

## § 226.60

date the employee's tier II rate is reduced for a vested dual benefit, as shown in § 226.11. This rate includes the restored amount but does not include any cost-of-living increase in the tier II original rate or restored amount. It is the rate before reduction for the railroad retirement family maximum or age minus any cost-of-living increases.

### Subpart E—Years of Service and Average Monthly Compensation

#### § 226.60 General.

The years of service and average monthly compensation used in computing an employee's tier II annuity rate are based on the employee's creditable railroad service and compensation as described in parts 210 and 211 of this chapter. In computing the average monthly compensation, the compensation for each year cannot be higher than twelve times the tier II monthly maximum creditable for that year, as described in part 211 of this chapter.

#### § 226.61 Use of military service.

(a) *Claim for use of military service.* An employee is deemed to have filed a claim for the use of military service and earnings as service and compensation under the Railroad Retirement Act if—

(1) The employee indicates on the annuity application or another signed statement that he or she has military service;

(2) The employee does not specifically request that the military service be credited as wages under the Social Security Act;

(3) The military service is creditable under the Railroad Retirement Act, as shown in part 212 of this chapter; and

(4) Using the military service as railroad service and compensation would be to the employee's advantage (the employee and his or her family would receive higher total benefits than if the military service were credited under the Social Security Act).

(b) *Effective date for use of military service.* Military service can be used as service and compensation under the

## 20 CFR Ch. II (4–1–10 Edition)

Railroad Retirement Act starting with the date the annuity begins but no earlier than twelve months before the employee files an application or statement showing that he or she has military service.

#### § 226.62 Computing average monthly compensation.

The employee's average monthly compensation is computed by first determining the employee's highest 60 months of railroad compensation (disregarding compensation in excess of the maximum creditable tier II compensation for that year). The total of the highest 60 months is then divided by 60 to determine the average monthly compensation.

#### § 226.63 Determining monthly compensation.

(a) *Based on yearly compensation.* If Board records do not show monthly compensation for a year, the monthly compensation is determined by dividing the total compensation reported for the year by the number of months of service credited to the employee for that year.

(b) *For employee with government employment and no railroad service for 60-month period before annuity begins—*(1) *General.* The compensation used in determining the average monthly compensation (AMC) is indexed for an employee who has not worked in the railroad industry for the 60-month period before the month the employee's annuity begins and whose major employment during that period was for a government agency listed in § 216.16 of this chapter. The compensation is indexed by multiplying it by the quotient obtained by dividing the average annual wage for the indexing year by the average annual wage for the year being indexed. If the month for which compensation is being indexed is before 1951, the average annual wage for 1951 is used.

(2) *Indexing year defined.* The indexing year is the second year before the year in which the annuity begins.