

2. Section 217.8 is amended by adding paragraphs (t) and (u) to read as follows:

**§ 217.8 When one application satisfies the filing requirement for other benefits.**

\* \* \* \* \*

(t) An accrued annuity due at the death of a spouse or divorced spouse if the claimant is entitled to an employee annuity on the same claim number.

(u) A full-time student's annuity if the student was entitled to a child's annuity in the month before the month the child attained age 18.

Dated: January 31, 1995.

By Authority of the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

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## 20 CFR Parts 226 and 232

RIN 3220-AA58

### Computing Employee, Spouse, and Divorced Spouse Annuities

**AGENCY:** Railroad Retirement Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Railroad Retirement Board (Board) proposes to revise its regulations dealing with the computation of retirement annuities under the Railroad Retirement Act of 1974 (Act). The Board's current regulations regarding the computation of these annuities were promulgated under the Railroad Retirement Act of 1937 and no longer reflect the computational provisions contained in the Act.

**DATES:** Comments must be received by the Secretary to the Board on or before March 13, 1995.

**ADDRESSES:** Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

**FOR FURTHER INFORMATION CONTACT:** Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, telephone (312) 751-4513, TTD (312) 751-4701.

**SUPPLEMENTARY INFORMATION:** The proposed revision to Part 226 (formerly "Computation of Annuity") provides the rules for computing the amount of the employee, spouse and divorced spouse annuity, under the Railroad Retirement Act of 1974. In general, the annuity consists of two components or tiers. The first tier (tier I) is a social security level benefit that is computed under social security rules based on the employee's earnings under both the

railroad retirement and the social security systems and is reduced by the amount of any social security benefit payable. The second tier (tier II) is based solely on the employee's railroad earnings.

In limited circumstances the employee annuity may be increased by a "vested dual benefit". An employee who has completed 25 years of railroad service may also be eligible for a supplemental annuity.

The proposed rule is divided into seven (7) subparts:

Subpart A sets forth definitions and lists other regulations related to this part.

Subpart B describes the computation of the employee annuity which includes the social security level component (tier I) (proposed § 226.10), the component based solely on railroad service (tier II) (proposed § 226.11); the vested dual benefit (proposed § 226.12), and a supplemental annuity (proposed § 226.16). Proposed § 226.13 describes how cost-of-living increases apply to the annuity.

Subpart C (proposed §§ 226.30-226.35) parallels subpart B and describes the computation of the spouse and divorced spouse annuities. However, the divorced spouse is not entitled to a tier II benefit and no supplemental annuity or vested dual benefits are payable to spouses. Proposed § 226.31 explains how the spouse and divorced spouse annuity are reduced due to receipt of a public pension which was not based upon employment covered by the Social Security Act on the last day of employment.

Subpart D (proposed §§ 226.50-226.52) describes the Railroad Retirement Family Maximum which is a statutory "cap" placed upon the total benefits payable under the RRA. Proposed § 226.51 describes how the maximum is determined (the higher of \$1,200 or an amount based upon the employee's final average monthly compensation (FAMC)). Proposed § 226.52 describes how the "reduction amount" is computed when the maximum is exceeded and proposed § 226.50 describes how the spouse, then the employee annuity is reduced until the total employee and spouse annuity equal the maximum. The railroad retirement maximum is computed at the employee's annuity beginning date but will be recomputed if the spouse later divorces the employee or the employee later becomes entitled to a vested dual benefit or supplemental annuity. A divorced spouse annuity is not counted in determining whether the RRA maximum is exceeded.

Subpart E (proposed §§ 226.60-226.63) explains how years of service and average monthly compensation (AMC) are determined. The tier II of the employee annuity is seven tenths of 1% (.007) times the product of an employee's years of service times his or her AMC. The spouse's tier II is 45% of the employee's tier II. See proposed § 226.11 and 226.32.

Subpart F (proposed §§ 226.70-226.74) describes the reduction required due to receipt of workers' compensation benefits. The tier I of an employee, spouse, or divorced spouse annuity is reduced if the employee is under age 65 and is entitled to a disability annuity and another periodic benefit based upon disability pursuant to some other Federal or state law or plan (proposed § 226.70). The reduction amount is first applied to the tier I of any spouse or divorced spouse annuity payable, then to the employee tier I (§ 226.71). Certain disability payments do not cause a reduction. These are listed in proposed § 226.72.

The formula for the reduction amount is found at proposed § 226.71. The reduction provided for in this part applies if the total tier I components payable to the employee and spouse (or divorced spouse) plus workers' compensation or public disability benefit exceed 80% of the employee's prior average current earnings. Proposed § 226.73 explains what events cause a change in the reduction amount. Proposed § 226.74 provides that "average current earnings" must be recomputed periodically to take into account inflation. The redetermined average current earnings are used only if it results in a lower reduction amount.

Subpart G of the proposed rule (§§ 226.90-226.92) explains how and when an annuity is recomputed to take into account railroad service and social security earnings after an annuitant retires.

Part 232—Spouses' Annuities is now obsolete; it is proposed to be removed.

The Board has determined that this is not a significant regulatory action under Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

### List of Subjects in 20 CFR Part 226 and Part 232

Pensions, Railroad employees, Railroad retirement.

1. For the reasons set out in the preamble, Part 226 of Title 20 of the Code of Federal Regulations (formerly "Computation of Annuity") is proposed to be revised as follows: