

Railroad Retirement Board

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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 annuity 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 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

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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 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 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.