

§ 404.408 Reduction of benefits based on disability on account of receipt of certain other disability benefits provided under Federal, State, or local laws or plans.

(a) *When reduction required.* Under section 224 of the Act, a disability insurance benefit to which an individual is entitled under section 223 of the Act for a month (and any monthly benefit for the same month payable to others under section 202 on the basis of the same earnings record) is reduced (except as provided in paragraph (b) of this section) by an amount determined under paragraph (c) of this section if:

(1) The individual first became entitled to disability insurance benefits after 1965 but before September 1981 based on a period of disability that began after June 1, 1965, and before March 1981, and

(i) The individual entitled to the disability insurance benefit is also entitled to periodic benefits under a workers' compensation law or plan of the United States or a State for that month for a total or partial disability (whether or not permanent), and

(ii) The Commissioner has, in a month before that month, received a notice of the entitlement, and

(iii) The individual has not attained age 62, or

(2) The individual first became entitled to disability insurance benefits after August 1981 based on a disability that began after February 1981, and

(i) The individual entitled to the disability insurance benefit is also, for that month, concurrently entitled to a periodic benefit (including workers' compensation or any other payments based on a work relationship) on account of a total or partial disability (whether or not permanent) under a law or plan of the United States, a State, a political subdivision, or an instrumentality of two or more of these entities, and

(ii) The individual has not attained full retirement age as defined in § 404.409.

(b) *When reduction not made.* (1) The reduction of a benefit otherwise required by paragraph (a)(1) of this section is not made if the workers' compensation law or plan under which the periodic benefit is payable provides for

the reduction of such periodic benefit when anyone is entitled to a benefit under title II of the Act on the basis of the earnings record of an individual entitled to a disability insurance benefit under section 223 of the Act.

(2) The reduction of a benefit otherwise required by paragraph (a)(2) of this section is not to be made if:

(i) The law or plan under which the periodic public disability benefit is payable provides for the reduction of that benefit when anyone is entitled to a benefit under title II of the Act on the basis of the earnings record of an individual entitled to a disability insurance benefit under section 223 of the Act and that law or plan so provided on February 18, 1981. (The reduction required by paragraph (a)(2) of this section will not be affected by public disability reduction provisions not actually in effect on this date or by changes made after February 18, 1981, to provisions that were in effect on this date providing for the reduction of benefits previously not subject to a reduction); or

(ii) The benefit is a Veterans Administration benefit, a public disability benefit (except workers' compensation) payable to a public employee based on employment covered under Social Security, a public benefit based on need, or a wholly private pension or private insurance benefit.

(c) *Amount of reduction—*(1) *General.* The total of benefits payable for a month under sections 223 and 202 of the Act to which paragraph (a) of this section applies is reduced monthly (but not below zero) by the amount by which the sum of the monthly disability insurance benefits payable on the disabled individual's earnings record and the other public disability benefits payable for that month exceeds the higher of:

(i) Eighty percent of his *average current earnings*, as defined in paragraph (c)(3) of this section, or

(ii) The total of such individual's disability insurance benefit for such month and all other benefits payable for such month based on such individual's earnings record, prior to reduction under this section.

(2) *Limitation on reduction.* In no case may the total of monthly benefits payable for a month to the disabled worker and to the persons entitled to benefits for such month on his earnings record be less than:

(i) The total of the benefits payable (after reduction under paragraph (a) of this section) to such beneficiaries for the first month for which reduction under this section is made, and

(ii) Any increase in such benefits which is made effective for months after the first month for which reduction under this section is made.

(3) *Average current earnings defined.* (i) Beginning January 1, 1979, for purposes of this section, an individual's *average current earnings* is the largest of either paragraph (c)(3)(i) (a), (b) or (c) of this section (after reducing the amount to the next lower multiple of \$1 when the amount is not a multiple of \$1):

(A) The average monthly wage (determined under section 215(b) of the Act as in effect prior to January 1979) used for purposes of computing the individual's disability insurance benefit under section 223 of the Act;

(B) One-sixtieth of the total of the individual's wages and earnings from self-employment, without the limitations under sections 209(a) and 211(b)(1) of the Act (see paragraph (c)(3)(ii) of this section), for the 5 consecutive calendar years after 1950 for which the wages and earnings from self-employment were highest; or

(C) One-twelfth of the total of the individual's wages and earnings from self-employment, without the limitations under sections 209(a) and 211(b)(1) of the Act (see paragraph (c)(3)(ii) of this section), for the calendar year in which the individual had the highest wages and earnings from self-employment during the period consisting of the calendar year in which the individual became disabled and the 5 years immediately preceding that year. Any amount so computed which is not a multiple of \$1 is reduced to the next lower multiple of \$1.

(ii) *Method of determining calendar year earnings in excess of the limitations under sections 209(a) and 211(b)(1) of the Act.* For the purposes of paragraph (c)(3)(i) of this section, the extent by which the wages or earnings from self-

employment of an individual exceed the maximum amount of earnings creditable under sections 209(a) and 211(b)(1) of the Act in any calendar year after 1950 and before 1978 will ordinarily be estimated on the basis of the earnings information available in the records of Administration. (See subpart I of this part.) If an individual provides satisfactory evidence of his actual earnings in any year, the extent, if any, by which his earnings exceed the limitations under sections 209(a) and 211(b)(1) of the Act shall be determined by the use of such evidence instead of by the use of estimates.

(4) *Reentitlement to disability insurance benefits.* If an individual's entitlement to disability insurance benefits terminates and such individual again becomes entitled to disability insurance benefits, the amount of the reduction is again computed based on the figures specified in this paragraph (c) applicable to the subsequent entitlement.

(5) *Computing disability insurance benefits.* When reduction is required, the total monthly Social Security disability insurance benefits payable after reduction can be more easily computed by subtracting the monthly amount of the other public disability benefit from the higher of paragraph (c)(1) (i) or (ii). This is the method employed in the examples used in this section.

(d) *Items not counted for reduction.* Amounts paid or incurred, or to be incurred, by the individual for medical, legal, or related expenses in connection with the claim for public disability payments (see § 404.408 (a) and (b)) or the injury or occupational disease on which the public disability award or settlement agreement is based, are excluded in computing the reduction under paragraph (a) of this section to the extent they are consonant with the applicable Federal, State, or local law or plan and reflect either the actual amount of expenses already incurred or a reasonable estimate, given the circumstances in the individual's case, of future expenses. Any expenses not established by evidence required by the Administration or not reflecting a reasonable estimate of the individual's actual future expenses will not be excluded. These medical, legal, or related

expenses may be evidenced by the public disability award, compromise agreement, a court order, or by other evidence as the Administration may require. This other evidence may consist of:

(1) A detailed statement by the individual's attorney, physician, or the employer's insurance carrier; or

(2) Bills, receipts, or canceled checks; or

(3) Other clear and convincing evidence indicating the amount of expenses; or

(4) Any combination of the foregoing evidence from which the amount of expenses may be determinable.

(e) *Certification by individual concerning eligibility for public disability benefits.* Where it appears that an individual may be eligible for a public disability benefit which would give rise to a reduction under paragraph (a) of this section, the individual may be required, as a condition of certification for payment of any benefit under section 223 of the Act to any individual for any month, and of any benefit under section 202 of the Act for any month based on such individual's earnings record, to furnish evidence as requested by the Administration and to certify as to:

(1) Whether he or she has filed or intends to file any claim for a public disability benefit, and

(2) If he or she has so filed, whether there has been a decision on the claim. The Commissioner may rely, in the absence of evidence to the contrary, upon a certification that he or she has not filed and does not intend to file such a claim, or that he or she has filed and no decision has been made, in certifying any benefit for payment pursuant to section 205(i) of the Act.

(f) *Verification of eligibility or entitlement to a public disability benefit under paragraph (a).* Section 224 of the Act requires the head of any Federal agency to furnish the Commissioner information from the Federal agency's records which is needed to determine the reduction amount, if any, or verify other information to carry out the provisions of this section. The Commissioner is authorized to enter into agreements with States, political subdivisions, and other organizations that administer a

law or plan of public disability benefits in order to obtain information that may be required to carry out the provisions of this section.

(g) *Public disability benefit payable on other than a monthly basis.* Where public disability benefits are paid periodically but not monthly, or in a lump sum as a commutation of or a substitute for periodic benefits, such as a compromise and release settlement, the reduction under this section is made at the time or times and in the amounts that the Administration determines will approximate as nearly as practicable the reduction required under paragraph (a) of this section.

(h) *Priorities.* (1) For an explanation of when a reduction is made under this section where other reductions, deductions, etc., are involved, see § 404.402.

(2) Whenever a reduction in the total of benefits for any month based on an individual's earnings record is made under paragraph (a) of this section, each benefit, except the disability insurance benefit, is first proportionately decreased. Any excess reduction over the sum of all the benefits, other than the disability insurance benefit, is then applied to the disability insurance benefit.

Example 1: Effective September 1981, Harold is entitled to a monthly disability primary insurance amount of \$507.90 and a monthly public disability benefit of \$410.00 from the State. Eighty percent of Harold's average current earnings is \$800.00. Because this amount (\$800.00) is higher than Harold's disability insurance benefit (\$507.90), we subtract Harold's monthly public disability benefit (\$410.00) from eighty percent of his average current earnings (\$800.00). This leaves Harold a reduced monthly disability benefit of \$390.00.

Example 2: In September 1981, Tom is entitled to a monthly disability primary insurance amount of \$559.30. His wife and two children are also entitled to monthly benefits of \$93.20 each. The total family benefit is \$838.90. Tom is also receiving a monthly workers' compensation benefit of \$500.00 from the State. Eighty percent of Tom's average current earnings is \$820.10. Because the total family benefit (\$838.90) is higher than 80 percent of the average current earnings (\$820.10), we subtract the monthly workers' compensation benefit (\$500.00) from the total family benefit (\$838.90), leaving \$338.90 payable. This means the monthly benefits to Tom's wife and children are reduced to zero,

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and Tom's monthly disability benefit is reduced to \$338.90.

(i) *Effect of changes in family composition.* The addition or subtraction in the number of beneficiaries in a family may cause the family benefit to become, or cease to be, the applicable limit for reduction purposes under this section. When the family composition changes, the amount of the reduction is recalculated as though the new number of beneficiaries were entitled for the first month the reduction was imposed. If the applicable limit both before and after the change is 80 percent of the average current earnings and the limitation on maximum family benefits is in effect both before and after the change, the amount payable remains the same and is simply redistributed among the beneficiaries entitled on the same earnings record.

Example 1: Frank is receiving \$500.00 a month under the provisions of a State workers' compensation law. He had a prior period of disability which terminated in June 1978. In September 1981, Frank applies for a second period of disability and is awarded monthly disability insurance benefits with a primary insurance amount of \$370.20. His child, Doug, qualifies for benefits of \$135.10 a month on Frank's earnings record. The total family benefits is \$505.30 monthly.

Frank's average monthly wage (as used to compute the primary insurance amount) is \$400.00; eighty percent of his average current earnings (computed by using the 5 consecutive years in which his earnings were highest) is \$428.80 (80% of \$536.00); eighty percent of Frank's average current earnings (computed by using the 1 calendar year in which his earnings were highest) is \$509.60 (80% of \$637.00). The highest value for 80 percent of average current earnings is therefore \$509.60 (80%). Since this is higher than the total family benefit (\$505.30), the \$509.60 is the applicable limit in determining the amount of the reduction (or offset). The amount payable after the reduction is—

80% of Frank's average current earnings ...	\$509.60
Frank's monthly workers' compensation benefit	- 500.00
Monthly benefit payable to Frank	9.60

No monthly benefits are payable to Doug because the reduction is applied to Doug's benefit first. In December 1981, another child, Mike, becomes entitled on Frank's earnings record. The monthly benefit to each child before reduction is now \$109.10, the amount payable when there are two beneficiaries in addition to the wage earner. Thus, the total family benefit becomes

\$588.40. Because this is now higher than \$509.60 (80% of Frank's average current earnings), \$588.40 becomes the applicable limit in determining the amount of reduction. The amount payable after the increase in the total family benefit is—

The new total family benefit	\$588.40
Frank's monthly workers' compensation rate	- 500.00
Monthly benefit payable to Frank	88.40

No monthly benefits are payable to either child because the reduction (or offset) is applied to the family benefits first.

Example 2: Jack became entitled to disability insurance benefits in December 1973 (12/73), with a primary insurance amount (PIA) of \$220.40. He was also receiving a workers' compensation benefit. An offset was imposed against the disability insurance benefit. By June 1977 (6/77), Jack's PIA had increased to \$298.00 because of several statutory benefit increases. In December 1977 (12/77), his wife, Helen, attained age 65 and filed for unreduced wife's benefits. (She was not entitled to a benefit on her own earnings record.) This benefit was terminated in May 1978 (5/78), at her death. Helen's benefit was computed back to 12/73 as though she were entitled in the first month that offset was imposed against Jack. Since there were no other beneficiaries entitled and Helen's entire monthly benefit amount is subject to offset, the benefit payable to her for 12/77 through April 1978 (4/78), would be \$38.80. This gives Helen the protected statutory benefit increases since 12/73. The table below shows how Helen's benefit was computed beginning with the first month offset was imposed.

Month of entitlement/ statutory increase	Jack's PIA	Helen's benefit prior to off- set	Helen's statutory increase
December 1973	\$220.40	\$110.20
March 1974	236.00	118.00	\$7.80
June 1974	244.80	122.40	+ 4.40
June 1975	264.40	132.20	+ 9.80
June 1976	281.40	140.70	+ 8.50
June 1977	298.00	149.00	+ 8.30
December 1977 through April 1978 ¹	38.80

¹ Monthly benefit payable to Helen.

(j) *Effect of social security disability insurance benefit increases.* Any increase in benefits due to a recomputation or a statutory increase in benefit rates is not subject to the reduction for public disability benefits under paragraph (a) and does not change the amount to be deducted from the family benefit. The increase is simply added to what amount, if any, is payable. If a new

beneficiary becomes entitled to monthly benefits on the same earnings record after the increase, the amount of the reduction is redistributed among the new beneficiaries entitled under section 202 of the Act and deducted from their current benefit rate.

Example: In March 1981, Chuck became entitled to disability insurance benefits with a primary insurance amount of \$362.40 a month. He has a wife and two children who are each entitled to a monthly benefit of \$60.40. Chuck is receiving monthly disability compensation from a worker's compensation plan of \$410.00. Eighty percent of his average current earnings is \$800.00. Because this is higher than the total family benefit (\$543.60), \$800.00 is the applicable limit in computing the amount of reduction. The amount of monthly benefits payable after the reduction is—

Applicable limit	\$800.00
Chuck's monthly disability compensation	— 410.00
Total amount payable to Chuck and the family after reduction	\$390.00
Amount payable to Chuck	— 362.40
Total amount payable to the family	\$27.60
\$9.20 payable to each family member equals	\$27.60
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In June 1981, the disability benefit rates were raised to reflect an increase in the cost-of-living. Chuck is now entitled to \$403.00 a month and each family member is entitled to \$67.20 a month (an increase of \$6.80 to each family member). The monthly amounts payable after the cost-of-living increase are now \$403.00 to Chuck and \$16.00 to each family member (\$9.20 plus the \$6.80 increase).

In September 1981, another child becomes entitled to benefits based on Chuck's earnings record. The monthly amount payable to the family (excluding Chuck) must now be divided by 4:

\$6.90 payable to each family member equals	\$27.60
.....	4

The June 1981 cost-of-living increase is added to determine the amount payable. Chuck continues to receive \$403.00 monthly. Each family member receives a cost-of-living increase of \$5.10. Thus, the amount payable to each is \$12.00 in September 1981 (\$6.90 plus the \$5.10 increase). (See Example 2 under (i).)

(k) *Effect of changes in the amount of the public disability benefit.* Any change in the amount of the public disability benefit received will result in a recalculation of the reduction under paragraph (a) and, potentially, an adjustment in the amount of such reduction.

If the reduction is made under paragraph (a)(1) of this section, any increased reduction will be imposed effective with the month after the month the Commissioner received notice of the increase in the public disability benefit (it should be noted that only workers' compensation can cause this reduction). Adjustments due to a decrease in the amount of the public disability benefit will be effective with the actual date the decreased amount was effective. If the reduction is made under paragraph (a)(2) of this section, any increase or decrease in the reduction will be imposed effective with the actual date of entitlement to the new amount of the public disability benefit.

Example: In September 1981, based on a disability which began March 12, 1981, Theresa became entitled to Social Security disability insurance benefits with a primary insurance amount of \$445.70 a month. She had previously been entitled to Social Security disability insurance benefits from March 1967 through July 1969. She is receiving a temporary total workers' compensation payment of \$227.50 a month. Eighty percent of her average current earnings is \$610.50. The amount of monthly disability insurance benefit payable after reduction is—

80 percent of Theresa's average current earnings	\$610.50
Theresa's monthly workers' compensation payment	— 227.50
Total amount payable to Theresa after reduction	383.00

On November 15, 1981, the Commissioner was notified that Theresa's workers' compensation rate was increased to \$303.30 a month effective October 1, 1981. This increase reflected a cost-of-living adjustment granted to all workers' compensation recipients in her State. The reduction to her monthly disability insurance benefit is recomputed to take this increase into account—

80 percent of Theresa's average current earnings	\$610.50
Theresa's monthly workers' compensation payment beginning October 1, 1981	— 303.30

Total new amount payable to Theresa beginning October 1981 after recalculation of the reduction

\$307.20

Effective January, 1, 1982, Theresa's workers' compensation payment is decreased to \$280.10 a month when she begins to receive a permanent partial payment. The reduction to her monthly disability insurance benefit is again recalculated to reflect her decreased workers' compensation amount—

80 percent of Theresa's average current earnings	\$610.50
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Theresa's monthly workers' compensation payment beginning January 1, 1982	- 280.10
Total new amount payable to Theresa beginning January 1982 after recalculation of the reduction	\$330.40

If, in the above example, Theresa had become entitled to disability insurance benefits in August 1981, the increased reduction to her benefit, due to the October 1, 1981 increase in her workers' compensation payment, would have been imposed beginning with December 1981, the month after the month she notified the Social Security Administration of the increase. The later decrease in her workers' compensation payment would still affect her disability insurance benefit beginning with January 1982.

(1) *Redetermination of benefits*—(1) *General*. In the second calendar year after the year in which reduction under this section in the total of an individual's benefits under section 223 of the Act and any benefits under section 202 of the Act based on his or her wages and self-employment income is first required (in a continuous period of months), and in each third year thereafter, the amount of those benefits which are still subject to reduction under this section are redetermined, provided this redetermination does not result in any decrease in the total amount of benefits payable under title II of the Act on the basis of the workers' wages and self-employment income. The redetermined benefit is effective with the January following the year in which the redetermination is made.

(2) *Average current earnings*. In making the redetermination required by paragraph (1)(1) of this section, the individual's average current earnings (as defined in paragraph (c)(3) of this section) is deemed to be the product of his average current earnings as initially determined under paragraph (c)(3) of this section and:

(i) The ratio of the average of the total wages (as defined in § 404.1049) of all persons for whom wages were reported to the Secretary of the Treasury or his delegate for the calendar year before the year in which the redetermination is made, to the average of the total wages of all person reported to the Secretary of the Treasury or his delegate for calendar year 1977 or, if later, the calendar year before the year in which the reduction was first com-

puted (but not counting any reduction made in benefits for a previous period of disability); and

(ii) In any case in which the reduction was first computed before 1978, the ratio of the average of the taxable wages reported to the Commissioner of Social Security for the first calendar quarter of 1977 to the average of the taxable wages reported to the Commissioner of Social Security for the first calendar quarter of the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability). Any amount determined under the preceding two sentences which is not a multiple of \$1 is reduced to the next lower multiple of \$1.

(3) *Effect of redetermination*. Where the applicable limit on total benefits previously used was 80 percent of the average current earnings, a redetermination under this paragraph may cause an increase in the amount of benefits payable. Also, where the limit previously used was the total family benefit, the redetermination may cause the average current earnings to exceed the total family benefit and thus become the new applicable limit. If for some other reason (such as a statutory increase or recomputation) the benefit has already been increased to a level which equals or exceeds the benefit resulting from a redetermination under this paragraph, no additional increase is made. A redetermination is designed to bring benefits into line with current wage levels when no other change in payments has done so.

Example: In October 1978, Alice became entitled to disability insurance benefits with a primary insurance amount of \$505.10. Her two children were also entitled to monthly benefits of \$189.40 each. Alice was also entitled to monthly disability compensation benefits of \$667.30 from the State. Eighty percent of Alice's average current earnings is \$1340.80, and that amount is the applicable limit. The amount of monthly benefits payable after the reduction is—

Applicable limit	\$1,340.80
Alice's State disability compensation benefit	- 667.30
Total benefits payable to Alice and both children after reduction	\$673.50
Alice's disability insurance benefit	- 505.10
Payable to the children	\$168.40

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\$84.20 payable to each child after reduction equals	\$168.40
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In June 1979 and June 1980, cost-of-living increases in Social Security benefits raise Alice's benefit by \$50.10 (to \$555.20) and \$79.40 (to \$634.60) respectively. The children's benefits (before reduction) are each raised by \$18.80 (to \$208.20) and \$29.80 (to \$238.00). These increases in Social Security benefits are not subject to the reduction (*i.e.*, offset).

In 1980, Alice's average current earnings are redetermined as required by law. The offset is recalculated, and if the amount payable to the family is higher than the current amount payable to the family, that higher amount becomes payable the following January (*i.e.*, January 1981). The current amount payable to the family after the reduction is recalculated—

Alice's 1978 benefit after reduction	\$505.10
Alice's cost-of-living increase in June 1979	+ 50.10
Alice's cost-of-living increase in June 1980	+ 79.40
One child's 1978 benefit after reduction	+ 84.20
That child's cost-of-living increase in June 1979	+ 18.70
That child's cost-of-living increase in June 1980	+ 29.70
The other child's 1978 benefit after reduction	+ 84.20
The other child's cost-of-living increase in June 1979	+ 18.70
The other child's cost-of-living increase in June 1980	+ 29.70

Total amount payable to the family after reduction in January 1981	899.80
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The amount payable to the family after reduction is then recalculated using the redetermined average current earnings—

Average current earnings before redetermination	\$1,676.00
Redetermination ratio effective for January 1981	× 1.174

Redetermined average current earnings	\$1,967.00
.....	× 80%

80% of the redetermined average current earnings	\$1,573.60
Alice's State disability compensation benefit	– 667.30

Total benefits payable to the family after offset	\$906.30
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We then compare the total amount currently being paid to the family (\$899.80) to the total amount payable after the redetermination (\$906.30). In this example, the redetermination yields a higher amount and, therefore, becomes payable the following January (*i.e.*, January 1981). Additional computations are required to determine the amount that will be paid to each family member—

Total benefits payable to the family using the redetermined average current earnings	\$906.30
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Total cost-of-living increases to both children	– 96.80
Balance payable	809.50
Alice's current benefit amount before reduction	– 634.60
Payable to the children	174.90
Total cost-of-living increases to both children	+ 96.80
Total payable to children after reduction ..	271.70
\$135.90 (rounded from \$135.85) payable to each child equals	\$271.70

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[32 FR 19159, Dec. 20, 1967; 33 FR 3060, Feb. 16, 1968, as amended at 37 FR 3425, Feb. 16, 1972; 48 FR 37017, Aug. 16, 1983; 48 FR 38814, Aug. 26, 1983; 62 FR 38450, July 18, 1997; 81 FR 19033, Apr. 4, 2016]

§ 404.408a Reduction where spouse is receiving a Government pension.

(a) *General*—(1) *Terms used in this section.* (i) *Government pension* means any monthly periodic benefit (or equivalent) you receive that is based on your Federal, State, or local government employment.

(ii) *Noncovered employment* means Federal, State, or local government employment that Social Security did not cover and for which you did not pay Social Security taxes. For the purposes of this section, we consider your Federal, State, or local government employment to be noncovered employment if you pay only Medicare taxes.

(iii) *Spouse's benefits* are Social Security benefits you receive as a wife, husband, widow(er), mother, father, divorced spouse, or surviving divorced spouse.

(2) *When reduction is required.* We will reduce your spouse's benefit for each month that you receive a government pension based on noncovered employment, unless one of the exceptions in paragraph (b) of this section applies. When we consider whether you receive a government pension based on noncovered employment, we consider the entire month to be a month covered by Social Security if you worked for a Federal, State, or local government employer in a position covered by Social Security for at least 1 day in that month and there was no noncovered employment that month under the same pension plan.

(b) *Exceptions.* The reduction does not apply: