§ 404.435 Excess earnings; months to which excess earnings can or cannot be charged; grace year defined.

(a) Monthly benefits payable. We will not reduce your benefits on account of excess earnings for any month in which you, the beneficiary—

(1) Were not entitled to a monthly benefit;

(2) Were considered not entitled to benefits (due to non-covered work outside the United States or no child in care, as described in § 404.436);

(3) Were at full retirement age (as described in § 404.409(a));

(4) Were entitled to payment of a disability insurance benefit as defined in § 404.315; (see §§ 404.1592 and 404.1592a(b) which describes the work test if you are entitled to disability benefits);

(5) Are age 18 or over and entitled to a child’s insurance benefit based on disability;

(6) Are entitled to a widow’s or widower’s insurance benefit based on disability; or

(7) Had a non-service month in your grace year (see paragraph (b) of this section). A non-service month is any month in which you, while entitled to retirement or survivors benefits:

(i) Do not work in self-employment (see paragraphs (c) and (d) of this section);

(ii) Do not perform services for wages greater than the monthly exempt amount set for that month (see paragraph (e) of this section and § 404.430); and

(iii) Do not work in non-covered remunerative activity on 7 or more days in a month while outside the United States. A non-service month occurs even if there are no excess earnings in the year.

(b) Grace year defined. (1) A beneficiary’s initial grace year is the first taxable year in which the beneficiary has a non-service month (see paragraph (a)(7) of this section) in or after the month in which the beneficiary is entitled to a retirement, auxiliary, or survivor’s benefit.

(2) A beneficiary may have another grace year each time his or her entitlement to one type of benefit ends and, after a break in entitlement of at least one month, the beneficiary becomes entitled to a different type of retirement or survivors benefit. The new grace year would then be the taxable year in which the first non-service month occurs after the break in entitlement.

(3) For purposes of determining whether a given year is a beneficiary’s grace year, we will not count as a non-service month, a month that occurred while the beneficiary was entitled to disability benefits under section 223 of the Social Security Act or as a disabled widow, widower, or child under section 202.

(4) A beneficiary entitled to child’s benefits, to spouse’s benefits before age 62 (entitled only by reason of having a child in his or her care), or to mother’s or father’s benefits is entitled to a termination grace year in any year the beneficiary’s entitlement to these types of benefits terminates. This provision does not apply if the termination is because of death or if the beneficiary is entitled to a Social Security benefit for the month following the month in which the entitlement ended. The beneficiary is entitled to a termination grace year in addition to any other grace year(s) available to him or her.

Example 1: Don, age 62, will retire from his regular job in April of next year. Although he will have earned $15,000 for January-April of that year and plans to work part time, he will not earn over the monthly exempt amount after April. Don’s taxable year is the calendar year. Since next year will be the first year in which he has a non-service month while entitled to benefits, it will be his grace year and he will be entitled to the monthly earnings test for that year only. He will receive benefits for all months in which he does not earn over the monthly exempt amount (May-December) even though his
§ 404.436 Excess earnings; months to which excess earnings cannot be charged because individual is deemed not entitled to benefits.

Under the annual earnings test, excess earnings (as described in §404.430) are not charged to any month in which an individual is deemed not entitled to a benefit. A beneficiary (i.e., the insured individual or any person entitled or deemed entitled on the individual’s earnings record) is deemed not entitled to a benefit for a month if he is subject to a deduction for that month because of:

(a) Engaging in noncovered remunerative activity outside the United States (as described in §§404.417 and 404.418); or
(b) Failure to have a child in his or her care (as described in §404.421).

§ 404.437 Excess earnings; benefit rate subject to deductions because of excess earnings.

We will further reduce your benefits (other than a disability insurance benefit) because of your excess earnings (see §404.430), after your benefits may have been reduced because of the following:

(a) The family maximum (see §§404.403 and 404.404), which applies to entitled beneficiaries remaining after exclusion of beneficiaries deemed not entitled under §404.436 (due to a deduction for engaging in non-covered remunerative activity outside the United States or failure to have a child in one’s care);
(b) Your entitlement to benefits (see §404.410) for months before you reach full retirement age (see §404.409(a)) (this applies only to old-age, wife’s, widow’s, widower’s or husband’s benefits);
(c) Your receipt of benefits on your own earnings record, which reduces (see §404.407) your entitlement (or deemed entitlement; see §404.420) to benefits on another individual’s earnings record; and
(d) Your entitlement to benefits payable (or deemed payable) to you based on the earnings record of an individual.