

Railroad Retirement Board**§ 226.3****PART 226—COMPUTING EMPLOYEE, SPOUSE, AND DIVORCED SPOUSE ANNUITIES****Subpart A—General**

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Subpart A—General**§ 226.1 Introduction.**

This part explains how employee, spouse, and divorced spouse annuities are computed. It describes how to determine the years of railroad service and average monthly compensation used in computing the employee annuity rate. The railroad retirement family maximum, cost-of-living increases, and the recomputation of an annuity to include additional railroad earnings are also explained in this part.

§ 226.2 Definitions.

Except as otherwise expressly noted, as used in this part—

Annuity means a payment due an entitled individual for a calendar month and payable to him or her on the first day of the following month.

Eligible means that an individual meets all the requirements for payment of an annuity but has not yet applied for one.

Employee means an individual who is or has been in the service of an employer as defined in part 202 of this chapter.

Entitled means that an individual has applied for and has established his or her rights to benefits.

Railroad Retirement Act means the Railroad Retirement Act of 1974, as amended.

Retirement age means, with respect to an employee, spouse or divorced spouse who attains age 62 before January 1, 2000, age 65. For an employee, spouse or divorced spouse who attains age 62 after December 31, 1999, retirement age means the age provided for in section 216(l) of the Social Security Act.

Social Security Act means the Social Security Act as amended.

§ 226.3 Other regulations related to this part.

This part is closely related to part 216 of this chapter, which describes

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when an employee, spouse, or divorced spouse is eligible for an annuity, part 225 of this chapter, which explains the primary insurance amounts (PIA's) used in computing the employee, spouse and divorced spouse annuity rates, and part 229 of this chapter, which describes when and how employee and spouse annuities can be increased under the social security overall minimum. The creditable service and compensation used in determining the years of service and average monthly compensation are explained in parts 210 and 211 of this chapter. The beginning and ending dates of annuities are explained in part 218 of this chapter.

Subpart B—Computing an Employee Annuity

§ 226.10 Employee tier I.

Tier I of an employee annuity is an amount similar to the social security benefit the employee would receive based on combined railroad and social security earnings. The tier I benefit is computed as follows:

(a) A tier I PIA is computed based on combined railroad and social security earnings, as shown in § 225.11 of this chapter. This PIA is adjusted for any delayed retirement credits or cost-of-living increases, as shown in subparts D and E of part 225 of this chapter, and is reduced for receipt of a pension based upon non-covered service in accordance with section 215(a)(7) of the Social Security Act. The tier I of a disability annuity may also be adjusted for other benefits based on disability, as shown in §§ 226.70–226.74 of this part. Except in the case of an employee who retires at age 60 with 30 years of service, if the result is not a multiple of \$1, it is rounded to the next lower multiple of \$1. In the case of an employee who retires with an age reduced annuity based upon 30 years of service (see § 216.31 of this chapter) the tier I is not rounded until all reductions have been made.

(b) If the employee is entitled to a reduced age annuity (see § 216.31 of this chapter), the rate from paragraph (a) of this section is multiplied by a fraction for each month the employee is under retirement age on the annuity begin-

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ning date. The result is subtracted from the rate in paragraph (a) of this section. At present the fraction is $\frac{5}{180}$ of 1% (or $\frac{1}{180}$). If the employee retires before age 62 with at least 30 years of service, the employee is deemed age 62 for age reduction purposes and a 20% reduction is applied. This reduction remains in effect until the first full month throughout which the employee is age 62, at which time the tier I is recomputed to reflect interim increases in the national wage levels and the age reduction factor is recomputed, if necessary, in accordance with this paragraph.

(c) The amount from paragraph (a) or (b) of this section is reduced by the amount of any monthly benefit payable to the employee under title II of the Social Security Act, including any social security benefit payable under a totalization agreement between the Social Security Administration and another country. The social security benefit used to reduce the tier I may be an age or disability benefit on the employee's own earnings record, a benefit based on the earnings record of another person, or the total of two types of benefits. The amount of the social security benefit used to reduce tier I is before any deduction for excess earnings. It is after any reduction for other benefits based on disability. The result cannot be less than zero.

(d) The tier I is subject to automatic annual increases as provided for in subpart E of part 225 of this chapter.

Example: An employee born on November 3, 1919, becomes entitled to an age annuity effective October 1, 1982. Retirement age for individuals born in 1919 is age 65. He has less than 30 years of service. His tier I PIA is \$712.60, which is rounded down to \$712. Since the employee is 25 months under age 65 when his annuity begins, \$712 is multiplied by $\frac{25}{180}$ ($\frac{1}{180}$ for each month under age 65), to produce an age reduction of \$98.89, and a tier I rate after age reduction of \$613.11. The employee is also entitled to a social security benefit of \$190 a month. The employee's final tier I rate is \$423.11.

§ 226.11 Employee tier II.

The tier II of an employee annuity is based only on railroad service. For annuities awarded after September 1981, the tier II benefit is computed as follows:

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(a) The product obtained by multiplying the employee's creditable years of service by the average monthly compensation, determined as shown in subpart E of this part, is multiplied by seven-tenths of 1 percent (.007).

(b) If the employee is entitled to a vested dual benefit (see § 226.12 of this part), the result from paragraph (a) of this section is reduced by 25 percent of the vested dual benefit amount. This reduction is made before reduction of the tier II benefit for age. The result cannot be less than zero.

(c) If the railroad retirement family maximum applies, as shown in §§ 226.50-226.52 of this part, the amount from paragraph (a) or (b) of this section is reduced by the smaller of—

(1) The difference between the total railroad retirement maximum reduction amount and the reductions in the spouse and supplemental annuities; or

(2) The total tier II amount from paragraph (a) or (b) of this section.

(d) If the employee is entitled to a reduced age annuity (see § 216.31 of this chapter), the rate from paragraph (a) through (c) of this section is reduced in the same manner as the tier I as provided for in § 226.10 of this part. In the case of an employee with 30 years of service who is entitled to a reduced age annuity (see § 216.31 of this chapter), the age reduction only applies to the tier I component; no age reduction applies to the tier II component.

(e) The total tier II amount (paragraphs (a) through (d) of this section), is increased by 32.5 percent of the percentage increase in the cost-of-living increase to the tier I annuity component. Each cost-of-living increase is paid only to an employee whose annuity begins on or before the effective date of the increase. The increases are effective on the same date as any cost-of-living increase to the tier I annuity component.

§ 226.12 Employee vested dual benefit.

(a) *General.* An employee vested dual benefit is payable, in addition to tiers I and II, to an employee who meets one of the following requirements:

(1) *Employee worked in the railroad industry in 1974.* An employee who worked for a railroad in 1974 and retired after 1974 is considered vested if on December 31, 1974, he or she had both 10 years of railroad service and sufficient quarters of coverage under the Social Security Act to qualify for a social security benefit. An employee qualified on this basis is eligible for vested dual benefit amounts computed on his or her railroad and social security credits through December 31, 1974.

(2) *Employee who did not work for a railroad in 1974.* An employee who did not work in the railroad industry in 1974, but who had 25 or more years of railroad service before 1975 or a current connection with the railroad industry on December 31, 1974, as defined in part 216 of this chapter, or a current connection when he or she retired, is also considered vested under the same conditions as an employee who had worked in the railroad industry in 1974.

(3) *An employee who completed 10 years or more years of railroad service (but less than 25) before 1975 but left the industry before 1975 and did not have a current connection on December 31, 1974 or when he or she retired.* Such an employee is considered vested only if he or she had sufficient social security quarters of coverage to qualify for a social security retirement benefit as of the end of the year prior to 1975 in which he or she left the railroad industry. The vested dual benefit amount is based only on credits acquired through the last year of pre-1975 railroad service instead of through December 31, 1974.

(b) *Computation.* The employee vested dual benefit is computed as follows:

(1) The combined earnings dual benefit PIA is subtracted from the total of the railroad earnings dual benefit PIA and the social security earnings dual benefit PIA (see part 225 of this chapter for an explanation of these PIA's).

(2) The result from paragraph (b)(1) of this section is adjusted for any applicable cost-of-living increase, as shown in § 226.13 of this part.

(3) If the employee is entitled to a reduced age annuity (see § 216.1 of this chapter), the rate from paragraph (b)(2) of this section is reduced in the same manner as the tier I as provided for in § 226.10 of this part. In the case of an employee with 30 years of service who is entitled to an annuity reduced for age, the age reduction applies only to

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the tier I component; no age reduction applies to the vested dual benefit.

(4) The vested dual benefit payable in a given year may also be reduced for insufficient funding as shown in part 233 of this chapter.

Example: An employee born on November 3, 1919, becomes entitled to an annuity including a vested dual benefit on October 1, 1982. His combined earnings dual benefit PIA is \$254.90, his railroad earnings dual benefit PIA is \$93.80, and his social security earnings dual benefit PIA is \$244.70. The vested dual benefit before cost-of-living increase is \$83.60 ($\$93.80 + \$244.70 - \$254.90 = \83.60). A cost-of-living increase of \$67.72 (81 percent of \$83.60. See § 226.13 of this part) results in a vested dual benefit of \$151.32. Retirement age for a person born in 1919 is age 65. Since the employee is 25 months under age 65 when the annuity begins, \$151.32 is multiplied by 25/180, to produce an age reduction of \$21.02 and a vested dual benefit rate after age reduction of \$130.30.

§ 226.13 Cost-of-living increase in employee vested dual benefit.

If the employee's annuity begins June 1, 1975 or later, a cost-of-living increase is added to the total vested dual benefit amount. This increase is based on the cost-of-living increases in social security benefits during the period from January 1, 1975, to the earlier of the date the employee's annuity begins or January 1, 1982. The increases are effective on June 1 of each year through 1981. The percentage increase for annuities that begin June 1, 1981, or later is 81 percent.

§ 226.14 Employee regular annuity rate.

The regular annuity rate payable to the employee is the total of the employee tier I, tier II, and vested dual benefit amounts, from §§ 226.10–226.12.

§ 226.15 Deductions from employee regular annuity rate.

The employee annuity as computed under this subpart may be reduced by premiums required for supplemental medicare coverage, income tax withholding, recovery of debts due the Federal government, garnishment pursuant to part 350 of the chapter and property awards as provided for in part 295 of this chapter.

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§ 226.16 Supplemental annuity.

A supplemental annuity is payable in addition to tiers I and II and the vested dual benefit to an employee who meets the requirements of § 216.41 of this chapter. The supplemental annuity is equal to \$23 plus \$4 for each full year of service, over 25 years of service, up to a maximum of \$43. The supplemental annuity may be reduced by the railroad retirement family maximum as shown in §§ 226.50–226.52 of this part, or for the receipt of a private pension benefit as explained in part 227 of this chapter.

Subpart C—Computing a Spouse or Divorced Spouse Annuity

§ 226.30 Spouse or divorced spouse tier I.

(a) *General.* The tier I of a spouse or divorced spouse annuity is an amount similar to the social security benefit the spouse or divorced spouse would receive based on the employee's combined railroad and social security earnings. In the case of an employee who retires before age 62 with 30 years of service, the spouse tier I is simply 50% of the employee tier I until the first month throughout which both the employee and spouse are age 62 at which time the tier I is an amount similar to the social security benefit on the employee's combined railroad and social security earnings.

(b) *Reduction for other disability benefits.* The spouse or divorced spouse tier I may be adjusted for other disability benefits received by a disabled employee, as shown in §§ 226.70–226.74 of this part.

(c) *Reduction for government pension.* The amount in paragraphs (a) or (b) of this section is reduced (but not below zero) by the amount of any government pension payable on the spouse's or divorced spouse's earnings record, as described in § 226.31 of this part.

(d) *Rounding.* The last tier I rate from paragraph (a), (b) or (c) of this section, if not a multiple of \$1, is rounded to the next lower multiple of \$1. However, in cases in which the spouse is in receipt of an age reduced 60/30 annuity or in which the employee with 30 years of service began a disability annuity July 1, 1984, or later,

the spouse tier I is not rounded until all reductions have been made. See § 226.10(a).

(e) *Age reduction.* If the spouse or divorced spouse is entitled to a reduced age annuity (see §§ 216.51 and 216.52 of this chapter), the rounded tier I rate from paragraph (d) of this section is multiplied by a fraction for each month the spouse or divorced spouse is under retirement age on the date the annuity begins. The result is subtracted from the rate from paragraph (d) of this section. At present the fraction is $\frac{25}{36}$ of 1% (or 1/144). In the case of an employee with 30 years of service who is awarded a disability annuity on July 1, 1984, or later, where the spouse does not have a child of the employee under age 18 in care, the spouse tier I is reduced for each month the spouse is under retirement age on the date the spouse annuity begins. If the spouse is age 60 or 61, he or she is deemed to be age 62 for purposes of the age reduction. The age reduction is applied before reduction for a government pension.

(f) *Reduction for social security benefit.* The previous tier I rate, from paragraph (d) or (e) of this section, is reduced by the amount of any monthly benefit payable to the spouse or divorced spouse under title II of the Social Security Act. The social security benefit used to reduce tier I may be an age or disability benefit on the spouse's or divorced spouse's own earnings record, a benefit based on the earnings record of another person, or the total of two types of benefits. The result cannot be less than zero.

(g) *Reduction for employee annuity.* If the spouse or divorced spouse is entitled to an employee annuity on his or her own wage record, the spouse or divorced spouse tier I is reduced for the spouse's own employee annuity as follows:

(1) *Spouse.* If either the employee or the spouse had some railroad service before 1975, the previous tier I rate from paragraphs (d) through (f) of this section, whichever applies, is reduced (but not below zero) by the spouse's own employee tier I rate, as computed under § 226.10 of this part. If both the employee and spouse began railroad service after 1974, the spouse's total an-

nuity rate, as shown in § 226.33, is reduced (but not below zero) by the spouse's own employee total annuity rate, as shown in § 226.14. These reductions are effective from the later of the date the employee or spouse annuity begins.

(2) *Divorced spouse.* The previous tier I rate from paragraphs (d) through (f) of this section, whichever applies, is reduced (but not below zero) by the divorced spouse's own employee total annuity rate as shown in § 226.14.

Example: The computation of the spouse tier I may be illustrated as follows: A railroad employee's wife who was born on September 16, 1920, becomes entitled to a spouse annuity on October 1, 1982. She is also entitled to a social security benefit of \$190 a month effective October 1, 1982. Her husband's employee tier I PIA is \$712.60. The spouse tier I is \$356.30 (50 percent of \$712.60). This is rounded down to \$356. Since she is 35 months under age 65, the present retirement age when the annuity begins, \$356 is multiplied by 35/144, to produce an age reduction of \$86.53 and a tier I rate after age reduction of \$269.47. Her final tier I rate effective October 1, 1982, after reduction for social security benefits, is \$79.47 (\$269.47 - \$190.00).

§ 226.31 Reduction for public pension.

(a) The tier I annuity component of a spouse/divorced spouse annuity, as described in the preceding sections of this part, is reduced if the spouse/divorced spouse is in receipt of a public pension.

(b) *When reduction is required.* Unless the spouse or divorced spouse annuity meets one of the exceptions in paragraph (d) of this section, the tier I annuity component is reduced each month the annuitant is receiving a monthly pension from a Federal, state, or local government agency (government pension), but excluding a pension paid by a government of a foreign country, for which he or she was employed in work not covered by social security on the last day of such employment. For purposes of this section, Federal government employees are not considered to be covered by social security if they are covered for Medicare but are not otherwise covered by social security.

(c) *Payment in a lump sum.* If the government pension is not paid monthly or is paid in a lump-sum payment, the Board will determine how much the

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pension would be if it were paid monthly and then reduce the monthly railroad retirement annuity accordingly. The number of years covered by a lump-sum payment and thus the period when the annuity will be reduced, will generally be clear from the pension plan. If one of the alternatives to a lump-sum payment is a life annuity, and the amount of the monthly benefit for the life annuity can be determined, the reduction will be based on that monthly benefit amount. Where the period or the equivalent monthly pension benefit is not clear, it may be necessary for the Board to determine the reduction period on an individual basis.

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

(1) If the annuitant is receiving a government pension based on employment for an interstate instrumentality; or

(2) If the annuitant receives or is eligible to receive a government pension for one or more months in the period December 1977 through November 1982 and he or she meets the requirements for social security benefits that were applied in January 1977 (even though he or she did not actually claim such benefits nor become entitled to such benefits until a later month). The January 1977 requirements are, for a man, a one-half support test (see paragraph (e) of this section), and, for a woman claiming benefits as a divorced spouse, marriage for at least 20 years to the insured worker. A person is considered eligible for a government pension for any month in which he or she meets all the requirements for payment except that he or she is working or has not applied; or

(3) If the annuitant was receiving or eligible (as defined in paragraph (d)(2) of this section) to receive a government pension for one or more months before July 1983, and he or she meets the one-half support test (see paragraph (e) of this section). If the annuitant meets the exception in this paragraph but he or she does not meet the exception in paragraph (d)(2) of this section, December 1982 is the earliest month for which the reduction will not affect his benefits; or

(4) If the annuitant has been eligible for a government pension in a given

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month except for a requirement which delayed eligibility for such pension until the month following the month in which all other requirements were met, the Board will consider the annuitant to be eligible in that given month for the purpose of meeting one of the exceptions in paragraphs (d)(2) and (d)(3) of this section. If the annuitant meets an exception solely because of this paragraph, his or her benefits will be unreduced for months after November 1984 only.

(e) *The one-half support test.* For a man to meet the January 1977 requirement as provided in the exception in paragraph (d)(2) of this section and for a man or a woman to meet the exception in paragraph (d)(3) of this section, he or she must meet a one-half support test. One-half support is defined in part 222 of this chapter. One-half support must be met at one of the following times:

(1) If the employee upon whose compensation the spouse or divorced spouse annuity is based had a period of disability, as defined in part 220 of this chapter, which did not end before he or she became entitled to an age and service or disability annuity, the spouse/divorced spouse annuitant must have been receiving at least one-half support from the employee either—

(i) At the beginning of the employee's period of disability; or

(ii) At the time the employee became entitled to an age and service or disability annuity.

(2) If the employee upon whose compensation the spouse or divorced spouse annuity is based did not have a period of disability, as defined in part 220 of this chapter, at the time of his or her entitlement, the spouse or divorced spouse annuitant must have been receiving at least one-half support from the employee at the time the employee became entitled to an age and service or disability annuity.

(f) *Amount of reduction.* (1) If the spouse/divorced spouse annuitant becomes eligible for a government pension after June 1983, the Board will reduce (to zero, if necessary) the tier I annuity component by two-thirds of the amount of the monthly pension. If the amount of the reduction is not a

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multiple of 10 cents, it will be rounded to the next higher multiple of 10 cents.

(2) If the spouse/divorced spouse annuitant became eligible for a government pension before July 1983 and he or she did not meet one of the exceptions in paragraph (d) of this section, the Board will reduce (to zero, if necessary) the tier I component by the full amount of the pension for months before December 1984 and by two-thirds the amount of his or her monthly pension for months after November 1984. If the amount of the reduction is not a multiple of 10 cents, it will be rounded to the next higher multiple of 10 cents.

(g) *Reduction not applicable.* This reduction is not applied to claimants who both filed and were entitled to a spouse benefit prior to December 1977.

§ 226.32 Spouse tier II.

The spouse tier II benefit is computed as follows:

(a) The employee's tier II amount as computed under § 226.11 of this part, after any reduction for entitlement to a vested dual benefit but before reduction for the railroad retirement family maximum, is multiplied by 45 percent. The spouse tier II is recomputed if the employee's tier II rate is reduced for entitlement to a vested dual benefit after the beginning date of the spouse annuity.

(b) If tier I of a spouse annuity is reduced for the spouse's employee annuity, as provided for in § 226.30(g) of this part, the reduction is restored in tier II. The restored amount is payable on the effective date of the spouse or the employee tier I benefit, whichever is later. The previous tier II rate is increased by the restored amount, which is determined as follows:

(1) *Initial restored amount.* The restored amount is the amount by which the spouse tier I was reduced by reason of receipt of an employee annuity on the date the restored amount is first payable. The restored amount is only payable if either the employee or spouse had railroad service prior to 1975.

(2) *Recomputation of restored amount.* The restored amount is recomputed if the spouse becomes entitled to a government pension, a social security benefit, or a different type of social secu-

rity benefit after the date the initial restored amount is effective. The recomputed amount is the amount by which the spouse tier I is reduced by reason of receipt of an employee annuity on the effective date of the entitlement to a government pension or social security benefit.

(3) *Cost-of-living increase in restored amount.* If an initial or recomputed restored amount is effective before the effective date of the cost-of-living increase shown in paragraph (e) of this section, the restored amount is multiplied by the percentage increase that applies. The result is added to the restored amount on the effective date of the increase for each year that the increase is payable.

(c) If the employee's tier II has been reduced pursuant to section 3(g)(2) of the Railroad Retirement Act (takeback provision) the spouse tier II is reduced by one half of the "takeback" in the employee tier II.

(d) If the railroad retirement family maximum applies, as shown in §§ 226.50–226.52 of this part, the spouse tier II rate, as determined in paragraphs (a) through (c) of this section, is reduced by the smaller of—

(1) The total railroad retirement maximum reduction amount; or

(2) The previous spouse tier II rate.

(e) The tier II rate, from paragraphs (a) through (d) of this section, is increased by the same percentage as the employee tier II increase described in § 226.11(e) of this part.

(f) If the spouse is entitled to a reduced age annuity (see § 216.51 of this chapter), the tier II rate, as determined in paragraphs (a) through (e) of this section is reduced in the same manner as the tier I as provided for in § 226.30(e) of this part.

Example: An employee's tier II rate is \$329.63 effective October 17, 1981. The spouse rate is \$148.33 (45 percent \times \$329.63) effective October 17, 1981. This is increased to \$151.89 effective June 1, 1982, by a cost-of-living increase of 2.4 percent. The spouse is 35 months under age 65, the present retirement age, when the annuity begins. The \$151.89 rate is multiplied by $\frac{35}{144}$ to produce an age reduction of \$36.92. This is subtracted from \$151.89 to produce a final rate of \$114.97.

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§ 226.33 Spouse regular annuity rate.

The final tier I and tier II rates, from §§ 226.30 and 226.32, are added together to obtain the total spouse regular annuity rate.

§ 226.34 Divorced spouse regular annuity rate.

The regular annuity rate of a divorced spouse is equal to his or her tier I amount. The divorced spouse is not entitled to a tier II benefit.

§ 226.35 Deductions from regular annuity rate.

The regular annuity rate of the spouse and divorced spouse annuity may be reduced by premiums required for supplemental medicare coverage, income tax withholding (spouse annuity only), recovery of debts due the Federal government, and garnishment pursuant to part 350 of this chapter.

Subpart D—Railroad Retirement Family Maximum

§ 226.50 General.

There is a monthly ceiling on total family benefits which limits the amount of certain portions of the employee and spouse annuity. This railroad retirement family maximum amount varies according to the employee's earnings in the ten-year period that ends with the year in which his or her annuity begins. If the employee and spouse annuity amounts described in § 226.52 of this part are higher than the maximum from § 226.51 of this part, first the spouse tier II, then the supplemental annuity and, finally, the employee tier II are reduced until the total annuity amount is equal to the maximum or until the spouse tier II and the employee supplemental annuity and tier II have been reduced to zero, whichever comes first. The reduction for the railroad retirement family maximum is first computed from the date the employee's annuity begins. It is recomputed if the employee's tier II rate is reduced for entitlement to a vested dual benefit. It is also recomputed if a workers' compensation or other disability benefit begins or ends, or the employee's tier I benefit or supplemental annuity begins after the be-

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ginning date of the regular employee annuity. Finally, it is recomputed if a spouse who was entitled to an annuity divorces the employee or the spouse annuity entitlement ends.

§ 226.51 Maximum monthly amount.

The railroad retirement family maximum is equal to an employee's "final average monthly compensation" (FAMC) up to $\frac{1}{2}$ of $\frac{1}{12}$ of the annual maximum tier I earnings as shown in part 224 of this chapter in the year the annuity begins plus 80 percent of so much of his or her FAMC as exceeds $\frac{1}{2}$ of $\frac{1}{12}$ of the tier I maximum in the year the annuity begins. For this purpose, the FAMC is determined by dividing the individual's total earnings up to the tier II earnings limit as shown in part 211 of this chapter for the two highest-earnings years out of the last 10 calendar years, including the year of retirement, by 24. The railroad retirement maximum cannot be more than the FAMC and cannot be less than \$1,200.

Example: An employee's annuity begins on December 2, 1982. He has yearly earnings that exceed the tier II annual maximum of \$24,300 in 1982 and \$22,200 in 1981. The FAMC is the sum of the tier II maximum for 1981 and 1982 divided by 24 ($\$24,300 + \$22,200 \div 24$) or \$1,937.50. The maximum which may be credited to a month for tier I in 1982 is \$2,700. The family maximum is \$1,350 ($\frac{1}{2}$ of $\frac{1}{12}$ of the annual tier I maximum) plus \$470 (80% of the difference between \$1,937.50 and \$1,350) or \$1,820.

§ 226.52 Total annuity subject to maximum.

The total annuity amount which is compared to the maximum monthly amount to determine if a reduction for the railroad retirement family maximum applies is determined by adding together the amounts in paragraphs (a) and (b) of this section. A hypothetical spouse annuity amount is included from the beginning date of the employee annuity if the spouse is not entitled to an annuity at the time the maximum calculation is made.

(a) *Employee annuity amounts.* The following amounts are added together—

(1) The employee tier I amount, effective on the date the employee's tier I benefit begins or, if later, on the date a

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reduction for other disability benefits begins or ends, as shown in § 226.71 of this part. This amount is before any reduction for age or social security benefits but after including any delayed retirement credits, after any reduction for other disability benefits, and after rounding; and

(2) The employee tier II rate before reduction for the railroad retirement family maximum, effective on the employee's annuity beginning date and, if later, on the date the tier II is first reduced for a vested dual benefit, as shown in § 226.11 of this part; and

(3) The initial supplemental annuity rate effective on the date the supplemental annuity begins, before any reduction for a private pension, as shown in part 227 of this chapter.

(b) *Spouse annuity amounts.* The following amounts are added together—

(1) The spouse tier I amount, which is or would be effective on the date the employee's annuity or tier I benefit begins, as shown in § 226.30. This amount is before any reduction for other disability benefits, age, or social security benefits, but after any reduction for a government pension or employee annuity; and

(2) The spouse tier II rate which is or would be effective on the employee's annuity beginning date, the date the employee's tier I benefit begins, or the 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 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

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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.

Subpart F—Reduction for Workers' Compensation and Disability Benefits Under a Federal, State, or Local Law or Plan

§ 226.70 General.

For any month an employee disability annuitant is entitled to workers' compensation or a public disability benefit, the tier I benefit of the spouse or divorced spouse is reduced due to receipt of such benefits. (If both spouse and divorced spouse annuities are payable, the reduction amount is divided and applied in equal amounts to both the spouse and divorced spouse tier I benefits.) The employee tier I is reduced by the difference between the total reduction amount, described in § 226.71 of this part, and the reduction in the spouse and divorced spouse tier I benefits.

§ 226.71 Initial reduction.

(a) *When reduction is effective.* A reduction for other disability benefits begins with the first month the employee is receiving both a disability annuity and workers' compensation or a public disability benefit. The reduction ends with the month before the month in

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which the employee becomes 65 years old or with the month in which the workers' compensation or public disability benefit ends.

(b) *Amount of reduction.* The reduction for other disability benefits equals the difference between—

(1) The total tier I rates of the employee, spouse, and divorced spouse, before any reductions (age, public pension, social security benefits, etc.) plus the monthly amount of the workers' compensation or public disability benefit; and

(2) The higher of—

(i) Eighty percent of the employee's average current earnings, as defined in this section; or

(ii) The total tier I rates, as described in paragraph (b)(1) of this section.

Example 1: Harold is entitled to a monthly disability annuity with a tier I component of \$507 and a monthly public disability benefit of \$410 from the state. Eighty percent of Harold's average current earnings is \$800. Because this amount is higher than Harold's tier I component, to determine the reduction for other disability benefits the Board subtracts this amount (\$800) from the total of Harold's tier I component (\$507) and public disability benefit (\$410) which results in a reduction amount of \$117 (\$917-\$800). This leaves Harold with a reduced tier I amount of \$390 (\$507-\$117).

Example 2: Tom is entitled to a disability annuity with a tier I component of \$560. His wife and divorced wife are both entitled to annuities with tier I components of \$280 each. Total benefits are \$1,120. Tom is receiving a monthly workers' compensation benefit of \$500 from the state. Eighty percent of Tom's average current earnings is \$820. Because the total benefit (\$1,120) is higher than Tom's average current earnings, to determine the reduction for other disability benefits the Board subtracts this amount from \$1,620 (\$1,120 plus \$500) which results in a reduction amount of \$500. This means that the tier I of the spouse and divorced spouse annuity are each reduced by \$250.

(c) *Average current earnings, defined.* An employee's "average current earnings" is the highest of—

(1) The average monthly wage (AMW) used to compute the tier I AMW PIA. (The earnings are not indexed, even if the tier I PIA which is being paid is based on average indexed monthly earnings. See part 225 of this chapter.); or

(2) One-sixtieth of the employee's total earnings covered under either the

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Social Security or Railroad Retirement Acts (including earnings that exceed the maximum earnings used in computing social security benefits) for the five consecutive years after 1950 in which the employee had the highest earnings. The result, if not a multiple of \$1, is rounded to the next lower multiple of \$1; or

(3) One-twelfth of the employee's total earnings covered under either the Social Security or Railroad Retirement Acts (including earnings that exceed the maximum earnings used in computing social security benefits) for the year of highest earnings in the period which includes the year in which the employee became disabled and the five preceding years. The result, if not a multiple of \$1, is rounded to the next lower multiple of \$1.

§ 226.72 Benefits that do not cause a reduction.

The tier I is not reduced for the following types of benefits:

(a) A benefit paid under a law or plan that provided, on February 18, 1981, for reducing the benefit for entitlement to a disability insurance benefit under the Social Security Act.

(b) A Federal disability benefit based on service for other than a state or local government, if all or part of that service is covered under the Social Security Act.

(c) A disability benefit paid by the Federal government or a state or local government based on state or local employment, if all or substantially all of that employment is covered under the Social Security Act. "Substantially all" means 85 percent or more of the employment.

(d) A benefit paid by the Veteran's Administration.

(e) Private disability benefits.

(f) Amounts paid under the Federal Employers' Liability Act (FELA).

(g) Benefits based on need, such as welfare benefits or supplemental security income.

§ 226.73 Changes in reduction amount.

The reduction amount is not changed when a tier I benefit increases because of a recomputation or a general adjustment in annuity rates, such as a cost-of-living increase. However, the reduc-

tion amount may change for the following reasons:

(a) *A spouse or divorced spouse becomes entitled to a tier I benefit after the effective date of the reduction.* The reduction amount is recomputed as if the spouse or divorced spouse were entitled to a tier I benefit on the date the reduction first applied. The new reduction amount applies beginning with the date the spouse or divorced spouse tier I benefit begins.

Example: An employee became entitled to an annuity with a tier I component of \$500 on May 1, 1991. He was also receiving a state disability benefit of \$300 a month based on employment not covered under the Social Security Act. On June 1, 1991, the employee's tier I increased to \$520.70. On October 1, 1991, the employee's wife becomes entitled to an annuity with a tier I benefit of \$260.00. The tier I amount (\$250) that would have been payable to the wife on May 1, 1991 (assuming she had been eligible for a benefit at that time) is used to determine the reduction for other disability benefits beginning October 1, 1991.

(b) *The tier I benefit of a spouse or divorced spouse annuity ends after the effective date of the reduction.* The new reduction amount is computed using the tier I rate to which the employee was entitled when the reduction first applied. The new reduction amount applies beginning with the month after the month in which the spouse or divorced spouse tier I benefit ends.

(c) The average current earnings are redetermined, as shown in § 226.74.

(d) *The amount of the other disability benefit changes.* The reduction amount is recomputed to use the new benefit rate beginning with the date on which the new rate is payable. Any increases in the tier I amounts which were effective after the reduction first applied are not included in computing the new reduction amount.

Example: The employee's tier I benefit is \$500 on May 1, 1991, when the annuity is first reduced for other disability benefits. The tier I increases to \$520 effective June 1, 1991. When the amount of the disability benefit changes on October 1, 1991, \$500, not \$520, is used as the employee tier I amount in recomputing the reduction amount.

§ 226.74 Redetermination of reduction.

(a) *General.* The average current earnings are redetermined in the second year after the year the reduction

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for other disability benefits was first applied and every third year after that. The redetermined amount is used only if it results in a lower reduction amount. The new reduction amount is effective with January of the year after the redetermination is made.

(b) *Redetermined average current earnings.* The average current earnings are redetermined by multiplying the initial average current earnings amount by—

(1) The average of the total wages (including wages that exceed the maximum used in computing social security benefits) of all persons for whom wages were reported to the Secretary of the Treasury for the year before the year of redetermination, divided by the average of the total wages reported to the Secretary of the Treasury for 1977 or, if later, the year before the year for which the reduction was first computed. If the result is not a multiple of \$1, it is rounded to the next lower multiple of \$1; or

(2) If the reduction was first computed before 1978, the average of all taxable wages reported to the Secretary of Health and Human Services for the first quarter of 1977, divided by the average of all taxable wages reported to the Secretary of Health and Human Services for the first quarter of the year before the year for which the reduction was first computed. If the result is not a multiple of \$1, it is rounded to the next lower multiple of \$1.

Subpart G—Recomputation To Include Additional Railroad Service and Compensation

§ 226.90 When recomputation applies.

An employee's annuity may be recomputed to include additional railroad service and compensation and social security wages which the employee earns after the beginning date of the employee annuity. The annuity is recomputed only if the recomputation increases the annuity rate by more than \$1 a month or results in a lump-sum payment of more than \$5. Before a recomputed rate can be paid, the employee must stop working in the railroad industry. A recomputed tier I component is payable beginning with January 1 of the year after the year in

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which the wages or compensation are earned or (provided the employee is age 62 or disabled), in the case of railroad compensation, in the year after the employee stops working in the railroad industry. A recomputed tier II component is payable from the date the annuity is reinstated after the employee has ceased railroad work.

§ 226.91 How an employee annuity rate is recomputed.

(a) *Tier I.* A recomputation is made if any social security wages or railroad compensation for a year in which the employee returned to work are higher than the earnings for a year included in the previous computation of the tier I PIA, as shown in part 225 of this chapter. The higher earnings are used instead of the lower earnings for the earlier year to determine the average monthly wage or average indexed monthly earnings. Part 225 of this chapter describes how a PIA is recomputed.

(b) *Tier II.* The additional service is added to the years of service previously used in computing the tier II rate. The additional compensation is used to recompute the average monthly compensation, if the compensation for a month in which the employee returned to railroad service is higher than the compensation for a month used in the previous computation of the average monthly compensation. The higher monthly compensation is used instead of the lower compensation for a previous month to determine the new average monthly compensation as shown in § 226.62 of this part. The increased years of service and average monthly compensation are used in computing a new tier II rate, as shown in § 226.11 of this part.

Example: An employee receiving an annuity which began on January 1, 1992, returns to railroad service for 10 months in 1992 and 2 months in 1993. He stops work on February 20, 1993. He has earnings of \$34,500.00 in 1992 and \$5,200.00 in 1993. His tier II rate effective January 1, 1992, was based on 26 years (312 months) of service and an average monthly compensation of \$2,995 ($\$179,700 \div 60$). The additional 12 months of service increases the year of service used in computing the tier II rate to 27 (312 months + 12 months = 324 months $\div 12 = 27$). The 1992 earnings of \$34,500.00 are used instead of 1987 earnings of

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\$32,700.00. The 1993 earnings are not used because they are lower than the earnings for previous months used in computing the average monthly compensation. The additional \$1,800.00 in earnings increases the average monthly compensation to \$3,025 (\$179,100 + \$1,800.00 = \$181,500.00 ÷ 60). The initial tier II amount is increased from \$545.09 ($26 \times \$2,995 \times .007$) to \$571.73 ($27 \times \$3,025 \times .007$), effective with the date of annuity reinstatement, March 1, 1993.

§ 226.92 Effect of recomputation on spouse and divorced spouse annuity.

The annuity of a spouse or divorced spouse is recomputed to use the employee's recomputed tier I PIA and tier II rate, if the recomputation results in a lump-sum payment of more than \$5 or an increase in the spouse or divorced spouse annuity rate of more than \$1 a month. The spouse or divorced spouse annuity rate is recomputed beginning with the same date the employee's annuity rate is recomputed.

PART 227—COMPUTING SUPPLEMENTAL ANNUITIES

Sec.

- 227.1 Introduction.
- 227.2 Initial supplemental annuity rate.
- 227.3 Reduction for railroad retirement family maximum.
- 227.4 Reduction for employer pension.
- 227.5 Employer tax credits.

AUTHORITY: 45 U.S.C. 231f(b)(5).

SOURCE: 50 FR 11502, Mar. 22, 1985, unless otherwise noted.

§ 227.1 Introduction.

This part explains how to compute a supplemental annuity. A supplemental annuity is payable to an employee who meets the requirements in § 216.12 of this chapter.

§ 227.2 Initial supplemental annuity rate.

The supplemental annuity rate, before reduction for the railroad retirement family maximum or any private pension, is \$23 for an employee's first 25 years of service plus \$4 for each added year of service up to 30 years. The highest supplemental annuity rate is \$43 for an employee with 30 or more years of service.

§ 227.3 Reduction for railroad retirement family maximum.

If the railroad retirement family maximum applies, and the reduction amount is higher than the spouse tier II rate, as shown in part 226 of this chapter, the initial supplemental annuity rate from § 227.2 is reduced by the smaller of—

(a) The difference between the total railroad retirement maximum reduction amount and the reduction in the spouse annuity; or

(b) The total supplemental annuity rate from § 227.2.

[50 FR 11502, Mar. 22, 1985, as amended at 54 FR 12903, Mar. 29, 1989]

§ 227.4 Reduction for employer pension.

(a) *General.* The supplemental annuity for each month is reduced by the amount of any private pension the employee is receiving for that month based on the contributions of a railroad employer. This reduction is applied to the supplemental annuity amount after any reduction for railroad retirement family maximum. Private pension is explained in § 216.14 of this chapter.

(b) *Private pension reduced for supplemental annuity.* If the employer reduces the private pension for the employee's entitlement to the supplemental annuity, the reduced pension amount is subtracted from the supplemental annuity. However, the reduction in the supplemental annuity can be no greater than the difference between the supplemental annuity amount, after any reduction for railroad retirement family maximum, and the amount the private pension is reduced for the supplemental annuity. This guarantees that the sum of the reduced supplemental annuity and the reduced employer pension is not less than the amount of the full employer pension.

Example: The full employer pension is \$80. This is reduced by \$35 because of the employee's entitlement to a supplemental annuity. The initial supplemental annuity rate is \$43.

Full employer pension	\$80
Reduction for supplemental annuity	—35
Reduced pension amount	45
Supplemental annuity	43
Reduced pension amount	—45