is exceeded. The maximum is exceeded if the total of the monthly benefits exceeds the amount appearing in column V of the applicable table in section 215(a) of the Act on the line on which appears in column IV the primary insurance amount of the insured individual whose earnings record is the basis for the benefits payable. Where the maximum is exceeded, the total benefits for each month after 1964 are reduced to the amount appearing in column V. However, when any of the persons entitled to benefits on the insured individual's earnings would, except for the limitation described in § 404.353(b), be entitled to child's insurance benefits on the basis of the earnings record of one or more other insured individuals, the total benefits payable may not be reduced to less than the smaller of—

(1) The sum of the maximum amounts of benefits payable on the basis of the earnings records of all such insured individuals, or

(2) The last figure in column V of the applicable table in (or deemed to be in) section 215(a) of the Act. The *applicable* table refers to the table which is effective for the month the benefit is payable.

(c) *Eligible for old-age insurance benefits or dies in 1979.* If an insured individual becomes eligible for old-age insurance benefits or dies in 1979, the monthly maximum is as follows—

(1) 150 percent of the first \$230 of the individual's primary insurance amount, plus

(2) 272 percent of the primary insurance amount over \$230 but not over \$332, plus

(3) 134 percent of the primary insurance amount over \$332 but not over \$433, plus

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(4) 175 percent of the primary insurance amount over \$433.

If the total of this computation is not a multiple of \$0.10, it will be rounded to the next lower multiple of \$0.10.

(d) *Eligible for old-age insurance benefits or dies after 1979.* (1) If an insured individual becomes eligible for old-age insurance benefits or dies after 1979, the monthly maximum is computed as in paragraph (c) of this section. However, the dollar amounts shown there will be updated each year as average earnings rise. This updating is done by first dividing the average of the total wages (see §404.203(m)) for the second year before the individual dies or becomes eligible, by the average of the total wages for 1977. The result of that computation is then multiplied by each dollar amount in the formula in paragraph (c) of this section. Each updated dollar amount will be rounded to the nearer dollar; if the amount is an exact multiple of \$0.50 (but not of \$1), it will be rounded to the next higher \$1.

(2) Before November 2 of each calendar year after 1978, the Commissioner will publish in the FEDERAL REGISTER the formula and updated dollar amounts to be used for determining the monthly maximum for the following year.

(d-1) *Entitled to disability insurance benefits after June 1980.* If you first become eligible for old-age or disability insurance benefits after 1978 and first entitled to disability insurance benefits after June 1980, we compute the monthly family maximum under a formula which is different from that in paragraphs (c) and (d) of this section. The computation under the new formula is as follows:

(1) We take 85 percent of your average indexed monthly earnings and compare that figure with your primary insurance amount (see §404.212 of this part). We work with the larger of these two amounts.

(2) We take 150 percent of your primary insurance amount.

(3) We compare the results of paragraphs (d-1) (1) and (2) of this section. The smaller amount is the monthly family maximum. As a result of this rule, the entitled spouse and children of some workers will not be paid any benefits because the family maximum

does not exceed the primary insurance amount.

(e) *Person entitled on more than one record during years after 1978 and before 1984.* (1) If any of the persons entitled to monthly benefits on the earnings record of an insured individual would, except for the limitation described in §404.353(b), be entitled to child's insurance benefits on the earnings record of one or more other insured individuals, the total benefits payable may not be reduced to less than the smaller of—(i) the sum of the maximum amounts of benefits payable on the earnings records of all the insured individuals, or (ii) 1.75 times the highest primary insurance amount possible for that month based on the average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined for that year.

(2) If benefits are payable on the earnings of more than one individual and the primary insurance amount of one of the insured individuals was computed under the provisions in effect before 1979 and the primary insurance amount of the others was computed under the provisions in effect after 1978, the maximum monthly benefits cannot be more than the amount computed under paragraph (e)(1) of this section.

(f) *Person entitled on more than one record for years after 1983.* (1) If any person for whom paragraphs (c) and (d) would apply is entitled to monthly benefits on the earnings record of an insured individual would, except for the limitation described in §404.353(b), be entitled to child's insurance benefits on the earnings record of one or more other insured individuals, the total benefits payable to all persons on the earnings record of any of those insured individuals may not be reduced to less than the smaller of:

(i) The sum of the maximum amounts of benefits payable on the earnings records of all the insured individuals, or

(ii) 1.75 times the highest primary insurance amount possible for January 1983, or if later, January of the year that the person becomes entitled or re-entitled on more than one record.

This highest primary insurance amount possible for that year will be

based on the average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined for that year. Thereafter, the total monthly benefits payable to persons on the earnings record of those insured individuals will then be increased only when monthly benefits are increased because of cost-of-living adjustments (see § 404.270ff).

(2) If benefits are payable on the earnings of more than one individual and the primary insurance amount of one of the insured individuals was computed under the provisions in effect before 1979 and the primary insurance amount of the other was computed under the provisions in effect after 1978, the maximum monthly benefits cannot be more than the amount computed under paragraph (f)(1) of this section.

(g) *Person previously entitled to disability insurance benefits.* If an insured individual who was previously entitled to disability insurance benefits becomes entitled to a "second entitlement" as defined in § 404.250, or dies, after 1995, and the insured individual's primary insurance amount is determined under §§ 404.251(a)(1), 404.251(b)(1), or 404.252(b), the monthly maximum during the second entitlement is determined under the following rules:

(1) If the primary insurance amount is determined under §§ 404.251(a)(1) or 404.251(b)(1), the monthly maximum equals the maximum in the last month of the insured individual's earlier entitlement to disability benefits, increased by any cost-of-living or ad hoc increases since then.

(2) If the primary insurance amount is determined under § 404.252(b), the monthly maximum equals the maximum in the last month of the insured individual's earlier entitlement to disability benefits.

(3) Notwithstanding paragraphs (g)(1) and (g)(2) of this section, if the second entitlement is due to the insured individual's retirement or death, and the monthly maximum in the last month of the insured individual's earlier entitlement to disability benefits was computed under paragraph (d-1) of this section, the monthly maximum is equal to the maximum that would have been de-

termined for the last month of such earlier entitlement if computed without regard for paragraph (d-1) of this section.

[45 FR 1611, Jan. 8, 1980, as amended at 46 FR 25601, May 8, 1981; 48 FR 46148, Oct. 11, 1983; 51 FR 12606, Apr. 14, 1986; 58 FR 64892, Dec. 10, 1993; 62 FR 38450, July 18, 1997; 64 FR 17101, Apr. 8, 1999; 64 FR 57775, Oct. 27, 1999; 65 FR 16813, Mar. 30, 2000]

**§ 404.404 How reduction for maximum affects insured individual and other persons entitled on his earnings record.**

If a reduction of monthly benefits is required under the provisions of § 404.403, the monthly benefit amount of each of the persons entitled to a monthly benefits on the same earnings record (with the exception of the individual entitled to old-age or disability insurance benefits) is proportionately reduced so that the total benefits that can be paid in 1 month (including an amount equal to the primary insurance amount of the old-age or disability insurance beneficiary, when applicable) does not exceed the maximum family benefit (except as provided in § 404.405 where various savings clause provisions are described).

**§ 404.405 Situations where total benefits can exceed maximum because of "savings clause."**

The following provisions are *savings clauses* and describe exceptions to the rules concerning the maximum amount payable on an individual's earnings record in a month as described in § 404.403. The effect of a *savings clause* is to avoid lowering benefit amounts or to guarantee minimum increases to certain persons entitled on the earnings record of the insured individual when a statutory change has been made that would otherwise disadvantage them. The reduction described in § 404.403 does not apply in the following instances:

(a)-(m) [Reserved]

(n) *Months after August 1972.* The reduction described in § 404.403(a) shall not apply to benefits for months after August 1972 where two or more persons were entitled to benefits for August 1972 based upon the filing of an application in August 1972 or earlier and the