

**§ 229.21 When a spouse is eligible for an increase under the overall minimum.**

Normally, only the employee annuity receives the amount of the overall minimum increase. However, a spouse annuity may be increased under the O/M in cases in which the O/M benefit amount exceeds the total amount of the employee and spouse annuity.

**§ 229.22 Beginning date of increase under overall minimum.**

(a) *Employee age O/M.* An increase under the overall minimum in an employee annuity based on age can be paid beginning with the later of:

(1) The first day of the first full month throughout which the employee is age 62; or

(2) The beginning date of the employee's age or disability annuity; or

(3) The first month of the quarter in which the employee becomes insured under section 214 or 227 of the Social Security Act based on railroad and social security earnings; or

(4) The month the employee attains retirement age, if a DIB O/M was paid in the previous month. A DIB O/M is changed to an age O/M in the month the employee attains retirement age.

(b) *Employee DIB O/M.* An increase under the overall minimum in an employee annuity based on disability can be paid beginning with the later of—

(1) The beginning date of the employee's disability annuity; or

(2) The month after the month in which the disability waiting period described in § 404.315(d) of this title ends; or

(3) If no disability waiting period is required, the first month in which the employee is disabled and is insured for a disability benefit under § 404.130 of this title.

(c) *Spouse.* An increase in a spouse annuity under the overall minimum can be paid on the later of:

(1) The date the increase in the employee's annuity is paid; or

(2) The date the spouse is both eligible under the O/M and entitled to a spouse annuity.

**Subpart D—Family Members Included in Overall Minimum Computation**

**§ 229.30 Who can be included in the computation of an annuity under the overall minimum.**

(a) *Spouse.* In order to be included as a spouse in the computation of the overall minimum rate, a person must be the employee's wife or husband, as defined in part 222 of this chapter, as of the date described in § 229.31 of this part. The spouse must also be 62 years or older throughout the whole month in which he or she is first included or have the employee's child who is under 16 years old or disabled (before attaining age 22) in his or her care. If a spouse is 62 years old or older and under retirement age, and does not have an eligible child in his or her care, the spouse will be included only if he or she requests the payment of a reduced spouse annuity.

(b) *Child.* In order to be included as a child in the computation of the overall minimum, a person must meet the following requirements as of the date described in § 229.32 of this part. The person must be:

(1) The employee's child as defined in part 222 of this chapter; and

(2) Dependent on the employee, as shown in part 222 of this chapter; and

(3) Not married; and either

(4) Under 18 years old, or 18 years old to 19 years old and a full-time student, as defined in part 216 of this chapter, or 18 years old or older and disabled for any regular employment (see part 220 of this chapter) before attaining age 22.

(c) *Divorced spouse.* In order to be included as a divorced spouse in the computation of the overall minimum, a person must be eligible for a benefit as a divorced spouse under the Railroad Retirement Act as of the date described in § 229.33 of this part.

**§ 229.31 When a spouse can be included in the computation of the overall minimum rate.**

(a) A spouse who is married to the employee when the employee's application is filed can be included in the computation of the overall minimum rate beginning in the later of the month in which:

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(1) The employee first is eligible for an increase in his or her annuity under the overall minimum, as shown in § 229.22 of this part; or

(2) The spouse first becomes eligible to be included under the overall minimum, as shown in § 229.30 of this part.

(b) A spouse who marries the employee after the employee application is filed can be included in the overall minimum computation in the month in which he or she becomes eligible, as shown in § 229.30 of this part, if the overall minimum rate is already payable in the previous month. If the railroad formula rate is payable in the month before the spouse becomes eligible, the spouse can be included in the overall minimum computation in the later of the month in which:

(1) The employee first is eligible for an increase in his or her annuity rate under the overall minimum, as shown in § 229.22; or

(2) The spouse annuity begins.

### **§ 229.32 When a child can be included in the computation of the overall minimum rate.**

A child who meets the requirements of § 229.30(b) of this part can be included in the computation of the overall minimum rate in the month in which:

(a) The employee first is eligible for an increase in his or her annuity rate under the overall minimum, as shown in § 229.22 of this part; or

(b) In the case of a child born or adopted by the employee after the employee's annuity beginning date, such child can be included only when the overall minimum rate is already payable in the month before the month in which the child is born, or adopted except where:

(1) The child is born or adopted prior to the employee's attaining age 62 or becoming eligible for a period of disability (see § 220.36 of this chapter); or

(2) The child who is adopted after the employee's annuity beginning date meets the dependency requirements set forth in § 222.53 of this chapter.

(c) In the case of a child who has attained age 18 and has become re-entitled as a full-time student or disabled child, as described in § 229.30 of this part, such child can only be included when the overall minimum rate is al-

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ready payable in the month before the month the child becomes re-entitled.

### **§ 229.33 When a divorced spouse can be included in the computation of the overall minimum rate.**

A divorced spouse annuitant can be included in the computation of the overall minimum rate in the later of the month in which:

(1) The employee first is eligible for an increase in his or her annuity rate under the overall minimum, as shown in § 229.22; or

(2) The divorced spouse annuity begins.

### **Subpart E—When Entitlement Under the Overall Minimum Ends**

#### **§ 229.40 When an annuity increase under the overall minimum ends.**

(a) *Employee Age O/M.* An increase in an employee's annuity under the overall minimum based on age ends with the month before the month in which the employee dies. If a disability annuity is increased under the overall minimum based on age rather than disability, and the employee is under retirement age, the increase ends with the second month after the month the disability ends as shown in part 220 of this chapter.

(b) *Employee DIB O/M.* An increase in an employee's annuity under the overall minimum based on disability ends with the earlier of:

(1) The month before the month in which the employee dies; or

(2) The month before the month the employee attains retirement age (the DIB O/M is changed to an age O/M); or

(3) The second month after the month the disability ends, as explained in part 220 of this chapter.

(c) *Spouse.* An increase in a spouse annuity under the overall minimum ends when the increase in the employee annuity ends, as shown in paragraphs (a) and (b) of this section, when the spouse can no longer be included in computing the annuity rate under the overall minimum as shown in § 229.41 of this part, or when the spouse annuity ends as shown in part 218 of this chapter.