§ 186. Omitted

CODIFICATION

Section, act May 20, 1926, ch. 347, § 206, as added Apr. 10, 1936, ch. 166, 49 Stat. 1191, transferred certain pending cases before National Labor Relations Board to Mediation Board.

§ 187. Separability

If any provision of this subchapter or application thereof to any person or circumstance is held invalid, the remainder of such sections and the application of such provision to other persons or circumstances shall not be affected thereby.

(May 20, 1926, ch. 347, § 207, as added Apr. 10, 1936, ch. 166, 49 Stat. 1191.)

§ 188. Authorization of appropriations

There is authorized to be appropriated such sums as may be necessary for expenditure by the Mediation Board in carrying out the provisions of this chapter.

(May 20, 1926, ch. 347, § 208, as added Apr. 10, 1936, ch. 166, 49 Stat. 1191.)

CHAPTER 9—RETIREMENT OF RAILROAD EMPLOYEES

SUBCHAPTER I—RAILROAD RETIREMENT ACT OF 1934

Sec.
201 to 214. Omitted or Repealed.

SUBCHAPTER II—RAILROAD RETIREMENT ACT OF 1935

215 to 228. Omitted.

SUBCHAPTER III—RAILROAD RETIREMENT ACT OF 1937

228a to 228z–1. Omitted or Repealed.

SUBCHAPTER IV—RAILROAD RETIREMENT ACT OF 1974

231. Definitions.
231a. Annuity eligibility requirements.
231b. Computation of annuities.
231c. Computation of spouse and survivor annuities.
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231e. Lump sum payments.
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231f–1. Annual actuarial report.
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231n. Railroad Retirement Account.
231n–1. Social Security Equivalent Benefit Account.
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231p. Free transportation.
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231r. Automatic benefit eligibility requirement adjustments.
231s. Separability.
231t. Short title.
231u. Benefit preservation.
231v. Computation and certification of account benefit ratios.

SUBCHAPTER I—RAILROAD RETIREMENT ACT OF 1934

§§ 201 to 208. Omitted

CODIFICATION

Sections 201 to 208, sections 1 to 8, respectively, of act June 27, 1934, ch. 868, § 1, 48 Stat. 1283–1286, were omitted pursuant to the decision in the case of *Railroad Retirement Board v. Alton R. Co.* (Dist. of Col., 1935), 295 U.S. 330, 55 S.Ct. 758, 79 L.Ed. 1468, declaring this subchapter unconstitutional.

Section 201 defined terms for purposes of this subchapter.

Section 202 stated purposes of this subchapter and required a special report to be sent from the Railroad Retirement Board to the President.

Section 203 related to annuities paid under this subchapter.

Section 204 related to compulsory retirement.

Section 205 related to employee contributions.

Section 206 related to existing pension systems.

Section 207 related to employee representatives.

Section 208 related to retirement fund established under this subchapter.

Provisions relating to refund of sums paid by railroads and other carriers of the United States under this subchapter were contained in act June 1, 1938, ch. 315, §§ 1, 2, 52 Stat. 608.

§ 209. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 649

Section, act June 27, 1934, ch. 868, § 9, 48 Stat. 1287, established a Railroad Retirement Board and set out its functions.

§§ 210 to 214. Omitted

CODIFICATION

Sections 210 to 214, sections 10 to 14, respectively, of act June 27, 1934, ch. 868, § 10, 48 Stat. 1288, 1289, were omitted as unconstitutional. See section 201 of this title.

Section 210 related to jurisdiction of certain courts.

Section 211 related to exemption of annuities or death payments from legal process.

Section 212 related to penalties for missed payments by carriers and has been omitted from the Code as unconstitutional.

Section 213 related to certain other penalties.

Section 214 related to separability of provisions.

SUBCHAPTER II—RAILROAD RETIREMENT ACT OF 1935

CODIFICATION

This subchapter was comprised of act Aug. 29, 1935, ch. 812, §§ 1–14, 49 Stat. 967 to 973, known as the Railroad Retirement Act of 1935, and was amended in its entirety and completely revised by act June 24, 1937, ch. 382, 50 Stat. 307. The act, as amended and revised, was redesignated the Railroad Retirement Act of 1937 and was classified to subchapter III of this chapter. The Railroad Retirement Act of 1935 continued in effect with respect to individuals granted annuities prior to enactment of the Railroad Retirement Act of 1937. It was specifically amended by act June 11, 1940, ch. 307, § 2, 54 Stat. 264, and by act Aug. 13, 1940, ch. 664, §§ 2, 3, 54 Stat. 785.

§§ 215 to 228. Omitted

CODIFICATION

Sections 215 to 228 were omitted pursuant to the amendment and revision of act Aug. 29, 1935, ch. 812 by act June 24, 1937, ch. 382, 50 Stat. 307, known as the Railroad Retirement Act of 1937.

Section 215, acts Aug. 29, 1935, ch. 812, § 1, 49 Stat. 967; June 11, 1940, ch. 307, § 2, 54 Stat. 264; Aug. 13, 1940, ch.

664, §§2, 3, 54 Stat. 780, defined terms for purposes of this subchapter.

Section 216, act Aug. 29, 1935, ch. 812, §2, 49 Stat. 968, related to reductions in annuities of employees working beyond age sixty-five.

Section 217, act Aug. 29, 1935, ch. 812, §3, 49 Stat. 969, related to employees eligible for annuities under this subchapter.

Section 218, act Aug. 29, 1935, ch. 812, §4, 49 Stat. 969, related to annuities to representatives under this subchapter.

Section 219, act Aug. 29, 1935, ch. 812, §5, 49 Stat. 970, related to death payments under this subchapter.

Section 220, act Aug. 29, 1935, ch. 812, §6, 49 Stat. 970, related to establishment of Railroad Retirement Board.

Section 221, act Aug. 29, 1935, ch. 812, §7, 49 Stat. 971, related to issuance of a special report on retirement system by Board.

Section 222, act Aug. 29, 1935, ch. 812, §8, 49 Stat. 972, related to establishment of Investigation Commission.

Section 223, act Aug. 29, 1935, ch. 812, §9, 49 Stat. 973, related to court jurisdiction under this subchapter.

Section 224, act Aug. 29, 1935, ch. 812, §10, 49 Stat. 973, related to assignability of annuity payments.

Section 225, act Aug. 29, 1935, ch. 812, §11, 49 Stat. 973, related to penalties under this subchapter.

Section 226, act Aug. 29, 1935, ch. 812, §12, 49 Stat. 973, related to separability of provisions.

Section 227, act Aug. 29, 1935, ch. 812, §13, 49 Stat. 973, related to authorization of appropriations under this subchapter.

Section 228, act Aug. 29, 1935, ch. 812, §14, 49 Stat. 973, related to short title of this subchapter.

EFFECT OF AMENDMENTS TO SECTION 215 OF THIS TITLE

Act June 11, 1940, ch. 307, §2, 54 Stat. 264, provided that the amendment of section 215 of this title by act June 11, 1940, was to have the same effect as if it had been part of the Railroad Retirement Act of 1935 from its enactment on Aug. 29, 1935.

SHORT TITLE; CONTINUATION AND EFFECT OF RAILROAD RETIREMENT ACT OF 1935

Act June 24, 1937, ch. 382, §§201–205, 50 Stat. 318, 319, as amended by acts Oct. 8, 1940, ch. 757, title VI, pt. II, 54 Stat. 1014; Apr. 8, 1942, ch. 227, §10, 56 Stat. 207; Oct. 30, 1966, Pub. L. 89–700, title I, §111, 80 Stat. 1085, provided that act Aug. 29, 1935, ch. 812, §§1 to 14, 49 Stat. 967 to 973, comprising subchapter II of this chapter, as in effect prior to amendment by act June 24, 1937, was to be known as the Railroad Retirement Act of 1935 and that such act, as amended by act June 24, 1937, was to be known as the Railroad Retirement Act of 1937, set out transitional provisions for adjudication of claims under both the Railroad Retirement Acts of 1935 and 1937, and provided that the enactment of act June 24, 1937 was to have no effect on members of the Railroad Retirement Board in office on June 24, 1937, except that persons experienced in railroad service were to be retained in the employ of the Board, even if unqualified for service under the civil service law and rules, where the Board determined that they possessed the necessary qualifications.

SUBCHAPTER III—RAILROAD RETIREMENT ACT OF 1937

CODIFICATION

This subchapter was comprised of act Aug. 29, 1935, ch. 812, as restated by act June 24, 1937, ch. 382, 50 Stat. 307, known as the Railroad Retirement Act of 1937. The Railroad Retirement Act of 1937 was amended in its entirety and completely revised by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, effective Jan. 1, 1975. The act, as amended and revised by Pub. L. 93–445, was redesignated the Railroad Retirement Act of 1974 and is classified to subchapter IV of this chapter.

§§ 228a to 228c–1. Omitted

CODIFICATION

Sections 228a to 228c–1 were omitted pursuant to the amendment and revision of act Aug. 29, 1935, ch. 812, by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, known as the Railroad Retirement Act of 1974.

Section 228a, act Aug. 29, 1935, ch. 812, §1, as restated June 24, 1937, ch. 382, pt. I, §1, 50 Stat. 307; amended June 11, 1940, ch. 307, §1, 54 Stat. 264; Aug. 13, 1940, ch. 664, §§1, 3, 54 Stat. 785, 786; Oct. 10, 1940, ch. 842, §25, 54 Stat. 1100; Apr. 8, 1942, ch. 227, §13, 56 Stat. 209; July 31, 1946, ch. 709, §§1, 2, 201 to 204, 60 Stat. 722, 725 to 727; Oct. 30, 1951, ch. 632, §1, 65 Stat. 683; July 18, 1952, ch. 945, §6(d)(1), 66 Stat. 777; Aug. 31, 1954, ch. 1164, pt. I, §1, 68 Stat. 1038; Sept. 1, 1954, ch. 1206, title IV, §401(a), 68 Stat. 1097; Aug. 1, 1956, ch. 836, title I, §120(a), 70 Stat. 836; Aug. 1, 1956, ch. 837, title IV, §408(c), 70 Stat. 877; Aug. 30, 1957, Pub. L. 85–238, §4(a), 71 Stat. 520; Aug. 28, 1958, Pub. L. 85–840, title VII, §703, 72 Stat. 1056; Sept. 13, 1960, Pub. L. 86–778, title VII, §708, 74 Stat. 997; June 30, 1961, Pub. L. 87–64, title III, §301, 75 Stat. 142; July 30, 1965, Pub. L. 89–97, title III, §326(a), 79 Stat. 400; Sept. 29, 1965, Pub. L. 89–212, §2(f), 79 Stat. 860; Oct. 30, 1966, Pub. L. 89–700, title I, §101, 80 Stat. 1079; Feb. 15, 1968, Pub. L. 90–257, title I, §101, 82 Stat. 16; Oct. 22, 1968, Pub. L. 90–624, §2, 82 Stat. 1316, defined terms for purposes of this subchapter. See section 231 of this title.

Section 228b, act Aug. 29, 1935, ch. 812, §2, as restated June 24, 1937, ch. 382, pt. I, §1, 50 Stat. 309; amended July 31, 1946, ch. 709, §§205, 206, 60 Stat. 727, 728; Oct. 30, 1951, ch. 632, §§2, 3, 5, 65 Stat. 683; Aug. 31, 1954, ch. 1164, pt. I, §§2, 3, 68 Stat. 1038; Sept. 1, 1954, ch. 1206, title IV, §401(b), 68 Stat. 1097; Aug. 12, 1955, ch. 869, §1, 69 Stat. 715; May 19, 1959, Pub. L. 86–28, pt. I, §1, 73 Stat. 25; Sept. 22, 1961, Pub. L. 87–285, §§1, 2, 75 Stat. 585; Sept. 29, 1965, Pub. L. 89–212, §1, 79 Stat. 858; Oct. 30, 1966, Pub. L. 89–699, title II, §201(a), 80 Stat. 1075; Oct. 30, 1966, Pub. L. 89–700, title I, §102, 80 Stat. 1079; Feb. 15, 1968; Pub. L. 90–257, title I, §§102, 103, 82 Stat. 16; Aug. 12, 1970, Pub. L. 91–377, §2, 84 Stat. 791; July 2, 1971, Pub. L. 92–46, §2, 85 Stat. 101; Oct. 4, 1972, Pub. L. 92–460, §1(b), (c), 86 Stat. 765; July 10, 1973, Pub. L. 93–69, title I, §§101, 104(b), (c), 87 Stat. 162, 164, related to eligibility of individuals for annuities under this subchapter. See section 231a of this title.

Section 228c, act Aug. 29, 1935, ch. 812, §3, as restated June 24, 1937, ch. 382, pt. I, §1, 50 Stat. 310; amended July 31, 1946, ch. 709, §§207–211, 60 Stat. 728, 729; June 23, 1948, ch. 608, §1, 62 Stat. 576; Oct. 30, 1951, ch. 632; §§6–10, 65 Stat. 684; June 16, 1954, ch. 300, §1, 68 Stat. 250; Aug. 31, 1954, ch. 1164, pt. I, §§4–7, 68 Stat. 1038, 1039; Aug. 7, 1956, ch. 1022, §1, 70 Stat. 1076; Sept. 6, 1958, Pub. L. 85–927, pt. I, §1, 72 Stat. 1778; May 19, 1959, Pub. L. 86–28, pt. I, §2, 73 Stat. 26; Sept. 13, 1960, Pub. L. 86–778, title II, §211(*o*)(1), 74 Stat. 958; Oct. 5, 1963, Pub. L. 88–133, title I, §§1, 2, 77 Stat. 219; Sept. 29, 1965, Pub. L. 89–212, §3(a), (b), 79 Stat. 860; Oct. 30, 1966, Pub. L. 89–699, title I, §1, title II, §201(b), (c), 80 Stat. 1073, 1075, 1076; Oct. 30, 1966, Pub. L. 89–700, title I, §103, title III, §301(i), (iv)(a), 80 Stat. 1080, 1088; Feb. 15, 1968, Pub. L. 90–257, title I, §104, 82 Stat. 17; Mar. 17, 1970, Pub. L. 91–215, §§1, 2, 84 Stat. 70; Aug. 12, 1970, Pub. L. 91–377, §1, 84 Stat. 791, July 2, 1971, Pub. L. 92–46, §1, 85 Stat. 101; Oct. 4, 1972, Pub. L. 92–460, §1(a), (d), 86 Stat. 765; July 6, 1973, Pub. L. 93–58, §1, 87 Stat. 141; July 10, 1973, Pub. L. 93–69, title I, §104(a), 87 Stat. 163; Oct. 16, 1974, Pub. L. 93–445, title VI, §601, 88 Stat. 1360, related to computation of annuities under this subchapter. See section 231b of this title.

Section 228c–1, act Aug. 29, 1935, ch. 812, §4, as restated June 24, 1937, ch. 382, pt. I, §1, as added Oct. 8, 1940, ch. 757, title VI, pt. II, §625, 54 Stat. 1014; amended Apr. 8, 1942, ch. 227, §§1–8, 56 Stat. 204–206; July 31, 1946, ch. 709, §212, 60 Stat. 729; Oct. 30, 1951, ch. 632, §4, 65 Stat. 683; Aug. 1, 1956, ch. 837, title IV, §408(a), (b), 70 Stat. 876; Oct. 5, 1963, Pub. L. 88–133, title I, §§3, 4, 77 Stat. 219; Oct. 30, 1966, Pub. L. 89–700, title I, §104, 80 Stat. 1081, related to consideration of time spent in

military service in computation of annuities. See section 228a of this title.

ANNUITIES, PENSIONS, AND JOINT AND SURVIVOR ANNUITY ELECTIONS

Act July 31, 1946, ch. 709, §§ 404–407, 60 Stat. 742, provided that the rights of persons to whom pensions or annuities were awarded before July 31, 1946 were to be governed by the applicable provisions of law in effect prior to that date, that the election of a joint and survivor annuity made before July 31, 1946, by a person to whom the annuity accrued before Jan. 1, 1947, was to be given effect as though the provisions of law under which the election was made had continued to be operative, that death payments under sections 219 and 228e of this title, other than survivor annuities pursuant to an election, were to be made only with respect to deaths occurring before Jan. 1, 1947, and that any person to whom an annuity accrued before Jan. 1, 1947, and who would as of the date of the initial accrual have been entitled to an annuity in a greater amount by reason of the amendments by act July 31, 1946, had such amendments been in effect at the date of initial accrual, was to be awarded the annuity in such greater amount without additional application therefor.

REDUCTION OF ANNUITY BECAUSE OF PRIOR DISABILITY ANNUITY TERMINATED BY RECOVERY

Act July 31, 1946, ch. 709, § 408, 60 Stat. 742, provided that no annuities accruing after July 1946 were to be reduced under section 228b(a)(3) of this title in order to compensate for an annuity terminated by recovery from a disability.

DUAL BENEFIT PROVISION; RETROACTIVE PAYMENT TO SURVIVORS

Act June 16, 1954, ch. 300, § 2, 68 Stat. 250, provided that in the case of a decedent dying before July 1, 1954, so much of any annuity or pension payment due such decedent under section 228c(b) of this title, was to be paid only to the widow or widower of the decedent, if living, or to the child or children of such decedent, in the alternative, if living.

PERCENTAGE ADJUSTMENT

Pub. L. 92–46, § 4, July 2, 1971, 85 Stat. 101, authorized the Railroad Retirement Board to make certain adjustments in allowance percentages under this subchapter, so that the percentages when applied against certain social security benefits, would result in amounts comparable to those in effect prior to the changes made by Pub. L. 92–5, Mar. 17, 1971, 85 Stat. 5, known as the Social Security Amendments of 1971.

RECERTIFICATIONS BY RAILROAD RETIREMENT BOARD

Pub. L. 93–69, § 106, July 10, 1973, 87 Stat. 165, provided that all recertifications required by reason of the amendments made by sections 104 and 105 of Pub. L. 93–69 were to be made by the Board without application therefor.

Pub. L. 92–460, § 3, Oct. 4, 1972, 86 Stat. 766, provided that all recertifications required by reason of the amendments made by Pub. L. 92–460 were to be made by the Board without application therefor.

Pub. L. 92–46, § 6, July 2, 1971, 85 Stat. 102, provided that all recertifications required by reason of the amendments made by Pub. L. 92–46 were to be made by the Board without application therefor.

Pub. L. 91–377, § 4(b)(2), Aug. 12, 1970, 84 Stat. 792, provided that all recertifications required by reason of the amendments made by Pub. L. 91–377 to sections 228b, 228c, 228e, and 228o of this title were to be made by the Board without application therefor.

Pub. L. 90–257, § 108(c), Feb. 15, 1968, 82 Stat. 23, provided that all recertifications required by reason of the amendments made by Pub. L. 90–257 to sections 228a, 228b, 228c, 228e, and 228j of this title were to be made by the Board without application therefor.

Pub. L. 89–699, § 202(b), Oct. 30, 1966, 80 Stat. 1077, provided that all recertifications required by reason of the amendments made by Pub. L. 89–699 were to be made by the Board without application therefor.

Pub. L. 86–28, § 6(b), Mar. 19, 1959, 73 Stat. 28, provided that all recertifications required by reason of the amendments made by Pub. L. 86–28 to sections 228b, 228c, 228e, 228s–1 and the enactment of section 228z–1 of this title were to be made by the Board without application therefor.

Act Oct. 30, 1951, ch. 632, § 25(j), 65 Stat. 691, provided that all recertifications by the Board under act Oct. 30, 1951 were to be made without applications therefor unless required by reason of section 9 of act Oct. 30, 1951, in which case, recertifications were to be made only upon application therefor in such manner and form as the Board was to prescribe.

Act June 23, 1948, ch. 608, § 3, 62 Stat. 577, provided in part that all recertifications required by reason of act June 23, 1948 were to be made by the Board without application therefor.

RESTRICTIONS ON ESTABLISHMENT OF NEW ANNUITIES AND USE OF CERTAIN LABOR TACTICS

Pub. L. 91–215, § 7, Mar. 17, 1970, 84 Stat. 72, placed certain limitations on the utilization of particular procedures established under the Railway Labor Act, section 151 et seq. of this title, when alterations in the provisions of this subchapter regarding certain annuity payments were being sought and placed similar limitations on the use of strikes and lockouts as labor practices when such changes were being sought.

§ 228d. Repealed. July 31, 1946, ch. 709, § 212, 60 Stat. 729

Section, act Aug. 29, 1935, ch. 812, § 4, as restated June 24, 1937, ch. 382, pt. I, § 1, 50 Stat. 311, related to joint and survivor annuity.

§§ 228e to 228z–1. Omitted

CODIFICATION

Sections 228e to 228z–1 were omitted pursuant to the amendment and revision of act Aug. 29, 1935, ch. 812, by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, known as the Railroad Retirement Act of 1974.

Section 228e, act Aug. 29, 1935, ch. 812, § 5, as restated June 24, 1937, ch. 382, pt. I, § 1, 50 Stat. 312; amended Apr. 8, 1942, ch. 227, § 12, 56 Stat. 208; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946; 11 F.R. 7873, 60 Stat. 1095; acts July 31, 1946, ch. 709, § 213, 60 Stat. 729; June 23, 1948, ch. 608, § 2, 62 Stat. 577; Oct. 30, 1951, ch. 632, §§ 11 to 23, 65 Stat. 685; July 18, 1952, ch. 945, § 6(d)(2), (3), 66 Stat. 777; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953 18 F.R. 2053, 67 Stat. 631; acts Aug. 31, 1954, ch. 1164, pt. I, §§ 8–14, 68 Stat. 1039; Sept. 1, 1954, ch. 1206, title I, § 106(f), title IV, § 401(b)–(d), 68 Stat. 1081, 1097; Aug. 12, 1955, ch. 869, §§ 2, 3, 69 Stat. 716; Aug. 1, 1956, ch. 836, title I, § 120(b), (c), 70 Stat. 836; Aug. 7, 1956, ch. 1022, § 2, 70 Stat. 1076; Aug. 30, 1957, Pub. L. 85–238, § 4(b), (c), 71 Stat. 520; Sept. 6, 1958, Pub. L. 85–927, § 2, 72 Stat. 1779; May 19, 1959, Pub. L. 86–28, pt. I, § 3, 73 Stat. 27; Sept. 13, 1960, Pub. L. 86–778, title II, § 211(*o*)(2), 74 Stat. 958; Sept. 22, 1961, Pub. L. 87–285, § 3, 75 Stat. 585; Oct. 5, 1963, Pub. L. 88–133, title I, §§ 5, 6, 77 Stat. 220; July 30, 1965, Pub. L. 89–97, title I, § 111(b)(2), title III, § 326(b), 79 Stat. 341, 400; Sept. 29, 1965, Pub. L. 89–212, § 3(c)–(e), 79 Stat. 860; Oct. 30, 1966, Pub. L. 89–699, title II, § 201(d)–(f), 80 Stat. 1076; Oct. 30, 1966, Pub. L. 89–700, title I, § 105, title III, § 301(i), (iv)(b), (c), 80 Stat. 1082, 1088; Jan. 2, 1968, Pub. L. 90–248, title I, § 151(d)(3), 81 Stat. 860; Feb. 15, 1968, Pub. L. 90–257, title I, § 105, 82 Stat. 19; Aug. 12, 1970, Pub. L. 91–377, § 3, 84 Stat. 791, July 2, 1971, Pub. L. 92–46, § 3, 85 Stat. 101; Oct. 4, 1972, Pub. L. 92–460, § 1(e), (f), 86 Stat. 766; July 6, 1973, Pub. L. 93–58, § 2, 87 Stat. 141; July 10, 1973, Pub. L. 93–69, title I, § 104(d), 87 Stat. 164, related to annuities and lump sum payments for survivors. See sections 231c and 231e of this title.

Section 228f, act Aug. 29, 1935, ch. 812, § 6, as restated June 24, 1937, ch. 382, pt. I, § 1, 50 Stat. 312, related to

pensions to individuals on pension or gratuity rolls of employers. See section 231*o* of this title.

Section 228g, act Aug. 29, 1935, ch. 812, §7, as restated June 24, 1937, ch. 382, pt. I, §1, 50 Stat. 313, related to additional pensions or gratuities by employers. See section 231*o* of this title.

Section 228h, act Aug. 29, 1935, ch. 812, §8, as restated June 24, 1937, ch. 382, pt. I, §1, 50 Stat. 313; amended July 31, 1946, ch. 709, §214, 60 Stat. 735; Oct. 30, 1966, Pub. L. 89–700, title I, §106, 80 Stat. 1085, related to filing of compensation returns by employers with Board. See section 231h of this title.

Section 228h–1, act Oct. 9, 1940, ch. 797, §4, 54 Stat. 1089, related to records of service and compensation prior to Jan. 1, 1937, was transferred to a note set out under section 228h of this title.

Section 228i, act Aug. 29, 1935, ch. 812, §9, as restated June 24, 1937, ch. 382, pt. I, §1, 50 Stat. 314; amended Oct. 10, 1940, ch. 842, §26, 54 Stat. 1100; Oct. 30, 1966, Pub. L. 89–700, title I, §107, 80 Stat. 1085, related to erroneous payments by the Board. See section 231i of this title.

Section 228j, act Aug. 29, 1935, ch. 812, §10, as restated June 24, 1937, ch. 382, pt. I, §1, 50 Stat. 314; amended 1940 Reorg. Plan No. III, §1(a), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; acts June 25, 1948, ch. 646, 19§§1, 32(b), 62 Stat. 875, 895, 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Oct. 15, 1949, ch. 695, §5(a), 63 Stat. 880; Aug. 12, 1955, ch. 869, §5, 69 Stat. 716; Sept. 6, 1958, Pub. L. 85–927, pt. I, §3, 72 Stat. 1781; Sept. 6, 1966, Pub. L. 89–554, §8(a), 80 Stat. 660; Oct. 30, 1966, Pub. L. 89–700, title I, §108, 80 Stat. 1085; Feb. 15, 1968, Pub. L. 90–257, title I, §106, 82 Stat. 21, related to establishment of Railroad Retirement Board. See section 231f of this title.

Section 228k, act Aug. 29, 1935, ch. 812, §11, as restated June 24, 1937, ch. 382, pt. I, §1, 50 Stat. 315; amended July 31, 1946, ch. 709, §215, 60 Stat. 735, related to court jurisdiction under this subchapter. See section 231g of this title.

Section 228*l*, act Aug. 29, 1935, ch. 812, §12, as restated June 24, 1937, ch. 382, pt. I, §1, 50 Stat. 316 and amended Aug. 12, 1955, ch. 869, §4, 69 Stat. 716, related to assignability of annuities and pension payments under this subchapter. See section 231m of this title.

Section 228m, act Aug. 29, 1935, ch. 812, §13, as restated June 24, 1937, ch. 382, pt. I, §1, 50 Stat. 316; amended Sept. 6, 1958, Pub. L. 85–927, pt. I, §4, 72 Stat. 1781, related to penalties under this subchapter. See section 231*l* of this title.

Section 228n, act Aug. 29, 1935, ch. 812, §14, as restated June 24, 1937, ch. 382, pt. I, §1, 50 Stat. 316, related to separability of provisions. See section 231s of this title.

Section 228*o*, act Aug. 29, 1935, ch. 812, §15, as restated June 24, 1937, ch. 382, pt. I, §1, 50 Stat. 316; amended Sept. 22, 1959, Pub. L. 86–346, title I, §104(4), 73 Stat. 622; Oct. 5, 1963, Pub. L. 88–133, title I, §7(a), 77 Stat. 220; Oct. 30, 1966, Pub. L. 89–699, title I, §2, 80 Stat. 1074; Mar. 17, 1970, Pub. L. 91–215, §3, 84 Stat. 70; Aug. 12, 1970, Pub. L. 91–377, §5, 84 Stat. 792, related to establishment of Railroad Retirement Account. See section 231n of this title.

Section 228p, act Aug. 29, 1935, ch. 812, §16, as added June 24, 1937, ch. 382, pt. I, §1, 50 Stat. 317, related to authorization of appropriations under this subchapter.

Section 228q, act Aug. 29, 1935, ch. 812, §17, as added June 24, 1937, ch. 382, pt. I, §1, 50 Stat. 317; amended Oct. 30, 1951, ch. 632, §24, 65 Stat. 690, defined ''employment'' as used in this subchapter. See section 231q of this title.

Section 228r, act Aug. 29, 1935, ch. 812, §18, as added June 24, 1917, ch. 382, pt. I, §1, 50 Stat. 318, related to free transportation. See section 231p of this title.

Section 228s, act Aug. 29, 1935, ch. 812, §19(a), (b), as added June 24, 1917, ch. 382, pt. I, §1, as added Apr. 8, 1942, ch. 227, §11, 56 Stat. 207, 208; amended Oct. 30, 1966, Pub. L. 89–700, title I, §109, 80 Stat. 1085, related to incompetence. See section 231k of this title.

Section 228s–1, act June 24, 1937, ch. 382, pt. I, §20, as added Aug. 31, 1954, ch. 1164, pt. I, §15, 68 Stat. 1040; amended May 19, 1959, Pub. L. 86–28, pt. I, §4, 73 Stat. 28; Aug. 29, 1959, Pub. L. 86–211, §8(c), 73 Stat. 436; Oct. 30, 1966, Pub. L. 89–700, title I, §110, 80 Stat. 1085, related to waiver of annuities and pensions under this subchapter. See section 231k of this title

Section 228s–2, act Aug. 29, 1935, ch. 812, §21, as added July 30, 1965, Pub. L. 89–97, title I, §105(a)(1), 79 Stat. 335; amended July 30, 1965, Pub. L. 89–97, title I, §111(b)(1), 79 Stat. 340; Jan. 2, 1968, Pub. L. 90–248, title I, §129(c)(13), 81 Stat. 849, related to hospital insurance benefits for the aged. See section 231f of this title.

Section 228s–3, act Aug. 29, 1935, ch. 812, §22, as added Oct. 30, 1972, Pub. L. 92–603, title II, §201(d), 86 Stat. 1373, related to hospital insurance benefits for the disabled. See section 231f of this title.

Section 228t, act Oct. 30, 1951, ch. 632, §25(d), 65 Stat. 690, related to certain retirement or survivor annuities awarded prior to Oct. 30, 1951.

Section 228u, act Oct. 30, 1951, ch. 632, §25(e), 65 Stat. 690, related to determination of entitlement to a survivor annuity.

Section 228v, act Oct. 30, 1951, ch. 632, §25(f), 65 Stat. 691, related to law governing the awards of annuities.

Section 228w, act Oct. 30, 1951, ch. 632, §25(g), 65 Stat. 691, related to increased pensions after Nov. 30, 1961.

Section 228x, act Oct. 30, 1951, ch. 632, §25(h), 65 Stat. 691, related to increased annuities under subchapter II of this chapter.

Section 228y, act Oct. 30, 1951, ch. 632, §25(i), 65 Stat. 691, related to certain reduced annuities.

Section 228z, act Aug. 7, 1956, ch. 1022, §3, 70 Stat. 1076, related to increased pensions and annuities awarded before July 1, 1956 and annuities under subchapter II of this chapter.

Section 228z–1, Pub. L. 86–28, pt. I, §5, May 19, 1959, 73 Stat. 28, related to additional increases in certain pensions and annuities.

ACTUARIAL SOUNDNESS OF THE RAILROAD RETIREMENT SYSTEM

Pub. L. 93–69, title I, §107, July 10, 1973, 87 Stat. 165, authorized certain designated representatives of employees and representatives of carriers to submit to the Senate Committee on Labor and Public Welfare and the House Committee on Interstate and Foreign Commerce, no later than Apr. 1, 1974, a report containing their recommendations for restructuring the railroad retirement system to assure long-term actuarial soundness.

ADOPTED CHILD'S REENTITLEMENT TO ANNUITY

Pub. L. 93–58, §4(b), July 6, 1973, 87 Stat. 141, provided that any child whose entitlement to an annuity under section 228e(c) of this title was terminated by reason of his or her adoption prior to July 6, 1973, and who otherwise would have been entitled to an annuity under such section for a month after July, 1973, could become reentitled to his or her annuity by proper application.

CERTAIN PERSONS BECOMING EMPLOYERS

Act July 31, 1946, ch. 709, §409, 60 Stat. 743, provided that in the application of section 228f of this title with respect to persons who were not employers before the enactment of act July 31, 1946, the dates Jan. 1, 1946, and Jan. 1, 1947, were to be substituted for Mar. 1, 1937 and July 1, 1937, respectively.

COMMISSION ON RAILROAD RETIREMENT

Pub. L. 91–377, §7, Aug. 12, 1970, 84 Stat. 792, as amended by Pub. L. 92–46, §7, July 2, 1971, 85 Stat. 102, established a commission on railroad retirement, prescribed its composition, designated the rates of pay for its members, authorized a study of the retirement system and its financing, authorized appropriations for funding the expenses of the commission, and required that the commission submit a full report on its work no later than June 30, 1972.

CONGRESSIONAL DECLARATION OF 1974 LEGISLATIVE INTENT

Pub. L. 93–69, title I, §108, July 10, 1973, 87 Stat. 165, provided that the Congress declared its intent to enact

legislation in 1974, effective not later than Jan. 1, 1975, which would assure the long-term actuarial soundness of the railroad retirement system.

CONVERSION OF SPECIAL OBLIGATIONS IN RAILROAD RETIREMENT ACCOUNT ON OCT. 5, 1963; INTEREST RATE

Pub. L. 88–133, § 7(b), Oct. 5, 1963, 77 Stat. 220, provided that: ''The Secretary of the Treasury is authorized to retire the special obligations held by the account on the date of enactment of this Act [Oct. 5, 1963] and to issue in lieu thereof special obligations with an interest rate determined as provided for in section 15(b) of the Railroad Retirement Act of 1937, as amended by this Act [Pub. L. 88–133].''

DETERMINATION OF AMOUNTS OF SOCIAL SECURITY BENEFITS

Pub. L. 91–377, § 4(c), Aug. 12, 1970, 84 Stat. 792, provided that the amount by which a social security benefit computed under Pub. L. 90–248, Jan. 2, 1968, 81 Stat. 821, known as the Social Security Amendments of 1967, for purposes of Pub. L. 91–377, was to be deemed to be an amount equal to 87 per cent of such benefit computed under Pub. L. 91–172, title X, Dec. 30, 1969, 83 Stat. 737, known as the Social Security Amendments of 1969, and the amount by which an individual's social security benefit was increased by reason of the Social Security Amendments of 1969 was to be deemed to be 13 per cent of such individual's social security benefit as computed under the Social Security Amendments of 1969.

ENTITLEMENT TO ANNUITY OR PENSION UNDER RAILROAD RETIREMENT ACT OF 1937 AS INCLUDING ENTITLEMENT UNDER RAILROAD RETIREMENT ACT OF 1935

Pub. L. 89–97, title I, § 105(a)(2), July 30, 1965, 79 Stat. 335, provided that for purposes of section 21 of the Railroad Retirement Act of 1937, section 21 of act Aug. 29, 1935, as added by section 105(a)(1) of Pub. L. 89–97, and for certain other purposes, entitlement to an annuity or pension under this subchapter was to be deemed to include entitlement under subchapter II of this chapter.

HOSPITAL INSURANCE BENEFITS FOR THE AGED

Act Aug. 29, 1935, ch. 812, § 21, as added July 30, 1965, Pub. L. 89–97, title I, § 105(a)(1), 79 Stat. 335, required the Railroad Retirement Board to certify to the Secretary of Health, Education, and Welfare, in order to provide hospital insurance benefits for annuitants, pensioners, and certain other aged individuals for purposes of the Social Security program, the name of anyone aged 65 who was entitled to an annuity or pension under this subchapter, would have been so entitled had he ceased compensated service and had applied for such annuity, or bore a particular relationship to certain qualified employees, and specified such additional information as such certification was to include.

INCREASES IN CERTAIN PENSIONS AND ANNUITIES

Pub. L. 93–69, title I, § 105, July 10, 1973, 87 Stat. 164, provided that if title II of the Social Security Act, section 401 et seq. of Title 42, The Public Health and Welfare, was amended to provide an increase in benefits at any time during the period July 1, 1973 to Dec. 31, 1974, the pension of each recipient under section 228f of this title and the annuity of each recipient under this subchapter was to be increased by an amount computed under the method set forth in section 228c(a)(6) of this title.

Pub. L. 92–460, § 2 Sept. 4, 1972, 86 Stat. 766, provided for 20 per cent increases in pensions under section 228f of this title, annuities under subchapter II of this chapter, certain survivor annuities, and certain widows' and widowers' insurance annuities.

Pub. L. 92–46, § 5, July 2, 1971, 85 Stat. 101, provided for 10 per cent increases in pensions under section 228f of this title, annuities under subchapter II of this chapter, certain survivor annuities, and certain widows' and widowers' insurance annuities.

Pub. L. 91–377, § 4(b)(1), Aug. 12, 1970, 84 Stat. 792, provided for 15 per cent increases in pensions under section 228f of this title, annuities under subchapter II of this chapter, certain survivor annuities, and certain widows' and widowers' insurance annuities, provided that there would be a reduction in the amount of the increase where the recipient was also a recipient of certain social security benefits.

Pub. L. 90–257, § 107, Feb. 15, 1968, 82 Stat. 22, provided for certain increases in pensions under section 228f of this title, annuities under subchapter II of this chapter, survivor annuities and widows' and widowers' insurance annuities, provided that there would be a reduction in the amount of the increase where the recipient was also a recipient of certain social security benefits.

Pub. L. 89–699, § 201(g), Oct. 30, 1966, 80 Stat. 1077, provided for 7 per cent increases in pensions under section 228f of this title, annuities under subchapter II of this chapter, certain survivor annuities, and certain widows' and widowers' insurance annuities, provided that there would be a reduction in the amount of the increase where the recipient was also a recipient of certain social security benefits.

PERMANENCY OF INCREASES IN CERTAIN PENSIONS AND ANNUITIES

Pub. L. 92–460, § 6, Sept. 4, 1972, 86 Stat. 767, provided that it was the policy of Congress that the 20 per cent increase in pension and annuity benefits provided by section 2 of Pub. L. 92–460, as well as the 10 per cent and 15 per cent increases provided by section 5 of Pub. L. 92–46 and section 4(b)(1) of Pub. L. 91–377, respectively, could become permanent only if measures were taken to assure that the Railroad Retirement Account would remain solvent, and required representatives of employees, retirees, and carriers to submit to Congress reports containing their recommendations for such solvency measures no later than Mar. 1, 1973, and required the Railroad Retirement Board to submit its solvency recommendations to Congress no later than Apr. 1, 1973.

PRESUMPTION OF HIGHER INCREASES IN ANNUITIES

Pub. L. 90–257, § 108(b), Feb. 15, 1968, 82 Stat. 23, provided that in cases where an annuity was payable in the month before the month with respect to which increases in benefits under title II of the Social Security Act, sections 401 et seq. of Title 42, The Public Health and Welfare, provided for by Pub. L. 90–248, Jan. 2, 1968, 81 Stat. 821, known as the Social Security Amendments of 1967, became effective in an amount determined under this subchapter, other than under the first proviso of section 228c(e) of this title, the provisions of Pub. L. 90–257 were to be presumed to provide a higher amount of increase in annuity than the provisions of the Social Security Amendments of 1967 would provide under the first proviso of section 228c(e) of this title.

RAILROAD RETIREMENT AND OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE SYSTEM

Pub. L. 89–97, § 105(c), July 30, 1965, 79 Stat. 336, provided that amendments preserving the relationship between the railroad retirement and old-age, survivors, and disability insurance systems were contained in section 326 of Pub. L. 89–97, which amended sections 228 and 228e of this title.

TRANSFER OF FUNDS FOR PAYMENT OF SUPPLEMENTAL ANNUITIES

Pub. L. 91–215, § 6, Mar. 17, 1970, 84 Stat. 71, authorized the Railroad Retirement Board to request the Secretary of the Treasury to transfer from the Railroad Retirement Account to the Railroad Retirement Supplemental Account such funds as were necessary to meet the payment of the supplemental annuities pursuant to section 228c(j) of this title, as well as the administrative expenses necessarily involved for the six months following Mar. 17, 1970, and required the Board to request the return of an equal amount plus interest to the Railroad Retirement Account from the Supplemental Account within one year from Mar. 17, 1970.

Pub. L. 89–699, § 3(b), Oct. 30, 1966, 80 Stat. 1075, authorized the Railroad Retirement Board to request the Secretary of the Treasury to transfer from the Railroad Retirement Account to the Railroad Retirement Supplemental Account such funds as were necessary to meet the payment of the supplemental annuities pursuant to section 228c(j) of this title, as well as the administrative expenses necessarily involved for the six months following Oct. 30, 1966, and required the Board to request the return of an equal amount plus interest to the Railroad Retirement Account from the Supplemental Account within one year from Oct. 30, 1966.

SUBCHAPTER IV—RAILROAD RETIREMENT ACT OF 1974

CODIFICATION

This subchapter is comprised of act Aug. 29, 1935, ch. 812, as amended in its entirety and completely revised by act June 24, 1937, ch. 382, part I, 50 Stat. 307, and as further amended in its entirety and completely revised by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, eff. Jan. 1, 1975. The Act, as restated by Pub. L. 93–445, was redesignated the Railroad Retirement Act of 1974. See section 231t of this title. The Act is set out in this subchapter carrying a statutory credit showing restatement by act June 24, 1937 and a further restatement by Pub. L. 93–445 without reference to amendments made to the Act between its original enactment in 1935 and 1974. For history of the Act, credits, and note material, see subchapters II and III of this chapter.

§ 231. Definitions

For the purposes of this subchapter—

(a)(1) The term ''employer'' shall include—

(i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under part A of subtitle IV of title 49;

(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad;

(iii) any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any employer as defined in paragraph (i) or (ii) of this subdivision;

(iv) any railroad association, traffic association, tariff bureau, demurrage bureau, weighing and inspection bureau, collection agency and any other association, bureau, agency, or organization which is controlled and maintained wholly or principally by two or more employers as defined in paragraph (i), (ii), or (iii) of this subdivision and which is engaged in the performance of services in connection with or incidental to railroad transportation; and

(v) any railway labor organization, national in scope, which has been or may be organized in accordance with the provisions of the Railway Labor Act, as amended [45 U.S.C. 151 et seq.], and its State and National legislative committees, general committees, insurance departments, and local lodges and divisions, established pursuant to the constitution or bylaws of such organization.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, the term ''employer'' shall not include—

(i) any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities, and

(ii) any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general diesel-railroad system of transportation, but shall not exclude any part of the general diesel-railroad system of transportation now or hereafter operated by any other motive power. The Surface Transportation Board is hereby authorized and directed upon request of the Railroad Retirement Board, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this paragraph.

(b)(1) The term ''employee'' means (i) any individual in the service of one or more employers for compensation, (ii) any individual who is in the employment relation to one or more employers, and (iii) an employee representative: *Provided, however*, That the term ''employee'' shall include an employee of a local lodge or division defined as an employer in subsection (a) of this section only if he was in the service of or in the employment relation to an employer as defined in paragraph (i) of subsection (a)(1) of this section on or after August 29, 1935.

(2) The term ''employee'' shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

(c) The term ''employee representative'' means any officer or official representative of a railway labor organization other than a labor organization included in the term ''employer'' as defined in subsection (a) of this section who before or after August 29, 1935, was in the service of an employer as defined in subsection (a) of this section and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, as amended [45 U.S.C. 151 et seq.], and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

(d)(1) An individual is in the service of an employer whether his service is rendered within or without the United States if—

(i)(A) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or (B) he is rendering professional or technical services and is integrated into the staff of the employer, or (C) he is rendering, on the property used in the employer's operations, personal services the rendition of which is integrated into the employer's operations; and

(ii) he renders such service for compensation, or a method of computing the monthly compensation for such service is provided in section 231b(j) of this title.

(2) Notwithstanding the provisions of subdivision (1) of this subsection—

(i) an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States only when he is rendering service to it in the United States;

(ii) an individual shall be deemed to be in the service of a local lodge or division of a railway-labor-organization employer not conducting the principal part of its business in the United States only if (A) all, or substantially all, the individuals constituting the membership of such local lodge or division are employees of an employer conducting the principal part of its business in the United States; or (B) the headquarters of such local lodge or division is located in the United States; and

(iii) an individual shall be deemed to be in the service of a general committee of a railway-labor-organization employer not conducting the principal part of its business in the United States only if (A) he is representing a local lodge or division described in clause (A) or (B) of paragraph (ii); or (B) all, or substantially all, the individuals represented by such general committee are employees of an employer conducting the principal part of its business in the United States; or (C) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case the Board may prescribe such other formula as it finds to be equitable, and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 per centum of his remuneration for such service no part of such remuneration shall be regarded as compensation.

(3) Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof. For purposes of this subdivision, the laws applicable on August 29, 1935, in the place where the service is rendered shall be deemed to have been applicable there at all times prior to that date.

(e)(1) An individual shall be deemed to have been in the employment relation to an employer on August 29, 1935, if—

(i) he was on that date on leave of absence from his employment, expressly granted to him by the employer by whom he was employed, or by a duly authorized representative of such employer, and the grant of such leave of absence will have been established to the satisfaction of the Board before July 1947;

(ii) he was in the service of an employer after August 29, 1935, and before January 1946 in each of six calendar months, whether or not consecutive;

(iii) before August 29, 1935, he did not retire and was not retired or discharged from the service of the last employer by whom he was employed or its corporate or operating successor, but (A) solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such employer and thereafter remained continuously disabled until he attained age sixty-five or until August 1945, or (B) solely for such last stated reason an employer by whom he was employed before August 29, 1935, or an employer who is its successor did not on or after August 29, 1935, and before August 1945 call him to return to service, or (C) if he was so called he was solely for such reason unable to render service in six calendar months as provided in paragraph (ii); or

(iv) he was on August 29, 1935, absent from the service of an employer by reason of a discharge which, within one year after the effective date thereof, was protested, to an appropriate labor representative or to the employer, as wrongful, and which was followed within ten years of the effective date thereof by his reinstatement in good faith to his former service with all his senority[1] rights.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, an individual shall not be deemed to have been in the employment relation to an employer on August 29, 1935, if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937 [45 U.S.C. 228f], or if during the last payroll period before August 29, 1935, in which he rendered service to an employer he was not in the service of an employer, in accordance with subsection (d) of this section, with respect to any service in such payroll period, or if he could have been in the employment relation to an employer only by reason of his having been, either before or after August 29, 1935, in the service of a local lodge or division defined as an employer in subsection (a) of this section.

(f)(1) The term ''years of service'' shall mean the number of years an individual as an employee shall have rendered service to one or more employers for compensation or received remuneration for time lost, and shall be computed in accordance with the provisions of sec-

[1] So in original. Probably should be ''seniority''.

tion 231b(i) of this title. Twelve calendar months, consecutive or otherwise, in each of which an employee has rendered such service or received such wages for time lost, shall constitute a year of service. Ultimate fractions shall be taken at their actual value.

(2) Where service prior to August 29, 1935, may be included in the computation of years of service as provided in subdivision (3) of section 231b(i) of this title, it may be included as to—

(i) service rendered to a person which was an employer on August 29, 1935, irrespective of whether such person was an employer at the time such service was rendered;

(ii) service rendered to any express company, sleeping-car company, or carrier by railroad which was a predecessor of a company which, on August 29, 1935, was an employer as defined in paragraph (i) of subsection (a)(1) of this section, irrespective of whether such predecessor was an employer at the time such service was rendered; and

(iii) service rendered to a person not an employer in the performance of operations involving the use of standard railroad equipment if such operations were performed by an employer on August 29, 1935.

(g)(1) For purposes of section 231b(i)(2) of this title, an individual shall be deemed to have been in ''military service'' when commissioned or enrolled in the active service of the land or naval forces of the United States and until resignation or discharge therefrom; and the service of any individual in any reserve component of the land or naval forces of the United States, while serving in the land or naval forces of the United States for any period, even though less than thirty days, shall be deemed to have been active service in such force during such period.

(2) For purposes of section 231b(i)(2) of this title, a ''war service period'' shall mean (A) any war period, or (B) with respect to any particular individual, any period during which such individual (i) having been in military service at the end of a war period, was required to continue in military service, or (ii) was required by call of the President, or by any Act of Congress or regulation, order, or proclamation pursuant thereto, to enter and continue in military service, or (C) any period after September 7, 1939, with respect to which a state of national emergency was duly declared to exist which requires a strengthening of the national defense. For purposes of section 231b(i)(2) of this title, the period beginning on June 15, 1948, and ending on December 15, 1950, shall be deemed to be a war service period with respect to any individual who without intervening employment not covered by this subchapter rendered service as an employee to an employer under this subchapter in the year such individual was released from active military service or in the year immediately following such year.

(3) For purposes of section 231b(i)(2) of this title, a ''war period'' shall be deemed to have begun on whichever of the following dates is the earliest: (A) the date on which the Congress of the United States declared war; or (B) the date as of which the Congress of the United States declared that a state of war has existed; or (C) the date on which war was declared by one or more foreign states against the United States; or (D) the date on which any part of the United States or any territory under its jurisdiction was invaded or attacked by any armed force of one or more foreign states; or (E) the date on which the United States engaged in armed hostilities for the purpose of preserving the Union or of maintaining in any State of the Union a republican form of government.

(4) For purposes of section 231b(i)(2) of this title, a ''war period'' shall be deemed to have ended on the date on which hostilities ceased.

(h)(1) The term ''compensation'' means any form of money remuneration paid to an individual for services rendered as an employee to one or more employers or as an employee representative, including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost. A payment made by an employer to an individual through the employer's payroll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. Compensation earned in any calendar month before 1947 shall be deemed paid in such month regardless of whether or when payment will have been in fact made, and compensation earned in any calendar year after 1946 but paid after the end of such calendar year shall be deemed to be compensation paid in the calendar year in which it will have been earned if it is so reported by the employer before February 1 of the next succeeding calendar year or if the employee establishes, subject to the provisions of section 231h of this title, the period during which such compensation will have been earned.

(2) An employee shall be deemed to be paid ''for time lost'' the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost.

(3) Solely for purposes of determining amounts to be included in the compensation of an employee, the term ''compensation'' shall also include cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is less than $20.

(4) Tips included as compensation by reason of the provisions of subdivision (3) shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) of the Internal Revenue Code of 1986 [26 U.S.C. 6053(a)] or, if no statement including such tips is so furnished, at the time received. Tips so deemed to be paid in any

month shall be deemed paid for services rendered in such month.

(5) In determining compensation, there shall be attributable as compensation paid to an employee in calendar months in which he is in military service creditable under section 231b(i)(2) of this title, in addition to any other compensation paid to him with respect to such months—

(i) for each such calendar month prior to 1968, $160;

(ii) for each such calendar month after 1967 and prior to 1975, $260; and

(iii) for each such calendar month after 1974, the amount which is creditable as such individual's ''wages'' under section 209(d) of the Social Security Act [42 U.S.C. 409(d)].

(6) Notwithstanding the provisions of the preceding subdivisions of this subsection, the term ''compensation'' shall not include—

(i) tips, except as is provided under subdivision (3) of this subsection;

(ii) remuneration for service which is performed by a non-resident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 1101(a)(15) of title 8, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be;

(iii) remuneration earned in the service of a local lodge or division of a railway-labor-organization employer with respect to any calendar month in which the amount of such remuneration is less than $25;

(iv) remuneration for service as a delegate to a national or international convention of a railway-labor-organization employer if the individual rendering such service has not previously rendered service, other than as such a delegate, which may be included in his ''years of service;''

(v) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of sickness or accident disability or medical or hospitalization expenses in connection with sickness or accident disability; and

(vi) an amount paid specifically—either as an advance, as reimbursement or allowance—for traveling or other bona fide and necessary expenses incurred or reasonably expected to be incurred in the business of the employer provided any such payment is identified by the employer either by a separate payment or by specifically indicating the separate amounts where both wages and expense reimbursement or allowance are combined in a single payment.

(7) The term ''compensation'' includes any separation allowance or subsistence allowance paid under any benefit schedule provided under section 701 of title VII of the Regional Rail Reorganization Act of 1973 [45 U.S.C. 797][2] and any termination allowance paid under section 702 of that Act [45 U.S.C. 797a], but does not include any other benefits payable under that title [45 U.S.C. 797 et seq.]. The total amount of any subsistence allowance paid under a benefit schedule provided pursuant to section 701 of the Regional Rail Reorganization Act of 1973 shall be considered as having been earned in the month in which the employee first timely filed a claim for such an allowance.

(8) Notwithstanding any other provision of this subchapter, for the purposes of sections 231b(a)(1), 231c(a)(1), and 231c(f)(1) of this title, the term ''compensation'' includes any payment from any source to an employee or employee representative if such payment is subject to tax under section 3201 or 3211 of the Internal Revenue Code of 1986 [26 U.S.C. 3201, 3211].

(i) The term ''Board'' means the Railroad Retirement Board.

(j) The term ''company'' includes corporations, associations, and joint-stock companies.

(k) The term ''employee'' includes an officer of an employer.

(*l*) The term ''person'' means an individual, a partnership, an association, a joint-stock company, a corporation, or the United States or any other governmental body.

(m) The term ''United States,'' when used in a geographical sense, means the States and the District of Columbia.

(n) The term ''Social Security Act'' means the Social Security Act as amended [42 U.S.C. 301 et seq.] from time to time.

(*o*) An individual shall be deemed to have ''a current connection with the railroad industry'' at the time an annuity begins to accrue to him and at death if, in any thirty consecutive calendar months before the month in which an annuity under this subchapter begins to accrue to him, or the month in which he dies if that first occurs, he will have been in service as an employee in not less than twelve calendar months and, if such thirty calendar months do not immediately precede such month, he will not have been engaged in any regular employment other than employment for an employer or employment with the Department of Transportation, the Interstate Commerce Commission, the Surface Transportation Board, the National Mediation Board, the National Transportation Safety Board, the State-owned railroad (as defined in the Alaska Railroad Transfer Act of 1982 [45 U.S.C. 1201 et seq.]), so long as it is an instrumentality of the State of Alaska, or the Railroad Retirement Board in the period before such month and after the end of such thirty months. For purposes of section 231a(b) of this title and section 231a(d) of this title only, an individual shall be deemed also to have ''a current connection with the railroad industry'' if, after having completed twenty-five years of service, such individual involuntarily and without fault ceased rendering service as an employee under this subchapter and did not thereafter decline an offer of employment in the same class or craft as the individual's most recent employee service. For

[2] See References in Text note below.

purposes of section 231a(d) of this title only, an individual shall be deemed to have a ''current connection with the railroad industry'' if a pension will have been payable to that individual under the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.] or a retirement annuity based on service of not less than 10 years (as computed in awarding the annuity) will have begun to accrue to that individual prior to 1948 under the Railroad Retirement Act of 1937. For the purposes of section 231a(d) of this title only, an individual shall be deemed also to have a ''current connection with the railroad industry'' if he will have completed ten years of service and (A) he would be neither fully nor currently insured under the Social Security Act [42 U.S.C. 301 et seq.] if his service as an employee after December 31, 1936, were included in the term ''employment'' as defined in that Act, or (B) he has no quarters of coverage under the Social Security Act.

(p) The term ''annuity'' means a monthly sum which is payable on the first day of each calendar month for the accrual during the preceding calendar month.

(q) The terms ''quarter'' and ''calendar quarter'' shall mean a period of three calendar months ending on March 31, June 30, September 30, or December 31.

(r) For purposes of this subchapter, a person shall be considered to be permanently insured under the Social Security Act [42 U.S.C. 301 et seq.] on December 31, 1974, if he or she would be fully insured within the meaning of section 214(a) of that Act [42 U.S.C. 414(a)] when he or she attains age 62 solely on the basis of his or her quarters of coverage under that Act acquired prior to January 1, 1975.

(Aug. 29, 1935, ch. 812, §1, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305; amended Pub. L. 94–547, §4(a), Oct. 18, 1976, 90 Stat. 2526; Pub. L. 97–35, title XI, §1116, Aug. 13, 1981, 95 Stat. 628; Pub. L. 97–468, title VI, §615(b)(6), Jan. 14, 1983, 96 Stat. 2578; Pub. L. 98–76, title IV, §§402(a), 403(a), 410(a), Aug. 12, 1983, 97 Stat. 434, 435; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–647, title VII, §7304(a), Nov. 10, 1988, 102 Stat. 3778; Pub. L. 101–239, title X, §10208(d)(2)(B)(ii), Dec. 19, 1989, 103 Stat. 2481; Pub. L. 104–88, title III, §323, Dec. 29, 1995, 109 Stat. 950.)

REFERENCES IN TEXT

The Railway Labor Act, referred to in subsecs. (a)(1)(v) and (c), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§151 et seq.) of this title. For complete classification of this Act to the Code, see section 151 of this title and Tables.

Section 6 of the Railroad Retirement Act of 1937, referred to in subsec. (e)(2), which was classified to section 228f of this title, has been omitted from the Code.

The Regional Rail Reorganization Act of 1973, referred to in subsec. (h)(7), is Pub. L. 93–236, Jan. 2, 1974, 87 Stat. 985, as amended. Section 701 of title VII of the Regional Rail Reorganization Act of 1973 [45 U.S.C. 797] was repealed by Pub. L. 99–509, title IV, §4024(c), Oct. 21, 1986, 100 Stat. 1904, effective on the sale date (Apr. 2, 1987). Title VII of the Regional Rail Reorganization Act of 1973 is classified generally to subchapter VII (§797 et seq.) of chapter 16 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

The Social Security Act, referred to in subsecs. (n), (*o*), and (r), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Alaska Railroad Transfer Act of 1982, referred to in subsec. (*o*), is Pub. L. 97–468, title VI, §601 et seq., Jan 14, 1983, 96 Stat. 2556, as amended, which is classified principally to chapter 21 (§1201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of this title and Tables.

The Railroad Retirement Act of 1937, referred to in subsec. (*o*), is act Aug. 29, 1935, ch. 812, 49 Stat. 867, as amended generally by act June 24, 1937, ch. 382, part I, 50 Stat. 307, which is classified principally to subchapter III (§228a et seq.) of this chapter. The Railroad Retirement Act of 1937 was amended generally and redesignated the Railroad Retirement Act of 1974 by Pub. L. 93–445, title I, Oct. 16, 1974, 88 Stat. 1305. The Railroad Retirement Act of 1974 is classified generally to this subchapter. For complete classification of these Acts to the Code, see Tables.

AMENDMENTS

1995—Subsec. (a)(1)(i). Pub. L. 104–88, §323(1), added cl. (i) and struck out former cl. (i) which read as follows: ''any express company, sleeping car company, and carrier by railroad, subject to part I of the Interstate Commerce Act;''.

Subsec. (a)(2)(ii). Pub. L. 104–88, §323(2), substituted ''Surface Transportation Board is hereby authorized and directed upon request of the Railroad Retirement Board'' for ''Interstate Commerce Commission is hereby authorized and directed upon request of the Board''.

Subsec. (*o*). Pub. L. 104–88, §323(3), inserted ''the Surface Transportation Board,'' after ''the Interstate Commerce Commission,''.

1989—Subsec. (h)(5)(iii). Pub. L. 101–239 substituted ''section 209(d)'' for ''the third paragraph of section 209''.

1988—Subsec. (g)(2). Pub. L. 100–647 inserted provision designating the period beginning on June 15, 1948, and ending on Dec. 15, 1950, as a war service period with respect to certain individuals.

1986—Subsec. (h)(4), (8). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1983—Subsec. (h)(6). Pub. L. 98–76, §402(a), struck out cl. (ii) which provided that term ''compensation'' would not include the voluntary payment by an employee, without deduction from the remuneration of the employee, of any tax not now or thereafter imposed with respect to the compensation of such employee, and redesignated cls. (iii) to (vii) as (ii) to (vi), respectively.

Subsec. (h)(7). Pub. L. 98–76, §403(a), added par. (7).

Subsec. (h)(8). Pub. L. 98–76, §410(a), added par. (8).

Subsec. (*o*). Pub. L. 97–468 inserted ''the State-owned railroad (as defined in the Alaska Railroad Transfer Act of 1982 [45 U.S.C. 1201 et seq.]), so long as it is an instrumentality of the State of Alaska,'' after ''National Transportation Safety Board,''.

1981—Subsec. (f)(1). Pub. L. 97–35, §1116(a), substituted ''Ultimate fractions shall be taken at their actual value'' for ''Ultimate fractions shall be taken at their actual value, except that if the individual will have had not less than one hundred twenty-six months of service, an ultimate fraction of six months or more shall be taken as one year''.

Subsec. (*o*). Pub. L. 97–35, §1116(b)(2), inserted after first sentence ''For purposes of section 231a(b) of this title and section 231a(d) of this title only, an individual shall be deemed also to have 'a current connection with the railroad industry' if, after having completed twenty-five years of service, such individual involuntarily and without fault ceased rendering service as an employee under this subchapter and did not thereafter decline an offer of employment in the same class or craft as the individual's most recent employee service. For

purposes of section 231a(d) of this title only, an individual shall be deemed to have a 'current connection with the railroad industry' if a pension will have been payable to that individual under the Railroad Retirement Act of 1937 or a retirement annuity based on service of not less than 10 years (as computed in awarding the annuity) will have begun to accrue to that individual prior to 1948 under the Railroad Retirement Act of 1937.''

Pub. L. 97–35, §1116(b)(1), inserted reference to National Transportation Safety Board.

1976—Subsec. (h)(6)(vi), (vii). Pub. L. 94–547 added pars. (vi) and (vii).

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7304(b) of Pub. L. 100–647 provided that: ''The amendment made by this section [amending this section] shall apply with respect to annuities accruing in months after the date of enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1983 AMENDMENTS

Section 402(c) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending this section and section 351 of this title] shall apply to compensation paid for services rendered after June 30, 1983.''

Section 403(c) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending this section and section 351 of this title] shall be effective August 13, 1981.''

Section 410(b) of Pub. L. 98–76 provided that: ''The amendment made by this section [amending this section] shall apply with respect to payments made on or after January 1, 1982.''

Amendment by Pub. L. 97–468 effective on date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of this title, see section 615(b) of Pub. L. 97–468.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 1129 of Pub. L. 97–35, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) Except as otherwise provided in this section, the amendments made by this subtitle [subtitle D (§§1116–1129 of title XI of Pub. L. 97–35, enacting section 231u of this title, amending this section and sections 231a to 231f, 231i, 231n, 231q, 355, and 358 of this title, and enacting provisions set out as a note under section 231n of this title] shall take effect October 1, 1981, and shall apply only with respect to annuities awarded on or after that date.

''(b)(1) The amendment made by section 1116(a) of this Act [amending this section] shall take effect October 1, 1981, except that the years of service of an individual shall not be considered less after enactment of this Act [Aug. 13, 1981] for any individual who files an application before April 1, 1982 than such individual had during the month of September 1981.

''(2) The amendments made by sections 1116(b)(1), 1118(c)(2), 1119(b)(5), 1119(c), 1119(h)(3), 1119(i)(3), 1120(a), 1120(d), 1121(c)(1), 1121(c)(2), 1123, and 1125 of this Act [amending this section and sections 231b, 231c, 231d, 231e, 231i, and 231q of this title] shall take effect January 1, 1975.

''(3) The first sentence added to section 1(*o*) of the Railroad Retirement Act of 1974 [subsec. (*o*) of this section] by section 1116(b)(2) shall take effect October 1, 1981, and shall apply only with respect to individuals who did not die before that date and who ceased rendering service as an employee under the Railroad Retirement Act of 1974 [this subchapter] on or after October 1, 1975 or were on leave of absence or furlough on October 1, 1975. The second sentence added to section 1(*o*) of the Railroad Retirement Act of 1974 by section 1116(b)(2) shall take effect October 1, 1981.

''(c) The amendment made by section 1117(a) of this Act [amending section 231a of this title] shall take effect October 1, 1981, and shall apply only with respect to individuals whose supplemental annuity closing date under section 2(b) of the Railroad Retirement Act of 1974 [section 231a(b) of this title] before the effective date of the amendment to such section by this Act did not occur before October 1, 1981.

''(d) The amendments made by section 1119(b)(1) [amending section 231c of this title] shall not apply with respect to annuities awarded on the basis of employee annuities awarded before October 1, 1981.

''(e)(1) The amendments made by sections 1118(e)(3), 1119(d)(2), 1119(h)(1), and 1119(h)(4) of this Act [amending sections 231b and 231c of this title] shall take effect on the date of the enactment of this Act [Aug. 13, 1981].

''(2) The amendment made by section 1118(d) of this Act [amending section 231b of this title] shall apply with respect to annuity increases which become effective on or after the date described in the next sentence. The date referred to in the last preceding sentence is the later of October 1, 1981 and the date (after July 1, 1981) on which there is an increase in the rate of any tax imposed under chapter 22 (relating to railroad retirement tax) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [chapter 22 of Title 26, Internal Revenue Code]. For the purposes of the amendment made by section 1118(d), with respect to annuities awarded before October 1, 1981, the annuity portions computed under subsections (b) and (d) of section 3 of the Railroad Retirement Act of 1974 [section 231b(b) and (d) of this title] as in effect before October 1, 1981, shall be treated as a portion of an annuity computed under section 3(b) of such Act as amended by this Act.

''(3) The amendment made by section 1118(a) of this Act [amending section 231b of this title] shall take effect on the later of October 1, 1981, and the date (after July 1, 1981) on which there is an increase in the rate of any tax imposed under chapter 22 (relating to railroad retirement tax) of the Internal Revenue Code of 1986 [chapter 22 of Title 26], and shall apply only with respect to annuities awarded on or after the date of that taking effect.

''(f) Section 4(g) of the Railroad Retirement Act of 1974 as amended by this Act [section 231c(g) of this title] (except subdivisions (5) and (6) of such section 4(g)) shall take effect October 1, 1981, with respect to awards made on or after that date in cases in which the employee did not begin receiving an annuity under section 2(a)(1) of the Railroad Retirement Act of 1974 [section 231a(a)(1) of this title] before October 1, 1981, and did not die before that date, and to all awards made on or after October 1, 1986. In all other awards made on or after October 1, 1981, and before October 1, 1986, for purposes of determining the initial annuity amounts only, the provisions of section 4(g) of the Railroad Retirement Act of 1974, as in effect before amendment by this Act shall be applicable. Initial annuity amounts determined under the preceding sentence shall be increased only by the same percentage, or percentages, as an employee's annuity amount determined under section 3(b) of the Railroad Retirement Act of 1974 [section 231b(b) of this title] is increased under section 3(g) of the Railroad Retirement Act of 1974 [section 231b(g) of this title] on or after the date on which such initial annuity amount began to accrue. Annuity amounts determined under section 4(g) of the Railway Retirement Act of 1974 before amendment by this Act or under section 207(2) of Public Law 93–445 [set out as a note below] shall be increased only by the same percentage, or percentages, as an employee's annuity amount determined under section 3(b) of the Railroad Retirement Act of 1974 is increased under section 3(g) of the Railroad Retirement Act of 1974 on or after October 1, 1981. Section 4(g)(5) and 4(g)(6) of the Railroad Retirement Act of 1974, as amended by this Act, shall take effect on October 1, 1981.

''(g) The amendments made by sections 1118(b), 1118(g), 1120(b), 1122(a)(2), 1122(b)(1), 1122(c), 1124, 1126,

and 1127 of this Act [enacting section 231u of this title, amending sections 231b, 231d, 231f, and 231n of this title, and enacting provisions set out as a note under section 231n of this title] shall take effect October 1, 1981.

''(h) The amendments made by sections 1117(e)(2), 1117(f), 1118(h)(2), and 1119(i)(4) [amending sections 231a, 231b, and 231c of this title] shall take effect January 1, 1982.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 4(c)(1) of Pub. L. 94–547 provided that: ''The amendments made by subsection (a) of this section [amending this section] shall be effective January 1, 1975.''

EFFECTIVE DATE

Section 602(a)–(d) of Pub. L. 93–445 provided that:

''(a) The provisions of title I of this Act [enacting this subchapter] shall become effective on January 1, 1975, except as otherwise provided herein: *Provided, however*, That annuities awarded under section 2 of the Railroad Retirement Act of 1974 [section 231a of this title] on the basis of an application therefor filed with the Board on or after such date may, subject to the limitations prescribed in section 5(a) of such Act [section 231d(a) of this title], begin prior to such date, except that no annuity under paragraph (ii) of section 2(a)(1) of such Act [subsec. (a)(1) of section 231a of this title] shall begin to accrue to a man prior to July 1, 1974.

''(b) The provision of section 1(*o*) of the Railroad Retirement Act of 1974 [section 231(*o*) of this title] which provides that a 'current connection with the railroad industry' will not be broken by 'employment with the Department of Transportation, the Interstate Commerce Commission, the National Mediation Board, or the Railroad Retirement Board' shall not be applicable (A) for purposes of paragraph (iv) of section 2(a)(1) of such Act [section 231a(a)(1)(iv) of this title], to an individual who became disabled, as provided for purposes of such paragraph, prior to January 1, 1975, (B) for purposes of section 2(b)(1) of such Act [section 231a(b)(1) of this title], to an individual whose annuity under section 2(a) of the Railroad Retirement Act of 1937 [section 228b(a) of this title] or section 2(a)(1) of the Railroad Retirement Act of 1974 [section 231a(1) of this title] first began to accrue prior to January 1, 1975, and (C) for purposes of section 2(d)(1) [section 231a(d)(1) of this title] of such Act, to a survivor of a deceased employee if such employee died prior to January 1, 1975.

''(c) The provisions of clause (i)(B) and clause (ii)(B) of section 2(c)(1) of the Railroad Retirement Act of 1974 [subsec. (c)(1) of section 231a of this title] shall not be applicable to the spouse of an individual if (A) such individual will have completed thirty years of service and will have been awarded an annuity under section 2(a) of the Railroad Retirement Act of 1937 [section 228b(a) of this title] or section 2(a)(1) of the Railroad Retirement Act of 1974 [subsec. (a)(1) of section 231a of this title] which first began to accrue prior to July 1, 1974, or (B) such individual will have completed less than thirty years of service and will have been awarded an annuity under section 2(a) of the Railroad Retirement Act of 1937 [section 228b(a) of this title] or section 2(a)(1) of the Railroad Retirement Act of 1974 [subsec. (a)(1) section 231a of this title] which first began to accrue prior to January 1, 1975. For purposes of the entitlement of the spouse of an individual described in clause (A) or (B) of the preceding sentence to an annuity under such section 2(c)(1) [subsec. (c)(1) section 231a of this title], the provisions of clause (i)(B) of such section 2(c)(1) [subsec. (c)(1) of section 231a of this title] shall be deemed to read: '(B) has attained the age of 65'.

''(d) The provisions of section 2(b)(1) of the Railroad Retirement Act of 1974 [subsec. (b)(1) of section 231a of this title] which permit an individual to become entitled to a supplemental annuity thereunder if he 'has attained age 60 and completed thirty years of service' shall not be applicable to an individual who was awarded an annuity under section 2(a) of the Railroad Retirement Act of 1937 [section 228b(a) of this title] or section 2(a)(1) of the Railroad Retirement Act of 1974 [subsec. (a)(1) of section 231a of this title] which first began to accrue prior to July 1, 1974.''

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

TRANSITIONAL PROVISIONS

Sections 201 to 210 of title II of Pub. L. 93–445, effective Jan. 1, 1975, as amended by Pub. L. 94–92, title II, § 202(a), Aug. 9, 1975, 89 Stat. 465; Pub. L. 94–547, § 1, Oct. 18, 1976, 90 Stat. 2523, provided that:

''SEC. 201. The claims of individuals who, prior to the effective date of title I of this Act [see Effective Date note set out above], became eligible for annuities, supplemental annuities, or death benefits under section 2, 3(j), or 5 of the Railroad Retirement Act of 1937 [section 228b, 228c(j), or 228e of this title] shall be adjudicated by the Board under that Act [subchapter III of this chapter] in the same manner and with the same effect as if title I of this Act [enacting this subchapter] had not been enacted: *Provided, however*, That no annuity, supplemental annuity, or death benefit shall be awarded under the Railroad Retirement Act of 1937 [subchapter III of this chapter] on the basis of an application therefor filed with the Board on or after the effective date of title I of this Act: *Provided, further*, That no annuity under the Railroad Retirement Act of 1935 [subchapter II of this chapter], no annuity or supplemental annuity under the Railroad Retirement Act of 1937 [subchapter III of this chapter], and no pension under section 6 of the Railroad Retirement Act of 1937 [section 228f of this title] shall be payable for any month after December 31, 1974.

''SEC. 202. (a) Every individual who would have been entitled to an annuity under the Railroad Retirement Act of 1935 [subchapter II of this chapter] for the month of January 1975, if this Act [enacting this subchapter] had not been enacted, shall be entitled to an annuity under paragraph (i) of section 2(a)(1) of the Railroad Retirement Act of 1974 [section 231a(a)(1) of this title], beginning January 1, 1975, in an amount determined under the provisions of section 3(a) of such Act [section 231b(a) of this title], which amount shall initially be equal to the amount determined under clause (i) of section 3(a)(6) of the Railroad Retirement Act of 1937 [section 228c(a)(6) of this title] for the purpose of computing the last increase in such individual's annuity under the Railroad Retirement Act of 1935 [subchapter II of this chapter] pursuant to the provisions of section 105 of Public Law 93–69 [set out as a note under sections 228e to 228z–1 of this title], less the amount of any monthly insurance benefit to which such individual is actually entitled (before any deductions on account of work) under the Social Security Act [section 301 et seq. of Title 42, The Public Health and Welfare].

''(b) The amount of the annuity of an individual under subsection (a) of this section shall be increased by an amount, if any, equal to the amount by which (i) his annuity under the Railroad Retirement Act of 1935 [subchapter II of this chapter] for the month of December 1974 exceeds (ii) his annuity under subsection (a) of this section for the month of January 1975.

''SEC. 203. (a) Every individual who would have been entitled to a pension under section 6 of the Railroad Retirement Act of 1937 [section 228f of this title] for the

month of January 1975, if this Act [enacting this subchapter] had not been enacted, shall be entitled to an annuity under paragraph (i) of section 2(a)(1) of the Railroad Retirement Act of 1974 [section 231a(a)(1) of this title] in an amount determined under the provisions of section 3(a) of such Act [section 231b(a) of this title], which amount shall initially be equal to the amount determined under clause (i) of section 3(a)(6) of the Railroad Retirement Act of 1937 [section 228c(a)(6) of this title] for the purpose of computing the last increase in such individual's pension under section 6 of the Railroad Retirement Act of 1937 [section 228f of this title] pursuant to the provisions of section 105 of Public Law 93–69 [set out as a note under sections 228e to 228z–1 of this title], less the amount of any monthly insurance benefit to which such individual is actually entitled (before any deductions on account of work) under the Social Security Act [section 301 et seq. of Title 42].

''(b) The amount of the annuity of an individual under subsection (a) of this section shall be increased by an amount, if any, equal to the amount by which (i) his pension under section 6 of the Railroad Retirement Act of 1937 [section 228f of this title] for the month of December 1974 exceeds (ii) his annuity under subsection (a) of this section for the month of January 1975.

''(c) The annuities of each individual under the preceding subsections of this section shall be paid on January 1, 1975, and on the first day of each calendar month thereafter during his life.

''SEC. 204. (a) Every individual who was entitled to an annuity under section 2(a)1, 2(a)2, 2(a)3, 2(a)4, or 2(a)5 of the Railroad Retirement Act of 1937 [section 228b(a)1, 228b(a)2, 228b(a)3, 228b(a)4, or 228b(a)5 of this title] for the month of December 1974, or who would have been entitled to such an annuity for such month except for the provisions of section 2(d) of such Act [section 228b(d) of this title], and who would have been entitled to such an annuity for the month of January 1975, if this Act [enacting this subchapter] had not been enacted, shall be entitled to an annuity under paragraph (i), (ii), (iii), (iv), or (v), respectively, of section 2(a)(1) of the Railroad Retirement Act of 1974 [section 231a(a)(1) of this title], beginning January 1, 1975: *Provided, however*, That if an individual who was entitled to an annuity under section 2(a)4 or 2(a)5 of the Railroad Retirement Act of 1974 [probably should read ''Railroad Retirement Act of 1937'' classified to section 228b(a)4 or 228b(a)5, of this title] is age 65 or older, on January 1, 1975, such individual shall be entitled to an annuity under paragraph (i) of section 2(a)(1) of the Railroad Retirement Act of 1974 [section 231a(a)(1) of this title]. For purposes of this subsection—

''(1) that portion of the individual's annuity as is provided under section 3(a) of the Railroad Retirement Act of 1974 [section 231b(a) of this title] shall initially be in an amount equal to (A) the amount determined under clause (i) of section 3(a)(6) of the Railroad Retirement Act of 1937 [section 228c(a)(6) of this title] for the purpose of computing the last increase in the amount of such individual's annuity as computed under the provisions of section 3(a) [section 228c(a) of this title], and that part of section 3(e) which preceded the first proviso, of the Railroad Retirement Act of 1937 [section 228c(e) of this title] or (B), if less in a case where such individual is not entitled to an annuity amount provided under paragraph (3) of this subsection, the amount of the annuity under section 2(a) of the Railroad Retirement Act of 1937 [section 228b(a) of this title] (before any reduction on account of age and without regard to section 2(d) of such Act [section 228b(d) of this title]) which such individual would have received for the month of January 1975 if this Act [see Effective Date of 1976 Amendment set out hereunder] had not been enacted: *Provided, however*, That such annuity amount shall be subject to reduction in accordance with the provisions of section 3(m) of the Railroad Retirement Act of 1974 [section 231b(m) of this title] in the same manner as other annuity amounts provided under section 3(a) of the Railroad Retirement Act of 1974;

''(2) that portion of the individual's annuity as is provided under section 3(b)(1) of the Railroad Retirement Act of 1974 [section 231b(b)(1) of this title] shall be in an amount, if any, equal to the amount by which (A) his annuity under section 2(a) of the Railroad Retirement Act of 1937 [section 228b(a) of this title] for the month of December 1974 (before any reduction on account of age and without regard to section 2(d) of such Act [section 228b(d) of this title]) exceeds (B)(i), if such individual is entitled to an annuity amount provided under paragraph (3) of this subsection, the amount of the annuity which would have been provided such individual under paragraph (1) of this subsection (before any reduction due to such individual's entitlement to a monthly insurance benefit under the Social Security Act [section 301 et seq. of Title 42]) for the month of January 1975 if he had no wages or self-employment income under the Social Security Act other than wages derived from service as an employee under the Railroad Retirement Act of 1974 [this subchapter] after December 31, 1936, and before January 1, 1975, or (ii), if such individual is not entitled to an annuity amount provided under paragraph (3) of this subsection, the amount of his annuity provided under paragraph (1) of this subsection (before any reduction due to such individual's entitlement to a monthly insurance benefit under the Social Security Act) for the month of January 1975: *Provided, however*, That if the annuity of any individual under the Railroad Retirement Act of 1937 [subchapter III of this chapter] for the month of December 1974 was computed under the first proviso of section 3(e) of such Act [section 228c(e) of this title], the annuity of such individual for purposes of clause (A) of this paragraph shall be no greater than the annuity which such individual would have received under such Act [subchapter III of this chapter] for the month of December 1974, if no other person had been included in the computation of the annuity of such individual; and

''(3) if the individual was entitled to an old-age insurance benefit or a disability insurance benefit under the Social Security Act [section 301 et seq. of Title 42] on December 31, 1974, or was fully insured under that Act on that date, the annuity amounts provided under paragraphs (1) and (2) of this subsection shall be increased by an amount determined under the provisions of section 3(h)(1) of the Railroad Retirement Act of 1974 [section 231b(h)(1) of this title]: *Provided, however*, That, if the individual was entitled to an old-age insurance benefit or a disability insurance benefit under the Social Security Act on December 31, 1974, such amount shall not be less nor more than an amount which would cause the total of the annuity amounts provided the individual by the provisions of this subsection for the month of January 1975 to equal the total of the annuity under the Railroad Retirement Act of 1937 [subchapter III of this chapter] (prior to any reduction on account of age and without regard to section 2(d) of that Act [section 228b(d) of this title]) plus the old-age or disability insurance benefit under the Social Security Act (before any reduction on account of age and deductions on account of work) which such individual would have received for such month if this Act [enacting this subchapter] had not been enacted.

''(4) if the individual was entitled to a wife's, husband's, widow's, or widower's insurance benefit under the Social Security Act [section 301 et seq. of Title 42] on December 31, 1974, or is the wife, husband, widow, or widower of a person who was fully insured under that Act on that date, the annuity amounts provided under paragraphs (1) and (2) of this subsection shall be increased by an amount determined under the provisions of section 3(h)(3) of the Railroad Retirement Act of 1974 [section 231b(h)(3) of this title].

''(b) An individual who was awarded an annuity under section 2(a) of the Railroad Retirement Act of 1937 [section 228b(a) of this title], but who could not have be-

come eligible for an annuity under paragraph 2 of such section, shall not be eligible for an annuity under paragraph (ii) of section 2(a)(1) of the Railroad Retirement Act of 1974 [section 231a(a)(1) of this title].

''(c) An individual who was awarded an annuity under section 2(a) of the Railroad Retirement Act of 1937 [section 228b(a) of this title] shall not be entitled to an annuity amount computed under the provisions of section 3(c) of the Railroad Retirement Act of 1974 [section 231b(c) of this title]: *Provided, however*, That the provisions of this subsection shall not be applicable (i) to an individual who will have rendered at least twelve months of service as an employee to an employer (as defined in the Railroad Retirement Act of 1974 [this section] after December 31, 1974, or (ii) to an individual who was awarded an annuity under section 2(a)4 or 2(a)5 of the Railroad Retirement Act of 1937 [section 228b(a)4 or 228b(a)5 of this title] and who recovered from disability and returned to the service of an employer (as defined in the Railroad Retirement Act of 1974) [this section] after December 31, 1974.

[Section 202(b) of Pub. L. 94–92 provided that: ''The amendment made by this section [enacting section 204(c) of Pub. L. 93–445] shall be effective January 1, 1975.'']

''(d) The annuity amount provided an individual by paragraph (1) of this subsection as increased from time to time shall be deemed to be the primary insurance amount of such individual for purposes of computing the annuity of the spouse of such individual under section 4(a) of the Railroad Retirement Act of 1974. [section 231c(a) of this title].''

[Effective Date of 1976 Amendment. Section 1(d) of Pub. L. 94–547 provided that: ''The amendments made by this section [enacting section 204(d) and amending sections 204(a)(1), (2) and 206(1) of Pub. L. 93–445] shall be effective January 1, 1975: *Provided, however*, That the increases in annuities effective June 1, 1975, and June 1, 1976, shall be in the amount which would have been provided if this Act [enacting section 204(d) of Pub. L. 93–445, amending sections 204(a)(1), (2) and 206(1) of Pub. L. 93–445 and this section and section 231c and 231n of this title and section 3231 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under this section and sections 231c and 231n of this title and 3231 of Title 26] had not been enacted.'']

''SEC. 205. (a) Every individual who was entitled to a supplemental annuity under section 3(j) of the Railroad Retirement Act of 1937 [section 228c(j) of this title] for the month of December 1974, or who would have been entitled to such a supplemental annuity for such month except for the provisions of section 2(d) of such Act [section 228b(d) of this title], and who would have been entitled to such a supplemental annuity for the month of January 1975, if this Act [enacting this subchapter] had not been enacted, shall be entitled to a supplemental annuity under section 2(b)(1) of the Railroad Retirement Act of 1974 [section 231a(b)(1) of this title], beginning January 1, 1975, in an amount, the provisions of section 3(e) of such Act [section 231b(e) of this title] notwithstanding, equal to the amount of the supplemental annuity to which such individual was entitled under section 3(j) of the Railroad Retirement Act of 1937 [section 228c(j) of this title] for the month of December 1974, or to which such individual would have been entitled for such month under such section 3(j) [section 228c(j) of this title] except for the provisions of section 2(d) of such Act [section 228b(d) of this title].

''(b) An individual who was awarded an annuity under section 2(a) of the Railroad Retirement Act of 1937 [section 228b(a) of this title], but who could not have become eligible for a supplemental annuity under section 3(j) of such Act [section 228c(j) of this title] if this Act had not been enacted, shall not be eligible for a supplemental annuity under section 2(b) of the Railroad Retirement Act of 1974 [section 231a(b) of this title].

''SEC. 206. Every spouse who was entitled to an annuity under section 2(e) or 2(h) of the Railroad Retirement Act of 1937 [section 228b(e) or 228b(h) of this title] for the month of December 1974, or who would have been entitled to such an annuity for such month except for the provisions of section 2(d) of such Act [section 228b(d) of this title], and who would have been entitled to such an annuity for the month of January 1975, if this Act [enacting this subchapter] had not been enacted, shall be entitled to an annuity under section 2(c) of the Railroad Retirement Act of 1974 [section 231a(c) of this title] beginning January 1, 1975. For purposes of this section—

''(1) that portion of the spouse's annuity as is provided under section 4(a) of the Railroad Retirement Act of 1974 [section 231c(a) of this title] shall initially be in an amount equal to (A) the amount determined under clause (i) of section 3(a)(6) of the Railroad Retirement Act of 1937 [section 228c(a)(6) of this title] for the purpose of computing the last increase in the amount of such spouse's annuity as computed under the provisions of section 2 of the Railroad Retirement Act of 1937 [section 228b of this title] or (B), if less in a case where such spouse is not entitled to an annuity amount provided by paragraph (3) of this section, the amount of the annuity under section 2(e) or 2(h) of the Railroad Retirement Act of 1937 [section 228b(e) or (h) of this section] (before any reduction on account of age and without regard to section 2(d) of such Act [section 228b(d) of this title]) which such spouse would have received for the month of January 1975 if this Act [see Effective Date of 1976 Amendment set out under section 204(d) hereinabove] had not been enacted: *Provided, however*, That the amount of such annuity shall be subject to reduction in accordance with the provisions of section 202(k) or 202(q) of the Social Security Act [section 402(k) or 402(q) of Title 42], other than a reduction on account of age, in the same manner as any wife's insurance benefit or husband's insurance benefit payable under section 202 of the Social Security Act [section 402 of Title 42] and shall also be subject to reduction in accordance with the provisions of section 4(i) of the Railroad Retirement Act of 1974 [section 231c(i) of this title];

[Effective Date of 1976 Amendment. See note set out under section 204(d) hereinabove.]

''(2) that portion of the spouse's annuity as is provided under section 4(b) of the Railroad Retirement Act of 1974 [section 231c(b) of this title] shall be in an amount, if any, equal to 50 per centum of the individual's annuity as computed in accordance with the provisions of paragraph (2) of section 204(a) of this title: *Provided, however*, That, in case of a spouse who is not entitled to an annuity amount provided under paragraph (3) of this section, if (A) the amounts of the annuity provided a spouse for the month of January 1975 by the provisions of paragraph (1) (before any reduction due to such spouse's entitlement to a wife's or husband's insurance benefit under the Social Security Act [section 301 et seq. of Title 42]) and the proceeding provisions of this paragraph exceed (B) the amount of the annuity to which such spouse was entitled (before any reduction on account of age) for the month of December 1974 under section 2(e) or 2(h) of the Railroad Retirement Act of 1937 [section 228b(e) or 228b(h) of this title] (deeming, for this purpose, any increase in the amount of such annuity which, had this Act [enacting this subchapter] not been enacted, would have become effective January 1, 1975, by reason of an increase in the maximum amount payable as a wife's insurance benefit under the Social Security Act to have been effective for the month of December 1974), or to which such spouse would have been entitled for such month under such section 2(e) or 2(h) [section 228b(e) or 228b(h) of this title] except for the provisions of section 2(d) of such Act [section 228b(d) of this title], the amount of the annuity provided such spouse for the month of January 1975 by the preceding provisions of this paragraph shall be reduced until the total of the amounts described in clause (A) of this proviso equals the amount described in clause (B): *Provided further*, That, if the amount of the annuity of the spouse provided by paragraph (1) of this section is reduced by reason of the provisions of

section 4(i)(2) of the Railroad Retirement Act of 1974 [section 231c(i)(2) of this title], the amount of the annuity provided such spouse by the preceding provisions of this paragraph shall not be less than an amount which would cause the total of the annuity amounts provided such spouse under paragraph (1) (before any reduction pursuant to the provisions of section 202(k) or 202(q) of the Social Security Act [section 402(k) or 402(q) of Title 42] and before any reduction due to such spouse's entitlement to a wife's or husband's insurance benefit under the Social Security Act) and paragraph (2) of this section for the month of January 1975 to equal the amount of the annuity (before any reduction on account of age) which such spouse would have received for such month under section 2(e) or 2(h) of the Railroad Retirement Act of 1937 [section 228b(e) or 228b(h) of this title] (without regard to the provisions of section 2(d) of that Act [section 228b(d) of this title]) if this Act [enacting this subchapter] had not been enacted; and

''(3) if the spouse was entitled to an old-age insurance benefit or a disability insurance benefit under the Social Security Act [section 301 et seq. of Title 42] of [on] December 31, 1974, or was fully insured under that Act on that date, or was entitled to a wife's or a husband's insurance benefit under that Act on that date, the annuity amounts provided under paragraphs (1) and (2) of this section shall be increased by an amount determined under the provisions of section 4(e)(1) [section 231c(e)(1) of this title], or, if the spouse was entitled only to a wife's or husband's insurance benefit, 4(e)(3) [section 231c(e)(3) of this title] of the Railroad Retirement Act of 1974: *Provided, however*, That, if the spouse was entitled to a monthly insurance benefit under the Social Security Act of [on] December 31, 1974, such amount shall not be less nor more than an amount which would cause (A) the total of (i) the annuity amounts provided the spouse by the provisions of this section for the month of January 1975 plus (ii) the monthly insurance benefit to which such spouse is entitled for that month under the Social Security Act (before any reductions on account of age and deductions on account of work) to equal (B) the total of (i) the spouse's annuity under the Railroad Retirement Act of 1937 [subchapter III of this chapter] (prior to any reduction on account of age and without regard to section 2(d) of that Act [section 228b(d) of this title]) plus (ii) the monthly insurance benefit under the Social Security Act (before any reduction on account of age and deductions on account of work) which such spouse would have received for such month if this Act [enacting this subchapter] had not been enacted.

''SEC. 207. Every survivor who was entitled to an annuity under section 5 of the Railroad Retirement Act of 1937 [section 228e of this title] for the month of December 1974, or who would have been entitled to such an annuity for such month except for the provisions of section 5(i) of such Act [section 228e(i) of this title], and who would have been entitled to such an annuity for the month of January 1975, if this Act [enacting this subchapter] had not been enacted, shall be entitled to an annuity under section 2(d) of the Railroad Retirement Act of 1974 [section 231a(d) of this title] beginning January 1, 1975. For purposes of this section—

''(1) that portion of the survivor's annuity as is provided under section 4(f) of the Railroad Retirement Act of 1974 [section 231c(f) of this title] shall initially be in an amount equal to the amount determined under clause (i) of section 3(a)(6) of the Railroad Retirement Act of 1937 [section 228c(a)(6) of this title] for the purpose of computing the last increase in the amount of such survivor's annuity as computed under the provisions of section 5(q) of the Railroad Retirement Act of 1937 [section 228e(q) of this title]: *Provided, however*, That the amount of such annuity shall be subject to reduction in accordance with the provisions of section 202(k) or 202(q) of the Social Security Act [section 402(k) or 402(q) of Title 42] in the same manner as any widow's insurance benefit, mother's insurance benefit, widower's insurance benefit, parent's insurance benefit, or child's insurance benefit payable under section 202 of the Social Security Act [section 402 of Title 42] and shall also be subject to reduction in accordance with the provisions of section 4(i)(2) of the Railroad Retirement Act of 1974 [section 231c(i)(2) of this title];

''(2) that portion of the survivor's annuity as is provided under section 4(g) of the Railroad Retirement Act of 1974 [section 231c(g) of this title] shall initially be in an amount equal to 30 per centum of the amount computed in accordance with the provisions of paragraph (1) of this section prior to any reductions, other than reductions on account of age, in accordance with the provisions of section 202(k) or 202(q) of the Social Security Act [section 402(k) or 402(q) of Title 42] and prior to any reductions in accordance with, the provisions of section 4(i)(2) of the Railroad Retirement Act of 1974 [section 231c(i)(2) of this title]: *Provided, however*, That, if such survivor is not entitled to an annuity amount provided under paragraph (3) of this section, such amount shall not be less than an amount which would cause (A) the total of the annuity amounts provided the survivor by the provisions of this section for the month of January 1975 to equal (B) the amount of the annuity which the survivor would have received for such month under section 5 of the Railroad Retirement Act of 1937 [section 228e of this title] (without regard to section 5(i) of that Act [section 228e(i) of this title]) if this Act [enacting this subchapter] had not been enacted; and

''(3) if the survivor is a widow or widower who was entitled to an old-age insurance benefit or a disability insurance benefit under the Social Security Act [section 301 et seq. of Title 42] on December 31, 1974, or was fully insured under that Act on that date, the annuity amounts provided under paragraphs (1) and (2) of this section shall be increased by an amount determined under the provisions of 4(h)(1) of the Railroad Retirement Act of 1974 [section 231c(h)(1) of this title]: *Provided, however*, That, if the widow or widower was entitled to a monthly insurance benefit under the Social Security Act on December 31, 1974, such amount shall not be less nor more than an amount which would cause (A) the total of (i) the annuity amounts provided the widow or widower by the provisions of this section for the month of January 1975 plus (ii) the monthly insurance benefit to which such widow or widower is entitled for that month under the Social Security Act (before any deductions on account of work) to equal (B) the total of (i) the widow's or widower's annuity under the Railroad Retirement Act of 1937 [subchapter III of this chapter] (without regard to section 5(i) of that Act [section 228e(i) of this title]) plus (ii) the monthly insurance benefit under the Social Security Act (before any deductions on account of work) which such widow or widower would have received for such month if this Act [enacting this subchapter] had not been enacted.

''SEC. 208. For purposes of paragraph (1) of section 204(a), paragraph (1) of section 206, and paragraph (1) of section 207, the fact that the amount of the annuity payable to an individual, spouse, or survivor under the Railroad Retirement Act of 1937 [subchapter III of this chapter] for the month of December 1974 may not (i) in the case of an individual have been computed under the provisions of section 3(a) of such Act [section 228c(a) of this title] or that part of section 3(e) of such Act [section 228c(e) of this title] which precedes the first proviso; (ii) in the case of a spouse, have been computed under the provisions of section 2 of such Act [section 228b of this title], or (iii) in the case of a survivor, have been computed under the provisions of section 5 of such Act [section 228e of this title], shall be disregarded, and the amount determined under clause (i) of section 3(a)(6) of such Act [section 228c(a)(6) of this title] with respect to such individual, spouse, or survivor shall, for purposes of such paragraphs, be the amount which would have been determined under such clause (i) if the

annuity of such individual had been computed under the provisions of section 3(a) [section 228c(a) of this title], and that part of section 3(e) [section 228c(e) of this title] which preceded the first proviso, of such Act; the annuity of such spouse had been computed under the provisions of section 2 of such Act [section 228b of this title]; or the annuity of such survivor had been computed under the provisions of section 5 of such Act [section 228e of this title].

''SEC. 209. (a) Whenever monthly insurance benefits under section 202 of the Social Security Act [section 402 of Title 42] are increased, the amount of each annuity provided by section 202(a), section 203(a), paragraph (1) of section 204(a), paragraph (1) of section 206, and paragraphs (1) and (2) of section 207 shall be increased in the same manner, and effective the same date as other annuities of the same type payable under section 2 of the Railroad Retirement Act of 1974 [section 231a of this title] are increased.

''(b) The annuity amounts provided by section 202(b), section 203(b), paragraph (2) of section 204(a), and paragraph (2) of section 206 shall be increased by the same percentage, or percentages, and effective the same date, or dates, as other annuity amounts of the same type are increased pursuant to the provisions of section 3(g) of the Railroad Retirement Act of 1974 [section 231b(g) of this title].

''SEC. 210. The election of a joint and survivor annuity made before July 31, 1946, by an individual to whom an annuity accrues under the Railroad Retirement Act of 1937 [subchapter III of this chapter] before January 1, 1975, shall be given effect as though the provisions of law under which the election was made had continued to be operative unless such election had been revoked prior to the time the annuity of such individual began to accrue.''

§ 231a. Annuity eligibility requirements

(a) Individuals eligible for annuities; disability standards; proof of continued disability

(1) The following-described individuals, if they shall have completed ten years of service (or, for purposes of paragraphs (i), (iii), and (v), five years of service, all of which accrues after December 31, 1995) and shall have filed application for annuities, shall, subject to the conditions set forth in subsections (e), (f), and (h) of this section, be entitled to annuities in the amounts provided under section 231b of this title—

(i) individuals who have attained retirement age (as defined in section 216(*l*) of the Social Security Act [42 U.S.C. 416(*l*)]);

(ii) individuals who have attained the age of sixty and have completed thirty years of service;

(iii) individuals who have attained the age of sixty-two and have completed less than thirty years of service, but the annuity of such individuals shall be reduced by 1/180 for each of the first 36 months that he or she is under retirement age (as defined in section 216(*l*) of the Social Security Act [42 U.S.C. 416(*l*)]) when the annuity begins to accrue and by 1/240 for each additional month that he or she is under retirement age (as defined in section 216(*l*) of the Social Security Act) when the annuity begins to accrue;

(iv) individuals who have a current connection with the railroad industry, whose permanent physical or mental condition is such as to be disabling for work in their regular occupation, and who (A) have completed twenty years of service or (B) have attained the age of sixty; and

(v) individuals whose permanent physical or mental condition is such that they are unable to engage in any regular employment.

(2) For the purposes of paragraph (iv) of subdivision (1), the Board, with the cooperation of employers and employees, shall secure the establishment of standards determining the physical and mental conditions which permanently disqualify employees for work in the several occupations in the railroad industry, and the Board, employers, and employees shall cooperate in the promotion of the greatest practicable degree of uniformity in the standards applied by the several employers. An individual's condition shall be deemed to be disabling for work in his regular occupation if he will have been disqualified by his employer for service in his regular occupation in accordance with the applicable standards so established; if the employee will not have been so disqualified by his employer, the Board shall determine whether his condition is disabling for work in his regular occupation in accordance with the standards generally established; and, if the employee's regular occupation is not one with respect to which standards will have been established, the standards relating to a reasonably comparable occupation shall be used. If there is no such comparable occupation, the Board shall determine whether the employee's condition is disabling for work in his regular occupation by determining whether under the practices generally prevailing in industries in which such occupation exists such condition is a permanent disqualification for work in such occupation. For purposes of this subdivision and paragraph (iv) of subdivision (1), an employee's ''regular occupation'' shall be deemed to be the occupation in which he will have been engaged in more calendar months than the calendar months in which he will have been engaged in any other occupation during the last preceding five calendar years, whether or not consecutive, in each of which years he will have earned wages or salary, except that, if an employee establishes that during the last fifteen consecutive calendar years he will have been engaged in another occupation in one-half or more of all the months in which he will have earned wages or salary, he may claim such other occupation as his regular occupation.

(3) Such satisfactory proof shall be made from time to time as prescribed by the Board, of the disability provided for in paragraph (iv) or (v) of subdivision (1) and of the continuance of such disability (according to the standards applied in the establishment of such disability) until the employee attains retirement age (as defined in section 216(*l*) of the Social Security Act [42 U.S.C. 416(*l*)]). If the individual fails to comply with the requirements prescribed by the Board as to proof of the continuance of the disability until he attains retirement age (as defined in section 216(*l*) of the Social Security Act), his right to an annuity by reason of such disability shall, except for good cause shown to the Board, cease, but without prejudice to his rights to any subsequent annuity to which he may be entitled.

(4) An individual who is entitled to an annuity under paragraph (v) of subdivision (1), but who does not have at least ten years of service, shall, prior to the month in which the individual at-

tains age 62, be entitled only to an annuity amount computed under section 231b(a) of this title (without regard to section 231b(a)(2) of this title) or section 231b(f)(3) of this title. Upon attainment of age 62, such an individual may also be entitled to an annuity amount computed under section 231b(b) of this title, but such annuity amount shall be reduced for early retirement in the same manner as if the individual were entitled to an annuity under subsection (a)(1)(iii) of this section.

(b) Individuals eligible for supplemental annuities

An individual who—

(i) has attained age 60 and completed thirty years of service or attained age 65;

(ii) has completed twenty-five years of service;

(iii) is entitled to the payment of an annuity under subsection (a)(1) of this section;

(iv) had a current connection with the railroad industry at the time such annuity began to accrue; and

(v) has performed compensated service in at least one month prior to October 1, 1981;

shall, subject to the conditions set forth in subsections (e) and (h) of this section, be entitled to a supplemental annuity in the amount provided under section 231b of this title: *Provided, however*, That in cases where an individual's annuity under subsection (a)(1) of this section begins to accrue on other than the first day of the month, the amount of any supplemental annuity to which he is entitled for that month shall be reduced by one-thirtieth for each day with respect to which he is not entitled to an annuity under subsection (a)(1) of this section.

(c) Spouses eligible for annuities

(1) The spouse of an individual, if—

(i) such individual (A) is entitled to an annuity under subsection (a)(1) of this section and (B) has attained the age of 60 and has completed thirty years of service or has attained the age of 62, and

(ii) such spouse (A) has attained retirement age (as defined in section 216(*l*) of the Social Security Act [42 U.S.C. 416(*l*)]), or (B) has attained the age of 60 and such individual has completed thirty years of service, or (C), in the case of a wife, has in her care (individually or jointly with her husband) a child who meets the qualifications prescribed in paragraph (iii) of subsection (d)(1) of this section (without regard to the provisions of clause (B) of such paragraph),

shall, subject to the conditions set forth in subsections (e), (f), and (h) of this section, be entitled to a spouse's annuity, if he or she has filed application therefor, in the amount provided under section 231c of this title.

(2) A spouse who would be entitled to an annuity under subdivision (1) or a divorced wife who would be entitled to an annuity under subdivision (4) if he or she had attained retirement age (as defined in section 216(*l*) of the Social Security Act [42 U.S.C. 416(*l*)]) may elect upon or after attaining the age of 62 to receive such annuity, but the annuity in any such case shall be reduced by 1/144 for each of the first 36 months that the spouse or divorced wife is under retirement age (as defined in section 216(*l*) of the Social Security Act) when the annuity begins to accrue and by 1/240 for each additional month that the spouse or divorced wife is under retirement age (as defined in section 216(*l*) of the Social Security Act) when the annuity begins to accrue, except that the annuity of a divorced wife who was previously entitled to a spouse annuity which was reduced under this subdivision shall be reduced by the same percentage as was applicable to the spouse annuity.

(3) For the purposes of this subchapter, the term ''spouse'' shall mean the wife or husband of an annuitant under subsection (a)(1) of this section who (i) was married to such annuitant for a period of not less than one year immediately preceding the day on which the application for a spouse's annuity is filed, or in the month prior to his or her marriage to such annuitant was eligible for an annuity under paragraph (i) or (iv) of subsection (d)(1) of this section or, on the basis of disability, under paragraph (iii) thereof, or is the parent of such annuitant's son or daughter; and (ii) in the case of a husband, was receiving at least one-half of his support from his wife at the time his wife's annuity under subsection (a)(1) of this section began.

(4) The ''divorced wife'' (as defined in section 216(d) of the Social Security Act [42 U.S.C. 416(d)]) of an individual, if—

(i) such individual has attained the age 62;

(ii) such divorced wife (A) has attained retirement age (as defined in section 216(*l*) of the Social Security Act [42 U.S.C. 416(*l*)][1] and (B) is not married; and

(iii) such divorced wife would have been entitled to a benefit under section 202(b) of the Social Security Act [42 U.S.C. 402(b)] as the divorced wife of such individual if all of such individual's service as an employee after December 31, 1936, had been included in the term ''employment'' as defined in that Act [42 U.S.C. 301 et seq.];

shall, subject to the conditions set forth in subsections (e), (f), and (h) of this section, be entitled to a divorced wife's annuity, if she has filed an application therefor, in the amount provided under section 231c of this title.

(d) Survivors eligible for annuities

(1) The following described survivors of a deceased employee who will have completed ten years of service (or five years of service, all of which accrues after December 31, 1995) and will have had a current connection with the railroad industry at the time of his death shall, subject to the conditions set forth in subsections (g) and (h) of this section, be entitled to annuities, if they have filed application therefor, in the amounts provided under section 231c of this title—

(i) a widow (as defined in section 216(c) and (k) of the Social Security Act [42 U.S.C. 416(c), (k)]) or widower (as defined in section 216(g) and (k) of the Social Security Act) of such a deceased employee who has not remarried and who (A) will have attained the age of sixty or

[1] So in original. Probably should be followed by a closing parenthesis.

(B) will have attained the age of fifty but will not have attained age sixty and is under a disability which began before the end of the period prescribed in subdivision (2), and who, in the case of a widower, was receiving at least one-half of his support from the deceased employee at the time of her death or at the time her annuity under subsection (a)(1) of this section began;

(ii) a widow (as defined in section 216(c) and (k) of the Social Security Act [42 U.S.C. 416(c), (k)]) of such a deceased employee who has not remarried and who (A) is not entitled to an annuity under paragraph (i), and (B) at the time of filing an application for an annuity under this paragraph, will have in her care a child of such deceased employee, which child is entitled to an annuity under paragraph (iii) (other than an annuity payable to a child who has attained age 18 and is not under a disability);

(iii) a child (as defined in section 216(e) and (k) of the Social Security Act [42 U.S.C. 416(e), (k)]) of such a deceased employee who (A) will be less than eighteen years of age, or (B) will be less than nineteen years of age and a full-time elementary or secondary school student, or (C) will, without regard to his age, be under a disability which began before he attained age twenty-two or before the close of the eighty-fourth month following the month in which his most recent entitlement to an annuity under this paragraph terminated because he ceased to be under a disability, and who is unmarried and was dependent upon the employee at the time of the employee's death;

(iv) a parent (as defined in section 202(h)(3) of the Social Security Act [42 U.S.C. 402(h)(3)]) of such a deceased employee who (A) will have attained the age of sixty and (B) will have received at least one-half of his or her support from such deceased employee at the time of the employees'[2] death and (C) will not have remarried after the employee's death: *Provided, however*, That no parent will be entitled to an annuity under this paragraph on the basis of the deceased employee's compensation and years of service in any case where such employee died leaving a widow or widower or a child who is, or who might in the future become, entitled to an annuity under this subsection, but neither this proviso nor clause (B) or (C) of this paragraph shall operate to deny any parent an annuity to the extent and in the amount of the benefit that such parent would have received under the Social Security Act [42 U.S.C. 301 et seq.] if the service as an employee of the individual, with respect to which such parent would be eligible to receive an annuity under this subchapter except for this proviso and those clauses, were included in ''employment'' as defined in the Social Security Act; and

(v) The[3] widow (as defined in section 216(c) of the Social Security Act [42 U.S.C. 416(c)]), who is married, or has been married after the death of the employee, the surviving divorced wife (as defined in section 216(d) of the Social Security Act), and a surviving divorced mother (as defined in section 216(d) of the Social Security Act) if such widow, surviving divorced wife, or surviving divorced mother would have been entitled to a benefit under section 202(e) or 202(g) of the Social Security Act [42 U.S.C. 402(e), (g)] as the widow, surviving divorced wife, or surviving divorced mother of the employee if all of his service as an employee after December 31, 1936, had been included in the term ''employment'' as defined in that Act. For the purpose of this paragraph, the reference in sections 202(e)(3)[4] and 202(g)(3) of the Social Security Act to an individual entitled under section 202(f) of that Act shall include an individual entitled to an annuity under paragraph (i) and an individual entitled to an annuity under paragraph (ii), and the reference in section 202(e)(3)[4] and section 202(g)(3) of the Social Security Act to an individual entitled under section 202(d) or section 202(h) of that Act shall include an individual entitled to an annuity under paragraph (iii) or paragraph (iv), and the references in section 202(g)(3) of the Social Security Act to an individual entitled under section 202(a) or section 223(a) of that Act [42 U.S.C. 402(a), 423(a)] shall include an individual entitled to an annuity under subsection (a)(1) of this section.

(2) The period referred to in clause (B) of subdivision (1)(i) is the period (i) beginning with the latest of (A) the month of the employee's death, (B) in the case of a widow, the last month for which she was entitled to an annuity under paragraph (ii) of subdivision (1) as the widow of the deceased employee, or (C) the month in which the widow's or widower's previous entitlement to an annuity as the widow or widower of the deceased employee terminated because her or his disability had ceased and (ii) ending with the month before the month in which she or he attains age sixty, or, if earlier, with the close of the eighty-fourth month following the month with which such period began.

(3) For purposes of paragraph (i) or (iii) of subdivision (1), a widow, widower, or child shall be under a disability if her or his permanent physical or mental condition is such that she or he is unable to engage in any regular employment. The provisions of subsection (a)(3) of this section as to the proof of disability shall apply with regard to determinations with respect to disability under subdivision (1).

(4) In determining for purposes of this subsection and subdivision (3) of subsection (c) of this section whether an applicant is the wife, husband, widow, widower, child, or parent of a deceased employee as claimed, the rules set forth in section 216(h) of the Social Security Act [42 U.S.C. 416(h)] shall be applied deeming, for this purpose, individuals entitled to an annuity under subsection (c) of this section to be entitled to benefits under subsection (b) or (c) of section 202 of the Social Security Act [42 U.S.C. 402] and individuals entitled to an annuity under paragraph (i) or (ii) of subsection (d)(1) of this section to be entitled to a benefit under subsection (e), (f), or (g) of section 202 of the Social Security Act. For purposes of paragraph (iii) of

[2] So in original. Probably should be ''employee's''.

[3] So in original. Probably should not be capitalized.

[4] See References in Text note below.

subdivision (1), a child shall be deemed to have been dependent upon his parent employee if the conditions set forth in section 202(d)(3), (4), or (9) of the Social Security Act are fulfilled. The provisions of paragraph (7) of section 202(d) of the Social Security Act (defining the terms ''full-time elementary or secondary school student'' and ''elementary or secondary school'') shall be applied by the Board in the administration of this subsection as if the references therein to the Secretary were references to the Board. A child who attains age nineteen at a time when he is a full-time elementary or secondary school student (as defined in subparagraph (A) of paragraph (7) of section 202(d) of the Social Security Act and without the application of subparagraph (B) of such paragraph) but has not (at such time) completed the requirements for, or received, a diploma or equivalent certificate from a secondary school (as defined in section 202(d)(7)(c)(i)[5] of the Social Security Act) shall be deemed (for purposes of determining his continuing or initial entitlement to an annuity under this subsection) not to have attained such age until the first day of the first month following the end of the quarter or semester in which he is enrolled at such time (or, if the elementary or secondary school in which he is enrolled is not operated on a quarter or semester system, until the first day of the first month following the completion of the course in which he is enrolled or until the first day of the third month beginning after such time, whichever first occurs).

(e) Compensated service; rights to return

(1) No individual shall be entitled to an annuity under subsection (a)(1) of this section until he shall have ceased to render compensated service to an employer as defined in section 231(a) of this title.

(2) An annuity under subsection (a)(1) of this section shall be paid only if the applicant shall have relinquished such rights as he may have to return to the service of an employer: *Provided, however*, That this requirement shall not apply to individuals mentioned in paragraphs (iv) and (v) of subsection (a)(1) of this section prior to attaining retirement age (as defined in section 216(*l*) of the Social Security Act [42 U.S.C. 416(*l*)]): *Provided further*, That, notwithstanding the provisions of the preceding proviso and of clause (i) of subsection (c)(1) of this section, an annuity shall be paid to the spouse of an individual only if such individual shall have satisfied the requirements of this subdivision without regard to the preceding proviso: *And provided further*, That, notwithstanding the provisions of the first proviso of this subdivision and of clause (iii) of subsection (b)(1) of this section, a supplemental annuity shall be paid to an individual only if such individual shall have satisfied the requirements of this subdivision without regard to the first proviso thereof.

(3) No annuity under subsection (a)(1) of this section or supplemental annuity under subsection (b)(1) of this section shall be paid with respect to any month in which an individual in receipt of an annuity or supplemental annuity thereunder shall render compensated service to an employer. Individuals receiving annuities under subsection (a)(1) of this section shall report to the Board immediately all such compensated service.

(4) No annuity under paragraph (iv) or (v) of subsection (a)(1) of this section shall be paid to an individual with respect to any month in which the individual is under retirement age (as defined in section 216(*l*) of the Social Security Act [42 U.S.C. 416(*l*)]) and is paid more than the monthly allowable earnings as defined in the section (after deduction of disability related work expenses) from employment or self-employment of any form: *Provided, however*, That for purposes of this subdivision, if a payment in any one calendar month is for accruals in more than one calendar month, such payment shall be deemed to have been paid in each of the months in which accrued to the extent accrued in such month. Any such individual under the retirement age (as defined in section 216(*l*) of the Social Security Act) shall report to the Board any such payment of earnings for such employment or self-employment before receipt and acceptance of an annuity for the second month following the month of such payment. A deduction shall be imposed, with respect to any such individual who fails to make such report, in the annuity or annuities otherwise due the individual, in an amount equal to the amount of the annuity for each month in which he is paid such earnings in such employment or self-employment, except that the first deduction imposed pursuant to this sentence shall in no case exceed an amount equal to the amount of the annuity otherwise due for the first month with respect to which the deduction is imposed. If pursuant to the first sentence of this subdivision an annuity was not paid to an individual with respect to one or more months in any calendar year, and it is subsequently established that the total amount of such individual's earnings during such year as determined in accordance with that sentence (but exclusive of earnings for services described in subdivision (3)) did not exceed the amount of earnings computed by totaling the monthly allowable earnings as determined under this section for each month in the year (after deduction of disability related work expenses), the annuity with respect to such month or months, and any deduction imposed by reason of the failure to report earnings for such month or months under the third sentence of this subdivision, shall then be payable. If the total amount of such individual's earnings during such year (exclusive of earnings for services as described in subdivision (3) and after deduction of disability related work expenses) is in excess of the annual allowable earnings amount, the number of months in such year with respect to which an annuity is not payable by reason of the first and third sentences shall not exceed the number of months derived by dividing the amount by which such annual earnings exceed the annual allowable earnings amount by the monthly allowable earning amount determined under this section. If the computation under the preceding sentence results in a remainder greater than or equal to one-half, the number of months for which an annuity is not payable as determined under the preceding sentence shall be increased

[5] So in original. Probably should be section ''202(d)(7)(C)(i)''.

by one. The annual allowable earnings amount shall be computed by totaling the amount of monthly allowable earnings as determined under the first sentence of this subdivision for each month in the calender[6] year. If the amount of the individual's annuity has changed during the calendar year, any payment of annuities which become payable solely by reason of the limitations in the preceding three sentences shall be made first with respect to the month or months for which the annuity is larger. For purposes of this subdivision, ''the monthly allowable earnings'' shall be $700, except that for each year after 2007, ''the monthly allowable earnings'' amount shall be the larger of the amount for the previous year or the amount calculated by multiplying $700 by the ratio of the national average wage index for the year 2 calender[6] years before the year for which the amount is being calculated to the national average wage index for the year 2005. The amount so computed will be rounded to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

(5) The annuity of a spouse or divorced wife under subsection (c) of this section shall, with respect to any month, be subject to the same provisions of this subsection as the individual's annuity. In addition, the annuity of a spouse under subsection (c) of this section shall not be payable for any month if the individual's annuity under subsection (a)(1) of this section is not payable for such month by reason of the provisions of this subsection.

(f) Deductions on account of work

(1) That portion of the individual's annuity as is computed under section 231b(a) of this title on the basis of (A) his compensation and years of service subsequent to December 31, 1974, and (B) his wages and self-employment income derived from employment and self-employment under the Social Security Act [42 U.S.C. 301 et seq.] and that portion of the individual's annuity as is computed under section 231b(h) of this title shall be subject to deductions on account of work pursuant to the provisions of section 203 of the Social Security Act [42 U.S.C. 403] in the same manner as if such portion of such annuity were a monthly insurance benefit under that Act: *Provided*, *however*, That the provisions of this subdivision shall be applicable to the annuity of an individual only if such individual would be fully insured under the Social Security Act on the basis of wages and self-employment income derived from employment and self-employment under that Act and on the basis of compensation derived from service as an employee after December 31, 1974, if such service as an employee had been included in the term ''employment'' as defined in that Act. Any person in receipt of an annuity subject to deduction under this subsection shall report to the Board the receipt of excess earnings as defined in paragraph (3) of section 203(f) of the Social Security Act.

(2) That portion of the spouse's or divorced wife's annuity under subsection (c) of this section which is derived from the portion of the individual's annuity subject to deductions under subdivision (1) and that portion of the spouse's or divorced wife's annuity as is computed under section 231c(e) of this title shall be subject to deductions on account of work pursuant to the provisions of section 203 of the Social Security Act [42 U.S.S. 403] in the same manner as if such portion of such spouse's or divorced wife's annuity were a monthly insurance benefit under that Act. In addition, such portion of the spouse's or divorced wife's annuity shall be subject to deductions if the individual's annuity is subject to deductions under subdivision (1) in the same manner as if such portion of such spouse's or divorced wife's annuity were a monthly insurance benefit under the Social Security Act [42 U.S.C. 301 et seq.].

(3) Deductions shall not be made pursuant to subdivision (1) from that portion of an individual's annuity as is computed under section 231b(a) of this title for any month in which the annuity of such individual is reduced pursuant to section 231b(m) of this title. This subdivision shall be disregarded in determining the applicability and amount of deductions in a spouse's annuity pursuant to subdivision (2) of this subsection.

(4) Deductions shall not be made pursuant to subdivision (2) from that portion of a spouse's annuity as is computed under section 231c(a) of this title for any month in which the annuity of such spouse is reduced due to entitlement to a benefit under title II of the Social Security Act [42 U.S.C. 401 et seq.].

(5) If an annuity begins to accrue on other than the first day of a month, subdivisions (1) and (2) of this subsection shall not apply in the year the annuity begins to accrue if the annuitant has no earnings in excess of the monthly exempt amount in such year after the annuity beginning date.

(6)(A) Except as provided in subparagraph (B)—

(i) that portion of the annuity for any month of an individual as is computed under section 231b(b) of this title and as adjusted under section 231b(g) of this title, plus any supplemental amount for such month under section 231b(e) of this title, and that portion of the annuity for any month of a spouse as is computed under section 231c(b) of this title and as adjusted under section 231c(d) of this title, shall each be subject to a deduction of $1 for each $2 of compensation received by such individual from compensated service rendered in such month to the last person, or persons, by whom such individual was employed before the date on which the annuity of such individual under subsection (a)(1) of this section began to accrue; and

(ii) that portion of the annuity for any month of a spouse as is computed under section 231c(b) of this title and as adjusted under section 231c(d) of this title shall be subject to a deduction of $1 for each $2 of compensation received by such spouse from compensated service rendered in such month to the last person, or persons, by whom such spouse was employed before the date on which the annuity of such spouse under subsection (c)(1) of this section began to accrue.

[6] So in original. Probably should be ''calendar''.

(B) Any deductions imposed by this subdivision for any month shall not exceed 50 percent of the annuity amount for such month to which such deductions apply.

(g) Employment compensation of survivors; deductions

(1) No annuity shall be paid to a survivor under subsection (d) of this section with respect to any month in which such survivor renders service for compensation as an employee of an employer. Survivors receiving annuities under subsection (d) of this section shall report to the Board immediately all such service for compensation.

(2) Deductions, in amounts and at such time or times as the Board shall determine, shall be made from any payments to which a survivor is entitled under subsection (d) of this section until the total of such deductions equals such survivor's annuity under that subsection for any month, if for such month such survivor would be charged with excess earnings under section 203(f) of the Social Security Act [42 U.S.C. 403(f)] or, having engaged in any activity outside the United States, would be charged under such section 203(f) of the Social Security Act [42 U.S.C. 403(f)] with any excess earnings derived from such activity if it had been an activity within the United States. For purposes of this subdivision the Board shall have the authority to take such actions and to make such determinations and such suspensions of payment of benefits in the manner and to the extent that the Secretary of Health and Human Services would be authorized to take or to make under section 203(h)(3) of the Social Security Act if the survivors were receiving the annuities to which this subdivision applies under section 202 of the Social Security Act [42 U.S.C. 402]: *Provided, however*, That in determining a survivor's excess earnings for a year for the purposes of this subdivision there shall not be included his income from employment or self-employment during months beginning with the month with respect to which he ceases to be qualified for an annuity. Survivors receiving annuities under subsection (d) of this section shall report to the Board the receipt of excess earnings described in this subdivision.

(h) Military service; reductions

(1) Repealed. Pub. L. 98–76, title IV, § 414(a), Aug. 12, 1983, 97 Stat. 436.

(2) The supplemental annuity provided an individual by subsection (b) of this section shall, with respect to any month, be reduced by the amount of the supplemental pension, attributable to the employer's contribution, that such individual is entitled to receive for that month under any other supplemental pension plan: *Provided, however*, That the maximum of such reduction shall be equal to the amount of the supplemental annuity less any amount by which the supplemental pension is reduced by reason of the supplemental annuity.

(3) If a spouse or divorced wife entitled to an annuity under subsection (c) of this section or a survivor entitled to an annuity under subsection (d) of this section for any month is also entitled to annuity under subsection (a)(1) of this section for such month, the annuity under subsection (c) or (d) of this section shall be reduced, but not below zero, by an amount equal to the annuity under subsection (a)(1) of this section: *Provided, however*, That the provisions of this subdivision shall not apply if either the spouse or survivor or the individual upon whose earnings record the spouse's or survivor's annuity under subsection (c) or (d) of this section is based rendered service as an employee to an employer, or as an employee representative, prior to January 1, 1975.

(4) If an annuitant is entitled to more than one annuity under subsections (c) and (d) of this section for a month, such annuitant shall be entitled to only the larger of such annuities for such month, except that, if such annuitant so elects, he shall instead be entitled to only the smaller of such annuities for such month.

(i) Limitation; service accrued after 1995

An individual entitled to an annuity under this section who has completed five years of service, all of which accrues after 1995, but who has not completed ten years of service, and the spouse, divorced spouse, and survivors of such individual, shall not be entitled to an annuity amount provided under section 231b(a), section 231c(a), or section 231c(f) of this title unless the individual, or the individual's spouse, divorced spouse, or survivors, would be entitled to a benefit under title II of the Social Security Act [42 U.S.C. 401 et seq.] on the basis of the individual's employment record under both this subchapter and title II of the Social Security Act.

(Aug. 29, 1935, ch. 812, § 2, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1312; amended Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 97–35, title XI, § 1117, Aug. 13, 1981, 95 Stat. 628; Pub. L. 98–76, title I, §§ 104(a), (b), 106(a)–(g), title IV, §§ 409(a), 413(a), 414(a), 415, Aug. 12, 1983, 97 Stat. 416–418, 435, 436; Pub. L. 100–647, title VII, §§ 7302(a), (b), 7303(a), Nov. 10, 1988, 102 Stat. 3777, 3778; Pub. L. 107–90, title I, § 103(a), (c), (d), Dec. 21, 2001, 115 Stat. 880; Pub. L. 109–280, title X, § 1002(a), Aug. 17, 2006, 120 Stat. 1053; Pub. L. 109–478, § 2(a), Jan. 12, 2007, 120 Stat. 3573.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (c)(4), (d)(1)(iv), (f)(1), (2), (4), and (i), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Paragraph (3) of section 202(e) of the Social Security Act [42 U.S.C. 402(e)(3)], referred to in subsec. (d)(1)(v), was repealed, and paragraph (4) of section 202(e) of that Act was redesignated as paragraph (3) of section 202(e) and was further amended, by Pub. L. 98–21, title I, § 131(a)(1)–(3)(A), Apr. 20, 1983, 97 Stat. 92.

AMENDMENTS

2007—Subsec. (e)(4). Pub. L. 109–478, § 2(a)(3), substituted "If the total amount of such individual's earnings during such year (exclusive of earnings for services as described in subdivision (3) and after deduction of disability related work expenses) is in excess of the annual allowable earnings amount, the number of months in such year with respect to which an annuity is not payable by reason of the first and third sentences shall

not exceed the number of months derived by dividing the amount by which such annual earnings exceed the annual allowable earnings amount by the monthly allowable earning amount determined under this section. If the computation under the preceding sentence results in a remainder greater than or equal to one-half, the number of months for which an annuity is not payable as determined under the preceding sentence shall be increased by one. The annual allowable earnings amount shall be computed by totaling the amount of monthly allowable earnings as determined under the first sentence of this subdivision for each month in the calender year. If the amount of the individual's annuity has changed during the calendar year, any payment of annuities which become payable solely by reason of the limitations in the preceding three sentences shall be made first with respect to the month or months for which the annuity is larger. For purposes of this subdivision, 'the monthly allowable earnings' shall be $700, except that for each year after 2007, 'the monthly allowable earnings' amount shall be the larger of the amount for the previous year or the amount calculated by multiplying $700 by the ratio of the national average wage index for the year 2 calender years before the year for which the amount is being calculated to the national average wage index for the year 2005. The amount so computed will be rounded to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.'' for ''If the total amount of such individual's earnings during such year (exclusive of earnings for services described in subdivision (3)) is in excess of $4,800 (after deduction of disability related work expenses), the number of months in such year with respect to which an annuity is not payable by reason of such first and third sentences shall not exceed one month for each $400 of such excess, treating the last $200 or more of such excess as $400; and if the amount of the annuity has changed during such year, any payments of annuities which become payable solely by reason of the limitations contained in this sentence shall be made first with respect to the month or months for which the annuity is larger.''

Pub. L. 109–478, § 2(a)(1), (2), substituted ''the monthly allowable earnings as defined in the section'' for ''$400 in earnings'' in first sentence and ''the amount of earnings computed by totaling the monthly allowable earnings as determined under this section for each month in the year'' for ''$4,800'' in fourth sentence.

2006—Subsec. (c)(4)(i). Pub. L. 109–280, § 1002(a)(1), struck out ''(A) is entitled to an annuity under subsection (a)(1) of this section and (B)'' after ''such individual''.

Subsec. (e)(5). Pub. L. 109–280, § 1002(a)(2), struck out ''or divorced wife'' after ''In addition, the annuity of a spouse''.

2001—Subsec. (a)(1). Pub. L. 107–90, § 103(a)(1), inserted ''(or, for purposes of paragraphs (i), (iii), and (v), five years of service, all of which accrues after December 31, 1995)'' after ''ten years of service'' in introductory provisions.

Subsec. (a)(4). Pub. L. 107–90, § 103(a)(2), added par. (4).

Subsec. (d)(1). Pub. L. 107–90, § 103(c), inserted ''(or five years of service, all of which accrues after December 31, 1995)'' after ''ten years of service'' in introductory provisions.

Subsec. (i). Pub. L. 107–90, § 103(d), added subsec. (i).

1988—Subsec. (e)(1). Pub. L. 100–647, § 7302(a)(1), struck out ''any person, whether or not'' after ''compensated service to'' and ''(but with the right to engage in other employment to the extent not prohibited by subdivision (3) or (4) of this subsection or by subsection (f) of this section). As used in this subsection, the term 'compensated service' shall not include any service as an elected public official of the United States, a State, or any political subdivision of a State'' after ''section 231(a) of this title''.

Subsec. (e)(2). Pub. L. 100–647, § 7302(a)(2), struck out ''and of the person, or persons, by whom he was last employed'' after ''service of an employer''.

Subsec. (e)(3). Pub. L. 100–647, § 7302(a)(3), struck out ''or to the last person, or persons, by whom he was employed prior to the date on which the annuity under subsection (a)(1) of this section began to accrue'' after ''service to an employer''.

Subsec. (e)(4). Pub. L. 100–647, § 7303(a), substituted ''$400 in earnings (after deduction of disability related work expenses)'' for ''$200 in earnings'', ''$4,800 (after deduction of disability related work expenses)'' for ''$2,400'' in two places, ''each $400'' for ''each $200'', ''$200'' for ''$100'', and ''as $400'' for ''as $200''.

Subsec. (f)(6). Pub. L. 100–647, § 7302(b), added par. (6).

1983—Subsec. (a)(1)(i). Pub. L. 98–76, § 106(a)(1), substituted ''retirement age (as defined in section 216(*l*) of the Social Security Act)'' for ''the age of sixty-five''.

Subsec. (a)(1)(iii). Pub. L. 98–76, § 106(a)(2), substituted ''reduced by 1/180 for each of the first 36 months that he or she is under retirement age (as defined in section 216(*l*) of the Social Security Act) when the annuity begins to accrue and by 1/240 for each additional month that he or she is under retirement age (as defined in section 216(*l*) of the Social Security Act) when the annuity begins to accrue'' for ''reduced by 1/180 for each calendar month that he or she is under age sixty-five when the annuity begins to accrue''.

Subsec. (a)(3). Pub. L. 98–76, § 106(b), which directed the substitution of ''retirement age (as defined in section 216(*l*) of the Social Security Act)'' for ''the age of 65'' and ''the age of sixty-five years'' was executed by substituting that phrase for ''the age of sixty-five'' and ''the age of sixty-five years''.

Subsec. (c)(1)(ii). Pub. L. 98–76, § 106(c), substituted ''retirement age (as defined in section 216(*l*) of the Social Security Act)'' for ''the age of 65''.

Subsec. (c)(2). Pub. L. 98–76, § 106(d), substituted ''retirement age (as defined in section 216(*l*) of the Social Security Act)'' for ''the age of 65'' and ''reduced by 1/144 for each of the first 36 months that the spouse or divorced wife is under retirement age (as defined in section 216(*l*) of the Social Security Act) when the annuity begins to accrue and by 1/240 for each additional month that the spouse or divorced wife is under retirement age (as defined in section 216(*l*) of the Social Security Act) when the annuity begins to accrue'' for ''reduced by 1/144 for each calendar month that the spouse or divorced wife is under age 65 when the annuity begins to accrue''.

Pub. L. 98–76, § 409(a), inserted '', except that the annuity of a divorced wife who was previously entitled to a spouse annuity which was reduced under this subdivision shall be reduced by the same percentage as was applicable to the spouse annuity'' before the period.

Subsec. (c)(3). Pub. L. 98–76, § 415, struck out '', if, as of the day on which the application for a spouse's annuity is filed, such wife or husband and such annuitant were members of the same household, or such wife or husband was receiving regular contributions from such annuitant toward her or his support, or such annuitant has been ordered by any court to contribute to the support of such wife or husband'' after ''annuitant's son or daughter''.

Subsec. (c)(4)(ii)(A). Pub. L. 98–76, § 106(e), substituted ''retirement age (as defined in section 216(*l*) of the Social Security Act'' for ''the age of 65''.

Subsec. (d)(1)(iii)(B). Pub. L. 98–76, § 104(a), substituted ''nineteen years of age and a full-time elementary or secondary school student'' for ''twenty-two years of age and a full-time student at an educational institution''.

Subsec. (d)(1)(iv). Pub. L. 98–76, § 413(a), inserted '', but neither this proviso nor clause (B) or (C) of this paragraph shall operate to deny any parent an annuity to the extent and in the amount of the benefit that such parent would have received under the Social Security Act if the service as an employee of the individual, with respect to which such parent would be eligible to receive an annuity under this subchapter except for this proviso and those clauses, were included in 'employment' as defined in the Social Security Act''.

Subsec. (d)(4). Pub. L. 98–76, § 104(b), substituted ''full-time elementary or secondary school student'' for

''full-time student'' and ''elementary or secondary school'' for ''educational institution'', in two places, ''nineteen'' for ''twenty-two'', and ''diploma or equivalent certificate from a secondary school (as defined in section 202(d)(7)(c)(1) of the Social Security Act)'' for ''degree from a four-year college or university''.

Subsec. (e)(2). Pub. L. 98–76, § 106(f), substituted ''retirement age (as defined in section 216(*l*) of the Social Security Act)'' for ''age sixty-five''.

Subsec. (e)(4). Pub. L. 98–76, § 106(g), substituted ''retirement age (as defined in section 216(*l*) of the Social Security Act)'' for ''age sixty-five'' and ''age of sixty-five''.

Subsec. (h)(1). Pub. L. 98–76, § 414(a), struck out par. (1) relating to a reduction of annuities of individuals whose military service credited under section 231b(i)(2) of this title was used as a basis or partial basis for a pension, disability compensation, or any other gratuitous benefits payable on a periodic basis under any other Act.

1981—Subsec. (b). Pub. L. 97–35, § 1117(a), struck out subdiv. (1) designation, substituted ''conditions set forth in subsections (e)'' for ''conditions set forth in subdivision (2) of this section and subsections (e)'', added par. (v), and struck out subdivs. (2) and (3), which provided for supplementary annuity for the period after an individual renders service as an employee for compensation after his supplemental annuity closing date with two provisos, and that such provisions shall not supersede the provisions of any agreement reached through collective bargaining providing for mandatory retirement at an age less than the applicable supplemental annuity closing date.

Subsec. (c)(2), (4). Pub. L. 97–35, § 1117(b), substituted ''subdivision (1) or a divorced wife who would be entitled to an annuity under subdivision (4) if he or'' for ''subdivision (1) if he or'', ''by 1/144 for each calendar month that the spouse or divorced wife is'' for ''by 1/180 for each calendar month that the spouse is'' in subdiv. (2), and added subdiv. (4).

Subsec. (d)(1)(v). Pub. L. 97–35, § 1117(c), added par. (v).

Subsec. (e)(5). Pub. L. 97–35, § 1117(d), substituted ''spouse or divorced wife'' for ''spouse'' in two places.

Subsec. (f)(2). Pub. L. 97–35, § 1117(e)(1), substituted ''spouse's or divorced wife's annuity'' for ''spouse's annuity'' in five places.

Subsec. (f)(3) to (5). Pub. L. 97–35, § 1117(e)(2), added subdivs. (3) to (5).

Subsec. (g)(2). Pub. L. 97–35, § 1117(f), substituted ''such survivor would be charged with'' for ''such survivor is under the age of seventy-two and is charged with''.

Subsec. (h). Pub. L. 97–35, § 1117(g), substituted ''the spouse or divorced wife of such individual'' for ''the spouse of such individual'' in subdiv. (1), and ''If a spouse or divorced wife entitled'' for ''If a spouse entitled'' in subdiv. (3).

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (g)(2), pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 109–478, § 2(b), Jan. 12, 2007, 120 Stat. 3574, provided that: ''The amendments made by this section [amending this section] take effect January 1, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title X, § 1002(b), Aug. 17, 2006, 120 Stat. 1053, provided that: ''The amendments made by this section [amending this section] shall take effect 1 year after the date of the enactment of this Act [Aug. 17, 2006].''

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–90 effective Jan. 1, 2002, see section 103(j) of Pub. L. 107–90, set out as a note under section 405 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7302(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply to annuities payable under the Railroad Retirement Act of 1974 [this subchapter] for months beginning after the date of enactment of this Act [Nov. 10, 1988].''

Section 7303(b) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply with respect to months in calendar years beginning after December 31, 1988.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 104(d) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending this section and section 231d of this title] shall be effective with respect to annuities accruing for months after the month in which this Act is enacted [August, 1983] except in the case of a child who has attained the age of eighteen in or before the month in which this Act is enacted and is entitled to an annuity under section 2(d) of the Railroad Retirement Act of 1974 [subsec. (d) of this section] for the month in which this Act is enacted or, if earlier, for the month of April 1983.''

Section 106(k) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending this section and sections 231c and 231d of this title] shall be effective on the date of the enactment of this Act [Aug. 12, 1983], except that such amendment shall not apply to annuity amounts provided under sections 3(b) and 4(b) of the Railroad Retirement Act of 1974 or to increases in such annuity amounts provided under sections 3(g) and 4(d) of such Act if the individual upon whose earning record such annuity amounts are based rendered service as an employee to an employer, or as an employee representative, before the date of the enactment of this Act.''

Section 409(b) of Pub. L. 98–76 provided that: ''The amendment made by this section [amending this section] shall be effective with respect to divorced wife annuities awarded on and after the date of enactment [Aug. 12, 1983].''

Section 413(b) of Pub. L. 98–76 provided that: ''The amendment made by this section [amending this section] shall apply with respect to annuities that first begin to accrue with respect to any month beginning after the date of the enactment of this Act [Aug. 12, 1983].''

Section 414(b) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending this section] shall apply with respect to months beginning after the date of the enactment of this Act [Aug. 12, 1983].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 1117(a) of Pub. L. 97–35 effective Oct. 1, 1981, and applicable with respect to individuals whose supplemental annuity closing date under subsec. (b) of this section did not occur before Oct. 1, 1981, amendment by section 1117(e)(2), (f) of Pub. L. 97–35 effective Jan. 1, 1982, and amendment by other provisions of section 1117 of Pub. L. 97–35 effective Oct. 1, 1981, and applicable with respect to annuities awarded on or after Oct. 1, 1981, see section 1129 of Pub. L. 97–35, set out as a note under section 231 of this title.

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Special payment of $50 as soon as practicable after Mar. 29, 1975, by Secretary of the Treasury to each individual who, for month of March 1975, was entitled to a monthly annuity or pension payment under this subchapter, see section 702 of Pub. L. 94–12, set out as a note under section 402 of Title 42, The Public Health and Welfare.

§ 231b. Computation of annuities

(a) Amount

(1) The annuity of an individual under section 231a(a)(1) of this title shall be in an amount equal to the amount (before any reduction on account of age and before any deductions on account of work) of the old-age insurance benefit or disability insurance benefit to which such individual would have been entitled under the Social Security Act [42 U.S.C. 301 et seq.] if all of his or her service as an employee after December 31, 1936, had been included in the term ''employment'' as defined in that Act.

(2) For purposes of this subsection, individuals entitled to an annuity under section 231a(a)(1)(ii) of this title shall, except for the purposes of recomputations in accordance with section 215(f) of the Social Security Act [42 U.S.C. 415(f)], be deemed to have attained retirement age (as defined by section 216(*l*) of the Social Security Act [42 U.S.C. 416(*l*)]). For purposes of this subsection, individuals entitled to an annuity under paragraph (iv) or (v) of section 231a(a)(1) of this title shall be deemed to be entitled to a disability insurance benefit under section 223 of the Social Security Act [42 U.S.C. 423].

(3) If an individual entitled to an annuity under section 231a(a)(1)(i) or (iii) of this title on the basis of less than ten years of service is entitled to a benefit under section 202(a), section 202(b), or section 202(c) of the Social Security Act [42 U.S.C. 402(a), (b), (c)] which began to accrue before the annuity under section 231a(a)(1)(i) or (iii) of this title, the annuity amount provided such individual under this subsection, shall be computed as though the annuity under this subchapter began to accrue on the later of (A) the date on which the benefit under section 202(a), section 202(b), or section 202(c) of the Social Security Act began, or (B) the date on which the individual first met the conditions for entitlement to an age reduced annuity under this subchapter other than the conditions set forth in sections 231a(e)(1) and 231a(e)(2) of this title and the requirement that an application be filed.

(b) Increased annuities under subsection (a)

(1) The amount of the annuity of an individual provided under subsection (a) of this section shall be increased by an amount equal to seven-tenths of 1 per centum of the product which is obtained by multiplying such individual's ''years of service'' by such individual's ''average monthly compensation'' as determined under this subsection. The annuity amount payable to the individual under this subsection shall be reduced by 25 per centum of the annuity amount computed for such individual under subsection (h)(1) or (h)(2), and subsection (h)(5), of this section without regard to section 231f(c)(1) of this title. An individual's ''average monthly compensation'' for purposes of this subsection shall be the quotient obtained by dividing by 60 such individual's total compensation for the 60 months, consecutive or otherwise, during which such individual received that individual's highest monthly compensation, except that no part of any month's compensation in excess of the maximum amount creditable for any individual for such month under subsection (j) of this section shall be recognized. In determining the months of compensation to be used for purposes of this subsection, the total compensation reported for the individual under section 231h of this title or credited to such individual under subsection (j) of this section for a year divided by the number of months of service credited to such individual under subsection (i) of this section with respect to such year shall be considered the monthly compensation of the individual for each month of service in any year for which records of the Board do not show the amount of compensation paid to the individual on a monthly basis. If the ''average monthly compensation'' computed under this subsection is not a multiple of $1, it shall be rounded to the next lower multiple of $1.

(2) For purposes of subdivision (1) of this subsection, in determining ''average monthly compensation'' for an individual who has not engaged in employment for an employer in the 60-month period preceding the month in which such individual's annuity began to accrue, and whose major employment during such 60-month period was for a United States department or agency named in section 231(*o*) of this title, the amount of compensation used with respect to each month used in making such determination shall be the product of—

(i) the compensation credited to such individual for such month under paragraph (1) of this subsection; and

(ii) the quotient obtained by dividing—

(I) the average of total wages (as determined under section 215(b)(3)(A)(ii)(I) of the Social Security Act [42 U.S.C. 415(b)(3)(A)(ii)(I)]) for the second calendar year preceding the earliest of the year of the individual's death or the year in which an annuity begins to accrue to such individual (disregarding an annuity based on disability which is terminated because such individual has recovered from such disability if such individual engages in any regular employment after such termination); by

(II) the average of total wages (as determined under section 215(b)(3)(A)(ii)(II) of the Social Security Act [42 U.S.C. 415(b)(3)(A)(ii)(II)]) for the calendar year during which such month occurred, unless such month occurred prior to calendar year 1951, in which case, the average of total wages so determined for 1951.

In no event shall ''average monthly compensation'' determined for an individual under this subdivision exceed the maximum ''average monthly compensation'' which can be determined under subdivision (1) of this subsection for any person retiring January 1 of the year in which such individual's annuity began to accrue.

(c), (d) Repealed. Pub. L. 97–35, title XI, § 1118(b), Aug. 13, 1981, 95 Stat. 631

(e) Supplemental annuities

The supplemental annuity of an individual under section 231a(b) of this title shall be $23 plus an additional amount of $4 for each year of

service that the individual has in excess of 25 years, but in no case shall the supplemental annuity exceed $43.

(f) Reductions in annuities

(1) If, in the case of an individual whose annuity under section 231a(a)(1) of this title began to accrue prior to January 1, 1983, the annuity (before any reduction due to such individual's entitlement to a monthly insurance benefit under the Social Security Act [42 U.S.C. 301 et seq.] and disregarding any amount provided by subsection (h) of this section) plus the supplemental annuity to which such individual is entitled for any month under this subchapter, together with the annuity, if any, of the spouse of such individual (before any reduction due to such spouse's entitlement to a wife's or husband's insurance benefit under the Social Security Act and disregarding any amount provided by section 231c(e) of this title), before any reductions under the provisions of section 231a(f) of this title is less than the total amount which would have been payable to such individual and his spouse for such month, on the basis of the individual's compensation and years of service, under the provisions of the Railroad Retirement Act of 1937 as in effect on December 31, 1974 [45 U.S.C. 228a et seq.], disregarding, for purposes of the computations under such Railroad Retirement Act of 1937 compensation for any month after December 31, 1974, in excess of one-twelfth of the maximum annual taxable ''wages'' (as defined in section 3121 of the Internal Revenue Code of 1986 [26 U.S.C. 3121]) for the calendar year 1974, the annuity of such individual and the annuity of such spouse, if any, shall be increased proportionately so as to equal such total amount. For the purpose of computing amounts under this subdivision, the Board shall have the authority to approximate the effect of the reductions prescribed by sections 3(a)(2) and 3(a)(3) of the Railroad Retirement Act of 1937 [45 U.S.C. 228c(a)(2), (a)(3)]. For purposes of computing amounts payable under the Railroad Retirement Act of 1937, any increases in the amounts determined under the first proviso of section 3(e) of such Act which would have become effective after December 31, 1974, shall be disregarded.

(2) If for any month in which an annuity accrues and is payable under this subchapter the annuity to which an individual is entitled under this subchapter (or would have been entitled except for a reduction pursuant to a joint and survivor election), together with the annuity, if any, of the spouse and divorced wife of such individual, is less than the total amount, or the additional amount, which would have been payable to all persons for such month under the Social Security Act [42 U.S.C. 301 et seq.] if such individual's service as an employee after December 31, 1936, were included in the term ''employment'' as defined in that Act, the annuities of the individual and spouse shall be increased proportionately to such total amount, or such additional amount: *Provided*, *however*, That if an annuity accrues to an individual or a spouse for a part of a month, the amount payable for such part of a month under this subdivision shall be one-thirtieth of the amount payable under this subdivision for an entire month, multiplied by the number of days in such part of a month. For purposes of this subdivision, (i) persons not entitled to an annuity under section 231a of this title shall not be included in the computation under this subdivision except a spouse who could qualify for an annuity under section 231a(c) of this title if the individual from whom the spouse's annuity under this subchapter would derive had attained age 60 or 62, as the case may be, and such individual's children who meet the definition as such contained in section 216(e) of the Social Security Act [42 U.S.C. 416(e)]; (ii) after an annuity has been certified for payment and this subdivision was inapplicable after allowing for any waiting period under section 223(c)(2) of the Social Security Act [42 U.S.C. 423(c)(2)], and after having considered the inclusion of all persons who were then eligible for inclusion in the computation under this subdivision, or was then applicable but later became inapplicable, any recertification in such annuity under this subdivision shall not take into account persons not entitled to an annuity under section 231a of this title except a spouse who could qualify for an annuity under section 231a(c) of this title when she attains age 60 or 62, as the case may be, if the individual from whom the spouse's annuity would derive had attained age 60 or 62, as the case may be, and who was married to such individual at the time he applied for his annuity; and (iii) in computing the amount to be paid under this subdivision the only benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] which shall be considered shall be those to which the persons included in the computation are entitled.

(g) Increased annuities under subsection (b)

(1) Effective with the date of any increase after January 31, 1984, in monthly insurance benefits under the Social Security Act [42 U.S.C. 301 et seq.] which occurs, or which would have occurred had there not been a general benefit increase under that Act, pursuant to the automatic cost-of-living provisions of section 215(i) of that Act [42 U.S.C. 415(i)], that portion of the annuity of an individual which is computed under subsection (b) of this section shall, if such individual's annuity under section 231a(a)(1) of this title began to accrue on or before the effective date of a particular increase under this subdivision, be increased by 32.5 per centum of the percentage increase in the index which is used, or which would have been used had there not been a general benefit increase under the Social Security Act, in increasing benefits under the Social Security Act pursuant to the automatic cost-of-living provisions of section 215(i) of that Act. Any increase under this subsection shall not be deferred and shall be reflected in all payments made to annuitants after such increase under this subsection becomes effective.

(2) The first and, if necessary, the following time or times after January 1, 1983, that monthly insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] are increased, that portion of the annuity of an individual which is computed under subsection (b) of this section as increased under subdivision (1) of this subsection shall, if such individual's annuity under section 231a(a)(1) of this title began to ac-

crue in or before the year in which such first increase under the Social Security Act [42 U.S.C. 301 et seq.] became effective, be reduced by the dollar amount by which that portion of the annuity provided such individual under subsection (a) of this section was increased, after any reduction under subsection (m) of this section, as a result of such increase or increases under the Social Security Act until the total dollar amount of such reduction or reductions equals 5 per centum of the annuity amount provided such individual under subsection (a) of this section, as reduced under subsection (m) of this section, prior to such first increase. In no case shall the reduction by reason of this paragraph operate to reduce such portion to an amount less than $10.

(h) Increased annuities under subsections (a) and (b)

(1) The amount of the annuity provided under subsections (a) and (b) of this section of an individual who (A) will have (i) rendered service as an employee to an employer, or as an employee representative, during the calendar year 1974, or (ii) had a current connection with the railroad industry on December 31, 1974, or at the time his annuity under section 231a(a)(1) of this title began to accrue, or (iii) completed twenty-five years of service prior to January 1, 1975, and (B) will have (i) completed ten years of service prior to January 1, 1975, and (ii) been permanently insured under the Social Security Act [42 U.S.C. 301 et seq.] on December 31, 1974, shall be increased by an amount equal to the amount by which (C) the sum of (i) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, if his service as an employee after December 31, 1936, and prior to January 1, 1975, were included in the term ''employment'' as defined in that Act and if he had no wages or self-employment income under that Act other than wages derived from such service as an employee, and (ii) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, exceeds (D) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, and on the basis of compensation derived from service as an employee after December 31, 1936, and prior to January 1, 1975, if such service as an employee had been included in the term ''employment'' as defined in that Act.

(2) The amount of the annuity provided under subsections (a) and (b) of this section to an individual who (A) will not have met the conditions set forth in subclause (i), (ii), or (iii) of clause (A) of subdivision (1) of this subsection, but (B) will have (i) completed ten years of service prior to January 1, 1975, and (ii) been permanently insured under the Social Security Act [42 U.S.C. 301 et seq.] as of December 31 of the calendar year prior to 1975 in which he last rendered service as an employee to an employer, or as an employee representative, shall be increased by an amount equal to the amount by which (C) the sum of (i) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, if his service as an employee after December 31, 1936, and prior to January 1, 1975, were included in the term ''employment'' as defined in that Act and if he had no wages or self-employment income under that Act other than wages derived from such service as an employee, and (ii) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which he last performed service as an employee under this subchapter, exceeds (D) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which he last performed service as an employee under this subchapter and on the basis of compensation derived from service as an employee after December 31, 1936, and prior to January 1, 1975, if such service as an employee had been included in the term ''employment'' as defined in that Act.

(3) The amount of the annuity provided under subsections (a) and (b) of this section of an individual who (A) will have (i) rendered service as an employee to an employer, or as an employee representative, during the calendar year 1974, or (ii) had a current connection with the railroad industry on December 31, 1974, or at the time his annuity under section 231a(a)(1) of this title began to accrue, or (iii) completed twenty-five years of service prior to January 1, 1975, and (B) will have completed ten years of service prior to January 1, 1975, and is the wife, husband, widow, or widower of a person who will have been permanently insured under the Social Security Act [42 U.S.C. 301 et seq.] on December 31, 1974, shall be increased by an amount equal to the smaller of (C) the wife's, husband's, widow's, or widower's insurance benefit to which such individual would have been entitled, upon attaining age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of such person's wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, or (D) the primary insurance amount to which such individual would have been entitled upon attaining age 65

(or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of such individual's wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, and on the basis of compensation derived from service as an employee after December 31, 1936, and prior to January 1, 1975, if such service as an employee had been included in the term ''employment'' as defined in that Act.

(4) The amount of the annuity provided under subsections (a) and (b) of this section of an individual who (A) will not have met the conditions set forth in subclause (i), (ii), or (iii) of clause (A) of subdivision (3) of this subsection, but (B) will have completed ten years of service prior to January 1, 1975, and is the wife, husband, widow, or widower of a person who will have been permanently insured under the Social Security Act [42 U.S.C. 301 et seq.] as of December 31 of the calendar year prior to 1975 in which such individual last rendered service as an employee to an employer, or as an employee representative, shall be increased by an amount equal to the smaller of (C) the wife's, husband's, widow's, or widower's insurance benefit to which such individual would have been entitled, upon attaining age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of such person's wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which such individual last performed service as an employee under this subchapter or (D) the primary insurance amount to which such individual would have been entitled upon attaining age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of such individual's wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which such individual last performed service as an employee under this subchapter and on the basis of compensation derived from service as an employee after December 31, 1936, and prior to January 1, 1975, if such service as an employee had been included in the term ''employment'' as defined in that Act.

(5) The amount computed under subdivision (1), (2), (3), or (4) of this subsection shall be increased by the same percentage, or percentages, as benefits under the Social Security Act [42 U.S.C. 301 et seq.] are increased, or would have been increased had there been no general benefit increases under the Social Security Act, pursuant to the automatic cost-of-living provisions of section 215(i) of that Act [42 U.S.C. 415(i)] during the period from January 1, 1975, to the earlier of the date on which the individual's annuity under section 231a(a)(1) of this title began to accrue or January 1, 1982.

(6) No amount shall be payable to an individual under subdivision (3) or (4) of this subsection unless the entitlement of such individual to such amount had been determined prior to August 13, 1981.

(i) Years of service

(1) The ''years of service'' of an individual shall include all his service subsequent to December 31, 1936.

(2) The ''years of service'' of an individual shall also include his voluntary or involuntary military service, within or without the United States, during any war service period: *Provided, however*, That such military service shall be included only if, prior to the beginning of his military service and in the same calendar year in which such military service began, or in the next preceding calendar year, the individual rendered service for compensation to an employer or to a person service to which is otherwise creditable under this subchapter, or lost time as an employee for which he received remuneration, or was serving as an employee representative: *Provided further*, That such military service shall be included only subject to and in accordance with the provisions of subdivisions (1) and (3) of this subsection in the same manner as though military service were service rendered as an employee: *And provided further*, That such military service rendered after December 1956 shall not be included with respect to any month if (A) any benefits are payable for that month under the Social Security Act [42 U.S.C. 301 et seq.] on the basis of such individual's wages and self-employment income, (B) such military service was included in the computation of such benefits, and (C) the inclusion of such military service in the computation of such benefits resulted (for that month) in benefits not otherwise payable or in an increase in the benefits otherwise payable: *And provided further*, That an individual who entered military service prior to a war service period shall not be regarded as having been in military service in a war service period with respect to any part of the period for which he entered such military service.

(3) The ''years of service'' of an individual who was an employee on August 29, 1935, shall, if the total number of his ''years of service'' as determined under subdivisions (1) and (2) is less than thirty, also include his service prior to January 1, 1937, but not so as to make his total years of service exceed thirty: *Provided, however*, That with respect to any such individual who rendered service to any employer subsequent to December 31, 1936, and who on August 29, 1935, was not an employee of an employer conducting the principal part of its business in the United States, no greater proportion of his service rendered prior to January 1, 1937, shall be included in his ''years of service'' than the proportion which his total compensation (without regard to any limitation on the amount of compensation otherwise provided in this subchapter) for service subsequent to December 31, 1936, rendered anywhere to an employer conducting the principal part of its business in the United States or rendered in the United States to any other employer bears to his total compensation (without regard to any limitation on the amount of compensation otherwise provided in this subchapter) for service rendered anywhere to an employer subsequent to December 31, 1936. Where the ''years of service'' include only part of the service prior to January 1, 1937, the part included shall be taken in reverse order beginning with the last calendar month of such service.

(4) Where for any calendar year after 1984 an individual has performed service for compensation in less than twelve months of the calendar year but has received compensation in excess of an amount determined by multiplying the number of months in the year in which such individual performed service for compensation by an amount equal to one-twelfth of the current maximum annual taxable ''wages'' as defined in section 3121 of the Internal Revenue Code of 1986 [26 U.S.C. 3121], the individual shall be deemed to have rendered service for compensation in that number of months in the calendar year, but not to exceed twelve, which is equal to the quotient of the amount of such individual's compensation for the calendar year divided by an amount equal to one-twelfth of the current maximum annual taxable ''wages'' as defined in section 3121 of the Internal Revenue Code of 1986, with any remainder produced by this computation increasing the quotient by one, but an individual shall not be deemed under this subdivision to have rendered service for compensation in any month in which such individual was neither in an employment relation to one or more employers nor an employee representative.

(j) Average monthly compensation

The ''average monthly compensation'' shall be computed in the manner specified in subsection (b) of this section, except (1) that with respect to service prior to January 1, 1937, the monthly compensation shall be the average compensation paid to an employee with respect to calendar months included in his years of service in the years 1924–1931, and (2) the amount of compensation paid or attributable as paid to him with respect to each month of service before September 1941 as a station employee whose duties consisted of or included the carrying of passengers' hand baggage and otherwise assisting passengers at passenger stations and whose remuneration for service to the employer was, in whole or in substantial part, in the forms of tips, shall be the monthly average of the compensation paid to him as a station employee in his months of service in the period September 1940 through August 1941: *Provided, however*, That where service in the period 1924 through 1931 in the one case, or in the period September 1940 through August 1941 in the other case, is, in the judgment of the Board, insufficient to constitute a fair and equitable basis for determing[1] the amount of compensation paid or attributable as paid to him in each month of service before 1937, or September 1941, respectively, the Board shall determine the amount of such compensation for each such month in such manner as in its judgment shall be fair and equitable. In computing the monthly compensation, no part of any month's compensation in excess of $300 for any month before July 1, 1954, or in excess of $350 for any month after June 30, 1954, and before June 1, 1959, or in excess of $400 for any month after May 31, 1959, and before November 1, 1963, or in excess of $450 for any month after October 31, 1963, and before October 1, 1965, or in excess of (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable ''wages'' as defined in section 3121 of the Internal Revenue Code of 1986 [26 U.S.C. 3121], whichever is greater, for any month after September 30, 1965, shall be recognized. If for any calendar year after 1984 an employee has received compensation of less than one-twelfth of the current maximum annual taxable ''wages'' as defined in section 3121 of the Internal Revenue Code of 1986 in one or more months of the calendar year, the total compensation paid such employee in the calendar year (without regard to the limitation on the amount of compensation provided in the preceding sentence) shall be deemed to have been paid in equal proportions with respect to all months in the year in which the employee will have been in the service of one or more employers for compensation or will have performed service for compensation as an employee representative, but this sentence shall not operate to increase the employee's compensation for any month above an amount equal to one-twelfth of the current maximum annual taxable ''wages'' as defined in section 3121 of the Internal Revenue Code of 1986. If the employee earned compensation in service after June 30, 1937, and after the last day of the calendar year in which he attained age sixty-five, such compensation and service shall be disregarded in computing the average monthly compensation if the result of taking such compensation into account in such computation would be to diminish his annuity. Where an employee claims credit for months of service rendered within two years prior to his retirement from the service of an employer, with respect to which the employer's return pursuant to section 231h of this title has not been entered on the records of the Board before the employee's annuity could otherwise be certified for payment, the Board may, in its discretion (subject to subsequent adjustment at the request of the employee) include such months in the computation of the annuity without further verification and may consider the compensation for such months to be the average of the compensation for months in the last period for which the employer has filed a return of the compensation of such employee and such return has been entered on the records of the Board.

(k) Employee representatives

The annuity of an individual who shall have been an employee representative shall be determined in the same manner and with the same effect as if the employee organization by which he shall have been employed were an employer.

(*l*) Reductions for increased annuities

(1) Except as provided in subdivision (2) of this subsection, if an annuity awarded under section 231a(a)(1)(iii) of this title or under section 231a(c)(2) of this title is increased or decreased either by a change in the law or by a recomputation, the reduction on account of age in the amount of such increase or decrease shall be computed as though such increased or decreased annuity amount had been in effect for and after the month in which the annuitant first became entitled to such annuity under section 231a(a)(1)(iii) or section 231a(c)(2) of this title.

(2) The reduction required under section 231a(a)(1)(iii) or section 231a(c)(2) of this title may be applied separately to each of the annu-

[1] So in original. Probably should be ''determining''.

ity amounts computed under subsections (a), (b), and (h) of this section and subsections (a), (b), and (e) of section 231c of this title. For this purpose, in any case in which an annuity amount was computed for an individual under the provisions of this subchapter or of Public Law 93–445 prior to October 1, 1981, an annuity amount computed under subsections (a), (b), (c), (d) and (h) of this section, subsection (a), (b), or (e) of section 231c of this title, and section 204 or section 206 of Public Law 93–445 shall be reduced by its proportionate share of the reduction on account of age. For purposes of the preceding sentence, annuity amounts computed for an individual under subsections (b), (c), and (d) of this section prior to October 1981 shall be considered as one annuity amount.

(m) Reductions due to monthly social security payments

The annuity of any individual under subsection (a) of this section for any month shall, after any reduction pursuant to paragraph (iii) of section 231a(a)(1) of this title, be reduced, but not below zero, by the amount of any monthly benefit (before any deductions on account of work) payable to that individual for that month under title II of the Social Security Act [42 U.S.C. 401 et seq.].

(Aug. 29, 1935, ch. 812, § 3, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1319; amended Pub. L. 95–216, title III, § 358(a), Dec. 20, 1977, 91 Stat. 1556; Pub. L. 96–582, § 1, Dec. 23, 1980, 94 Stat. 3374; Pub. L. 97–35, title XI, § 1118, Aug. 13, 1981, 95 Stat. 630; Pub. L. 98–76, title I, § 101(a), 102(a), 107(a), (b), title IV, §§ 404(1), (2), 405(a), Aug. 12, 1983, 97 Stat. 411, 413, 418, 434, 435; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 107–90, title I, §§ 102(a), (c), 103(b), 104(a)(1), (2)(A), Dec. 21, 2001, 115 Stat. 879, 880, 882.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(1), (f), (g), (h)(1) to (5), (i)(2), and (m), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Railroad Retirement Act of 1937, referred to in subsec. (f)(2), is act Aug. 29, 1935, ch. 812, 49 Stat. 867, as amended generally by act June 24, 1937, ch. 382, part I, 50 Stat. 307, which is classified principally to subchapter III (§ 228a et seq.) of this chapter. The Railroad Retirement Act of 1937 was amended generally and redesignated the Railroad Retirement Act of 1974 by Pub. L. 93–445, title I, Oct. 16, 1974, 88 Stat. 1305. The Railroad Retirement Act of 1974 is classified generally to this subchapter. For complete classification of these Acts to the Code, see Tables.

Section 3 of the Railroad Retirement Act of 1937, referred to in subsec. (f)(2), which was classified to section 228c of this title, has been omitted from the Code.

Sections 204 and 206 of Public Law 93–445 (approved Oct. 16, 1974, 88 Stat. 1352, 1354), referred to in subsec. (*l*)(2), are set out as part of the Transitional Provisions note under section 231 of this title.

AMENDMENTS

2001—Subsec. (a)(2). Pub. L. 107–90, § 102(a), inserted after par. designation "For purposes of this subsection, individuals entitled to an annuity under section 231a(a)(1)(ii) of this title shall, except for the purposes of recomputations in accordance with section 215(f) of the Social Security Act, be deemed to have attained retirement age (as defined by section 216(*l*) of the Social Security Act)."

Subsec. (a)(3). Pub. L. 107–90, § 103(b), added par. (3).

Pub. L. 107–90, § 102(c), struck out par. (3) which read as follows: "In lieu of an annuity amount provided under subdivision (1), the annuity of an individual entitled to an annuity under paragraph (ii) of section 231a(a)(1) of this title which begins to accrue before the individual attains age 62 shall be in an amount equal to—

"(i) for each month prior to the first month throughout which the individual is age 62, the amount (after any reduction on account of age but before any deductions on account of work) of the old-age insurance benefit to which such individual would have been entitled under the Social Security Act as of the date on which such individual's annuity begins to accrue if such individual had attained age 62 on the first day of the month in which his or her annuity begins to accrue and if all of such individual's service as an employee after December 31, 1936, had been included in the term 'employment' as defined in that Act, using for purposes of this computation the number of benefit computation years applicable to a person born in the year in which such individual was born; and

"(ii) for months beginning with the first month throughout which the individual is age 62, the amount (after any reduction on account of age but before any deductions on account of work) of the old-age insurance benefit to which such individual would have been entitled under the Social Security Act if all of such individual's service as an employee after December 31, 1936, had been included in the term 'employment' as defined in that Act."

Subsec. (f). Pub. L. 107–90, § 104(a)(1), (2)(A), redesignated pars. (2) and (3) as (1) and (2), respectively, struck out ", without regard to the provisions of subdivision (1) of this subsection," before "proportionately so as to equal" in first sentence of par. (1), and struck out former par. (1) which read as follows: "If the total amount of an individual's annuity and supplemental annuity computed under the preceding subsections of this section would, before any reductions on account of age, before any reduction due to such individual's entitlement to a monthly insurance benefit under the Social Security Act, and disregarding any increases in such total amount which become effective after the date on which such individual's annuity under section 231a(a)(1) of this title begins to accrue, exceed an amount equal to the sum of (A) 100 per centum of his 'final average monthly compensation' up to an amount equal to 50 per centum of one-twelfth of the maximum annual taxable 'wages' (as defined in section 3121 of the Internal Revenue Code of 1986) for the calendar year in which such individual's annuity under section 231a(a)(1) of this title begins to accrue, plus (B) 80 per centum of so much of his 'final average monthly compensation' as exceeds 50 per centum of one-twelfth of the maximum annual taxable 'wages' (as defined in section 3121 of the Internal Revenue Code of 1986) for the calendar year in which such individual's annuity under section 231a(a)(1) of this title begins to accrue, the supplemental annuity of such individual first, and then, if necessary, the annuity amount of such individual as computed under subsection (b) of this section, shall be reduced until such total amount of such individual's annuity and supplemental annuity equals such sum or until such supplemental annuity and such annuity amount computed under subsection (b) of this section are reduced to zero, whichever occurs first: *Provided, however*, That the provisions of this subdivision shall not operate to reduce the total amount of an individual's annuity and supplemental annuity computed under the preceding subsections of this section below $1,200. For purposes of this subdivision, the 'final average monthly compensa-

tion' of an individual shall except as provided in the following sentence be determined by dividing the total compensation received by such individual in the two calendar years, consecutive or otherwise, in which he was credited with the highest total compensation during the ten-year period ending with December 31 of the year in which such individual's annuity under section 231a(a)(1) of this title begins to accrue by 24. If the individual's 'average monthly compensation' is determined under subdivision (2) of subsection (b) of this section, the 'final average monthly compensation' for such individual shall be the average of the compensation for the 24 months in which the compensation determined for the purpose of subdivision (2) of subsection (b) of this section is the highest. For purposes of this subdivision, the term 'compensation' shall include 'compensation' as defined in section 231(h) of this title, 'wages' as defined in section 209 of the Social Security Act, 'self-employment income' as defined in section 211(b) of the Social Security Act, and wages deemed to have been paid under section 217 or 229 of the Social Security Act on account of military service: *Provided, however*, That in no case shall the compensation with respect to any calendar month exceed the limitation on the compensation for such month prescribed in subsection (j) of this section. Wages and self-employment income included as compensation for purposes of this subdivision shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the calendar quarter in which credited, in the case of wages paid before 1978, or in equal proportions with respect to all months in the calendar year in which credited, in the case of self-employment income and in the case of wages paid after 1977.''

1986—Subsecs. (f)(1), (2), (i)(4), (j). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' wherever appearing.

1983—Subsec. (a)(2). Pub. L. 98–76, § 101(a)(1), amended par. (2) generally, substituting provisions that for purposes of this subsection, individuals entitled to an annuity under section 231a(a)(1)(iv) or (v) of this title shall be deemed to be entitled to a disability insurance benefit under section 223 of the Social Security Act, for provisions that for purposes of this subsection, individuals entitled to an annuity under paragraph (ii) of section 231a(a)(1) of this title would except for purposes of recomputations in accordance with the provisions of section 215(f) of the Social Security Act, be deemed to have attained age 65, and individuals entitled to an annuity under paragraph (iv) or (v) of such section 231a(a)(1) of this title would be deemed to be entitled to a disability insurance benefit under section 223 of the Social Security Act.

Subsec. (a)(3). Pub. L. 98–76, § 101(a)(2), added par. (3).

Subsec. (f)(1). Pub. L. 98–76, § 404(1), inserted ''except as provided in the following sentence'' in sentence relating to the determination of the ''final average monthly compensation'' of an individual.

Pub. L. 98–76, § 404(2), inserted ''If the individual's 'average monthly compensation' is determined under subdivision (2) of subsection (b) of this section, the 'final average monthly compensation' for such individual shall be the average of the compensation for the 24 months in which the compensation determined for the purpose of subdivision (2) of subsection (b) of this section is the highest.''

Subsec. (f)(3). Pub. L. 98–76, § 405(a), in first sentence, inserted ''and divorced wife'' after ''of the spouse'', and substituted ''the annuities of the individual and spouse'' for ''such annuity or annuities''.

Subsec. (g). Pub. L. 98–76, § 102(a), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''Effective with the month of June for any year after 1981, that portion of the annuity of an individual which is computed under subsection (b) of this section shall, if such individual's annuity under section 231a(a)(1) of this title began to accrue on or before June 1 of such year, be increased by 32.5 per centum of the percentage increase, if any (rounded to the nearest one-tenth of 1 per centum), obtained by comparing (A) the unadjusted Consumer Price Index for the calendar quarter ending March 31 of such year with (B) the higher of (i) such index for the calendar quarter ending March 31 of the year immediately preceding such year or (ii) such index for the calendar quarter ending March 31 of any preceding year after 1980. The unadjusted Consumer Price Index for any calendar quarter shall be the arithmetical mean of such index for the three months in such quarter.''

Subsec. (i)(4). Pub. L. 98–76, § 107(a), added par. (4).

Subsec. (j). Pub. L. 98–76, § 107(b), inserted provision that if for any calendar year after 1984 an employee has received compensation of less than one-twelfth of the current maximum annual taxable ''wages'' as defined in section 3121 of the Internal Revenue Code of 1954 in one or more months of the calendar year, the total compensation paid such employee in the calendar year (without regard to the limitation on the amount of compensation provided in the preceding sentence) shall be deemed to have been paid in equal proportions with respect to all months in the year in which the employee will have been in the service of one or more employers for compensation or will have performed service for compensation as an employee representative, but this sentence shall not operate to increase the employee's compensation for any month above an amount equal to one-twelfth of the current maximum annual taxable ''wages'' as defined in section 3121 of the Internal Revenue Code of 1954.

1981—Subsec. (b). Pub. L. 97–35, § 1118(a), substituted new criteria for computation of increase in annuity of an individual provided under subsec. (a) of this section.

Subsec. (c). Pub. L. 97–35, § 1118(b), repealed subsec. (c) which provided for amount of increase of annuity of an individual entitled to an annuity under section 231a(a)(1) of this title and who rendered service as an employee to an employer, or as an employee representative subsequent to Dec. 31, 1974.

Subsec. (d). Pub. L. 97–35, § 1118(b), repealed subsec. (d) which prescribed a formula for increase in amount of annuity of an individual provided for in other provisions of this section.

Subsec. (f)(1). Pub. L. 97–35, § 1118(c)(2), substituted ''such individual's annuity under section 231a(a)(1) of this title begins to accrue, exceed an amount equal to the sum of (A)'' for ''such begins to accrue, exceed an amount equal to the sum of individual's annuity under section 231a(a)(1) of this title (A)''.

Pub. L. 97–35, § 1118(c)(1), substituted ''subsection (b) of this section'' for ''subsections (b), (c), and (d) of this section'' in two places.

Subsec. (g). Pub. L. 97–35, § 1118(d), substituted new formula for increase of portion of annuity of an individual computed under subsec. (b) of this section for formula for increase of portions of annuity of an individual computed under subsecs. (b) and (d) of this section, and revised effective dates for such increases.

Subsec. (h)(1) to (4). Pub. L. 97–35, § 1118(e)(1), substituted ''subsections (a) and (b) of this section'' for ''subsections (a) through (d) of this section'' in subdivs. (1) to (4).

Subsec. (h)(5). Pub. L. 97–35, § 1118(e)(2), substituted ''January 1, 1975, to the earlier of the date on which the individual's annuity under section 231a(a)(1) of this title began to accrue or January 1, 1982'' for ''January 1, 1975, to the date on which the individual's annuity under section 231a(a)(1) of this title began to accrue''.

Subsec. (h)(6). Pub. L. 97–35, § 1118(e)(3), added subdiv. (6).

Subsec. (j). Pub. L. 97–35, § 1118(f), substituted definition of average monthly compensation by reference to computation in manner specified in subsec. (b) of this section, for definition by reference to average compensation paid to an employee with respect to calendar months included in his years of service, and struck out provision rounding to next lower multiple of $1 if average monthly compensation is not a multiple of $1.

Subsec. (*l*). Pub. L. 97–35, § 1118(g), designated existing provisions as subdiv. (1), substituted provisions that except as provided in subdiv. (2) of this subsection, if an

annuity awarded under section 231a(a)(1)(iii) or under section 231a(c)(2) of this title is increased or decreased either by a change in law or by a recomputation, the reduction on account of age in the amount of such increase or decrease shall be computed as though such increased or decreased annuity amount had been in effect for and after month in which annuitant first became entitled to such annuity under section 231a(a)(1)(iii) or section 231a(c)(2) of this title, for provisions that in cases where an annuity awarded under section 231a(a)(1)(iii) or under section 231a(c)(2) of this title is increased either by a change in law or by a recomputation, the reduction for the increase in the annuity shall be determined separately and period with respect to which the reduction applies shall be determined as if such increase were a separate annuity payable for and after first month for which such increase is effective, and added subdiv. (2).

Subsec. (m). Pub. L. 97–35, § 1118(h)(2), inserted ''(before any deductions on account of work)'' after ''monthly benefit''.

Pub. L. 97–35, § 1118(h)(1), substituted ''shall, after any reduction pursuant to paragraph (iii) of section 231a(a)(1) of this title, be reduced'' for ''shall be reduced''.

1980—Subsec. (g). Pub. L. 96–582 designated existing provisions as subdiv. (1) and added subdiv. (2).

1977—Subsec. (f)(1). Pub. L. 95–216 substituted ''Wages and self-employment income included as compensation for purposes of this subdivision shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the calendar quarter in which credited, in the case of wages paid before 1978, or in equal proportions with respect to all months in the calendar year in which credited, in the case of self-employment income and in the case of wages paid after 1977'' for ''Wages and self-employment income included as compensation for purposes of this subdivision shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the calendar quarter in which credited in the case of wages, or in equal proportions with respect to all months in the calendar year in which credited, in the case of self-employment income''.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 102 of Pub. L. 107–90 applicable to annuities that begin to accrue on or after Jan. 1, 2002, with exception for amount of the annuity provided for a spouse under section 231c(a) of this title, see section 102(d) of Pub. L. 107–90, set out as a note under section 231c of this title.

Amendment by section 103(b) of Pub. L. 107–90 effective Jan. 1, 2002, see section 103(j) of Pub. L. 107–90, set out as a note under section 405 of Title 42, The Public Health and Welfare.

Pub. L. 107–90, title I, § 104(c), Dec. 21, 2001, 115 Stat. 882, provided that: ''The amendments made by this section [amending this section and sections 231c and 231f of this title] shall take effect on January 1, 2002, and shall apply to annuity amounts accruing for months after December 2001.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 101(c) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending sections 231b and 231c of this title] shall become effective on July 1, 1984, and shall apply only with respect to awards in cases where the individual's annuity under section 2(a)(1) of the Railroad Retirement Act of 1974 [45 U.S.C. 231a(a)(1)] began to accrue on or after that date and the individual had not completed thirty years of service and attained age 60 prior to that date. In the case of an individual who has completed thirty years of service and has attained age 60 before January 1, 1986, the amount of the reduction on account of age in the annuity amount provided to such individual under section 3(a)(3) of the Railroad Retirement Act of 1974 [subsec. (a)(3) of this section] and the amount of the reduction on account of age in the annuity amount provided to the spouse of such individual under subdivision (3) of section 4(a) of the Railroad Retirement Act of 1974 [45 U.S.C. 231c(a)(3)] shall be only one-half of the amount by which such annuity would be reduced on account of age except for the provisions of this sentence.''

Section 102(d) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending sections 231b and 231c of this title] shall be effective on the date of the enactment of this Act [Aug. 12, 1983]. For purposes of the amendments made by subsection (a) of this section [amending this section], annuity portions computed under subsections (b) and (d) of section 3 of the Railroad Retirement Act of 1974 [subsecs. (b) and (d) of this section] as in effect before October 1, 1981, shall be treated as having been computed under subsection (b) of such section as in effect after that date.''

Section 107(c) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending this section] shall become effective on January 1, 1985.''

Section 404(c) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending this section] shall be effective October 1, 1983, and shall apply with respect to annuities awarded on or after that date.''

Section 405(b) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending this section] shall be effective October 1, 1981.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 1118(a), (d) of Pub. L. 97–35 effective on the later of Oct. 1, 1981, and the date, after July 1, 1981, on which there is an increase in the rate of any tax imposed under chapter 22 of Title 26, Internal Revenue Code, and applicable only with respect to annuities awarded on or after such date, amendment by section 1118(b), (g) of Pub. L. 97–35 effective Oct. 1, 1981, amendment by section 1118(c)(2) of Pub. L. 97–35 effective Jan. 1, 1975, amendment by section 1118(e)(3) of Pub. L. 97–35 effective Aug. 31, 1981, amendment by section 1118(h)(2) of Pub. L. 97–35 effective Jan. 1, 1982, and amendment by other provisions of section 1118 of Pub. L. 97–35 effective Oct. 1, 1981 and applicable only with respect to annuities awarded on or after Oct. 1, 1981, see section 1129 of Pub. L. 97–35, set out as a note under section 231 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 3 of Pub. L. 96–582 provided that: ''The provisions of this Act [amending this section] shall take effect on the date of the enactment of this Act [Dec. 23, 1980].''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 358(b) of Pub. L. 95–216 provided that: ''The amendments made by this section [amending this section] shall be effective January 1, 1978.''

§ 231c. Computation of spouse and survivor annuities

(a) Amount of spouses' annuities; age

(1) The annuity of a spouse or divorced wife of an individual under section 231a(c) of this title shall be in an amount equal to the amount (before any reduction on account of age and before any deductions on account of work) of the wife's insurance benefit or the husband's insurance benefit to which such spouse or divorced wife would have been entitled under the Social Security Act [42 U.S.C. 301 et seq.] if such individual's service as an employee after December 31, 1936, had been included in the term ''employment'' as defined in that Act.

(2) For purposes of this subsection, a spouse entitled to an annuity under section

231a(c)(1)(ii)(B) of this title shall be deemed to have attained retirement age (as defined in section 216(*l*) of the Social Security Act [42 U.S.C. 416(*l*)][1].

(3) If a spouse entitled to an annuity under section 231a(c)(1)(ii)(A), section 231a(c)(1)(ii)(C), or section 231a(c)(2) of this title or a divorced spouse entitled to an annuity under section 231a(c)(4) of this title on the basis of the employment record of an employee who will have completed less than 10 years of service is entitled to a benefit under section 202(a), section 202(b), or section 202(c) of the Social Security Act [42 U.S.C. 402(a), (b), (c)] which began to accrue before the annuity under section 231a(c)(1)(ii)(A), section 231a(c)(1)(ii)(C), section 231a(c)(2), or section 231a(c)(4) of this title, the annuity amount provided under this subsection shall be computed as though the annuity under this subchapter began to accrue on the later of (A) the date on which the benefit under section 202(a), section 202(b), or section 202(c) of the Social Security Act began or (B) the first date on which the annuitant met the conditions for entitlement to an age reduced annuity under this subchapter other than the conditions set forth in sections 231a(e)(1) and 231a(e)(2) of this title and the requirement that an application be filed.

(b) Increases in spouses' annuities in accordance with section 231b(b), (c), (d) of this title

The amount of the annuity of a spouse of an individual provided under subsection (a) of this section shall be increased by an amount equal to 45 per centum of that portion of the individual's annuity as is computed under subsection (b) of section 231b of this title: *Provided, however*, That if the spouse is entitled to an annuity amount provided by subsection (e)(1) or (e)(2) of this section, the amount of such spouse's annuity provided by the preceding provisions of this subsection shall be reduced by the amount by which the amount computed in accordance with the provisions of clause (C) of subsection (e)(1) or (e)(2) of this section was increased by the Social Security Amendments of 1965, 1967, and 1969, disregarding (A) the amount of any such increase resulting from the Social Security Amendments of 1967 equal to, or less than, the excess of $5 over 5.8 per centum of the lesser of (i) the amount computed under clause (C) of subsection (e)(1) or (e)(2) of this section before any increases derived from legislation enacted after the Social Security Amendments of 1967 or (ii) the amount of the spouse's annuity to which such spouse would have been entitled under section 2(e) of the Railroad Retirement Act of 1937 [45 U.S.C. 228b(e)], without regard to section 3(a)(2) of that Act [45 U.S.C. 228c(a)(2)] or to increases derived from legislation enacted after 1968 and before any reduction on account of age, on the basis of the individual's compensation and years of service prior to January 1, 1975, and (B) the amount of any such increase resulting from the Social Security Amendments of 1969 equal to, or less than, $5: *Provided further*, That if the spouse is entitled to an annuity under section 231a(a)(1) of this title, the amount of the annuity of such spouse under this subsection shall,[2] be increased by an amount equal to the amount by which the amount of the annuity of such spouse provided under subsection (a) of this section was reduced by reason of the provisions of subsection (i)(2) of this section (disregarding, for this purpose, any increase in such reduction which becomes effective after the later of the date such spouse's annuity under section 231a(c) of this title began to accrue or the date such spouse's annuity under section 231a(a)(1) of this title began to accrue). The Board shall have the authority to approximate the amount of any reduction prescribed by the first proviso of this subsection.

(c) Repealed. Pub. L. 107–90, title I, § 104(b), Dec. 21, 2001, 115 Stat. 882

(d) Increases in spouses' annuities in accordance with section 231b(g) of this title

(1) That portion of the annuity of the spouse of an individual as is determined under subsection (b) and (c) of this section shall be increased by the same percentage, or percentages, as the individual's annuity is, or has been, increased pursuant to the provisions of section 231b(g)(1) of this title.

(2) That portion of the annuity of the spouse of an individual as is determined under subsection (b) of this section prior to any determination under subsection (c) of this subsection[3] shall, if the annuity of such spouse is not subject to reduction under subdivision (3) of this subsection, be reduced by an amount equal to 50 per centum of the dollar amount by which the annuity of the individual was reduced under section 231b(g)(2) of this title. In no case shall the reduction by reason of this paragraph operate to reduce such portion to an amount less than $10.

(3) The first and, if necessary, the following time or times after January 1, 1983, that monthly insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] are increased, that portion of the annuity of the spouse of an individual as is determined under subsections (b), (c), and (d)(1) of this section shall, if such spouse's annuity under section 231a(c) of this title began to accrue in or before the year in which such first increase under the Social Security Act [42 U.S.C. 301 et seq.] became effective, be reduced by the dollar amount by which that portion of the annuity provided such spouse under subsection (a) of this section was increased, after any reduction under subsection (i) of this section, as a result of such increase or increases under the Social Security Act until the total dollar amount of such reduction or reductions equals 5 per centum of the annuity amount provided such spouse under subsection (a) of this section, as reduced under subsection (i) of this section, prior to such first increase. In no case shall the reduction by reason of this paragraph operate to reduce such portion to an amount less than $10.

(e) Increases in particular spouses' annuities

(1) The amount of the annuity of the spouse of an individual determined under subsections (a)

[1] So in original. Probably should be followed by a closing parenthesis.

[2] So in original. The comma probably should not appear.

[3] So in original. Probably should be "section".

and (b) of this section, if (A) such individual will have (i) rendered service as an employee to an employer, or as an employee representative, during the calendar year 1974, or (ii) had a current connection with the railroad industry on December 31, 1974, or at the time his annuity under section 231a(a)(1) of this title began to accrue, or (iii) completed twenty-five years of service prior to January 1, 1975, and (B) such individual will have completed ten years of service prior to January 1, 1975, and such spouse will have been permanently insured under the Social Security Act [42 U.S.C. 301 et seq.] on December 31, 1974, shall be increased by an amount equal to the smaller of (C) the primary insurance amount to which such spouse would have been entitled, upon attaining age 65, under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of her or his wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, or (D) the wife's or husband's insurance benefit to which such spouse would have been entitled, upon attaining age 65, under the provisions of the Social Security Act as in effect on December 31, 1974, if such individual's service as an employee after December 31, 1936, and prior to January 1, 1975, were included in the term ''employment'' as defined in that Act, if such individual had no wages or self-employment income under the Act other than wages derived from such service as an employee, and if such spouse were entitled to no other benefit under that Act: *Provided, however*, That the increase under the provisions of this subdivision shall not be less than 50 per centum of the portion of the annuity, if any, of such individual determined under the provisions of section 231b(h)(1) of this title prior to any increases under the provisions of section 231b(h)(5) of this title.

(2) The amount of the annuity of the spouse of an individual determined under subsections (a) and (b) of this section, if (A) such individual will not have met the conditions set forth in subclause (i), (ii), or (iii) of clause (A) of subdivision (1) of this subsection, but (B) such individual will have completed ten years of service prior to January 1, 1975, and such spouse will have been permanently insured under the Social Security Act [42 U.S.C. 301 et seq.] as of December 31 of the calendar year prior to 1975 in which such individual last rendered service as an employee, shall be increased by an amount equal to the smaller of (C) the primary insurance amount to which such spouse would have been entitled, upon attaining age 65,under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his or her wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which such individual last rendered service as an employee or (D) the wife's or husband's insurance benefit to which such spouse would have been entitled, upon attaining age 65, under the provisions of the Social Security Act as in effect on December 31, 1974, if such individual's service as an employee after December 31, 1936, and prior to January 1, 1975, were included in the term ''employment'' as defined in that Act, if such individual had no wages or self-employment income under that Act other than wages derived from such service as an employee, and if such spouse were entitled to no other benefit under that Act: *Provided, however*, That the increase under the provisions of this subdivision shall not be less than 50 per centum of the portion of the annuity, if any, of such individual determined under the provisions of section 231b(h)(2) of this title prior to any increases under the provisions of section 231b(h)(5) of this title.

(3) The amount of the annuity of the spouse of an individual determined under subsections (a) and (b) of this section, if (A) such individual is entitled to an amount determined under the provisions of section 231b(h)(1) or 231b(h)(2) of this title and (B) such spouse is not entitled to an amount determined under the provisions of subdivision (1) or (2) of this subsection, shall be increased by an amount equal to 50 per centum of the portion of the annuity of such individual determined under the provisions of section 231b(h)(1) or 231b(h)(2) of this title prior to any increases under the provisions of section 231b(h)(5) of this title.

(4) The amount determined under the provisions of subdivision (1), (2), or (3) of this subsection shall be increased by the same percentage or percentages, as wife's and husband's insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] are increased, or would have been increased had there been no general benefit increases under the Social Security Act [42 U.S.C. 301 et seq.], pursuant to the automatic cost-of-living provisions of section 215(i) of that Act [42 U.S.C. 415(i)], during the period from January 1, 1975, to the earlier of the date on which the individual's annuity under section 231a(a)(1) of this title began to accrue or January 1, 1982.

(5) No amount shall be payable to a person under subdivision (1), (2), or (3) of this subsection unless the entitlement of such person to such amount had been determined prior to August 13, 1981.

(f) Amount of survivors' annuities; age; entitlement

(1) The annuity of a survivor of a deceased employee under section 231a(d) of this title shall be in an amount equal to the amount (before any deductions on account of work) of the widow's insurance benefit, widower's insurance benefit, mother's insurance benefit, parent's insurance benefit, or child's insurance benefit, whichever is applicable, to which he or she would have been entitled under the Social Security Act [42 U.S.C. 301 et seq.] if such deceased employee's service as an employee after December 31, 1936, had been included in the term ''employment'' as defined in that Act. In the case of a widow or widower who is entitled to an annuity under section 231a(d) of this title solely on the basis of railroad service which was performed prior to January 1, 1937, the amount provided under this section with respect to any month shall not be less than the first amount appearing in column IV of the table appearing in section 215(a) of the Social Security Act [42 U.S.C. 415(a)] as in effect on December 31, 1974, after reduction in accord-

ance with the provisions of section 202(k) and 202(q) of that Act [42 U.S.C. 402(k), (q)] in the same manner as would be applicable to a widow's insurance benefit or widower's insurance benefit payable under section 202(e) or 202(f) of that Act.

(2) For purposes of this subsection—

(i) a widow or widower or a parent who is entitled to an annuity based on age under section 231a(d)(1) of this title and who has not attained age 62 shall be deemed to be age 62: *Provided, however*, That the provisions of this paragraph shall not apply in the case of a widow or widower who was entitled to an annuity under section 231a(d)(1) of this title on the basis of disability for the month before the month in which he or she attained age 60,

(ii) a widow or widower or a child who is entitled to an annuity under section 231a(d)(1) of this title on the basis of disability shall be deemed to be entitled to a widow's insurance benefit, a widower's insurance benefit, or a child's insurance benefit under the Social Security Act [42 U.S.C. 301 et seq.] on the basis of disability, and

(iii) The[4] provisions of paragraphs (i) and (ii) of this subdivision shall not apply to the annuity of a widow, surviving divorced wife, or surviving divorced mother who is entitled to such annuity on the basis of the provisions of section 231a(d)(1)(v) of this title.

(3) The annuity amount provided to a widow or widower under last sentence of subdivision (1) shall be increased by the same percentage or percentages as insurance benefits payable under section 202 of the Social Security Act [42 U.S.C. 402] are increased after the date on which such annuity begins to accrue.

(g) Increases in survivor's annuities in accordance with subsection (f)

(1) The amount of the annuity provided under subsection (f)(1) of this section (other than the last sentence thereof) for a survivor of a deceased individual shall be increased by an amount equal to the appropriate one of the following percentages of that portion of the annuity computed under section 231b(b) of this title, before any reduction on account of age and without regard to any reduction under section 231b(g)(2) of this title, to which such deceased individual would have been entitled for the month such survivor's annuity under section 231a(d) of this title began to accrue if such individual were living (deeming for this purpose that if such individual died before becoming entitled to an annuity under section 231a(a)(1) of this title, such individual became entitled to an annuity under subdivision (i) of such section 231a(a)(1) of this title in the month in which such individual died):

(i) In the case of a widow or widower, the increase shall be equal to 50 per centum of such portion of the deceased individual's annuity, but the amount of the annuity so determined shall be subject to reduction on account of age in the same manner as is applicable to the annuity amount determined for the widow or widower under subsection (f) of this section and shall be subject to increase as provided in subdivision (4) of this subsection.

(ii) In the case of a parent, the increase shall be equal to 35 per centum of such portion of the deceased individual's annuity.

(iii) In the case of a child, the increase shall be equal to 15 per centum of such portion of the deceased individual's annuity.

(2) Whenever the total amount of the increases based on the deceased individual's portion of the annuity under section 231b(b) of this title as determined under subdivision (1) of this subsection for all survivors of a deceased employee is—

(i) less than an amount equal to 35 per centum of such portion of the deceased individual's annuity, the total increase shall, before any deductions under section 231a(g) of this title, be increased proportionately until the total increase is equal to 35 per centum of such portion of the deceased individual's annuity; or

(ii) more than an amount equal to 80 per centum of such portion of the deceased individual's annuity, the total increase shall, before any deductions under section 231a(g) of this title and before any reduction on account of age, be reduced proportionately until the total increase is equal to 80 per centum of such portion of the deceased individual's annuity.

(3) An annuity determined under this subsection for a month prior to the month in which application is filed, shall be reduced to any extent that may be necessary so that it will not render erroneous any annuity which, before the filing of such application, the Board has certified for payment for such prior month.

(4) If a widow or widower of a deceased employee is entitled to an annuity under section 231a(a)(1) of this title and if either such widow or widower or such deceased employee will have completed 10 years of service prior to January 1, 1975, the amount of the annuity of such widow or widower under subdivisions (1) through (3) of this subsection shall be increased by an amount equal to the amount, if any, by which (A) the widow's or widower's insurance annuity to which such widow or widower would have been entitled, upon attaining age 65, under section 5(a) of the Railroad Retirement Act of 1937 [45 U.S.C. 228e(a)] as in effect on December 31, 1974 (without regard to the proviso of that section or the first proviso of section 3(e) of that Act [45 U.S.C. 228c(e)] on the basis of the deceased employee's remuneration and service prior to January 1, 1975, increased by the same percentage, or percentages, as widow's and widower's insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] are increased during the period from January 1, 1975, to the later of the date on which such widow's or widower's annuity under section 231a(a)(1) of this title began to accrue or the date on which such widow's or widower's annuity under section 231a(d)(1) of this title began to accrue, exceeds (B) the total of the annuity amounts to which such widow or widower was entitled (after any reductions pursuant to subsection (i)(2) of this section but before any deductions on account of work) under the preceding provisions of this subsection, sub-

[4] So in original. Probably should not be capitalized.

section (f) of this section, and the amount determined under subsection (h) of this section, before the proviso, as of the later of the date on which such widow's or widower's annuity under section 231a(a)(1) of this title began to accrue or the date on which such widow's or widower's annuity under section 231a(d)(1) of this title began to accrue. If a widow or widower of a deceased employee is not entitled to an annuity under section 231a(a)(1) of this title or to an old-age insurance benefit or a disability insurance benefit under the Social Security Act [42 U.S.C. 301 et seq.], the amount of the annuity to which such widow or widower is entitled under this subsection shall not be less than an amount which would cause the total of the annuity amounts to which such widow or widower is entitled (before any deductions on account of work) under this subsection and subsection (f)(1) of this section to equal the total of the annuity amounts to which such widow or widower was entitled (or would have been entitled except for the provisions of sections 231a(e) and 231a(f) of this title) as a spouse under subsections (a), (b), and (e) of this section (after any reduction on account of age) in the month preceding the employee's death. If a widow or widower of a deceased employee is entitled to an annuity under section 231a(a)(1) of this title or to an old-age insurance benefit or a disability insurance benefit under the Social Security Act, the amount of the annuity to which such widow or widower is entitled under this subsection shall not be less than an amount which would cause (A) the total of the annuity amounts to which such widow or widower is entitled (after any reductions pursuant to section 202(k) or 202(q) of the Social Security Act or subsection (i)(2) of this section but before any deductions on account of work) under this subsection and subsection (f) of this section to equal (B)(i) the total of the annuity amounts, if any, to which such widow or widower was entitled (or would have been entitled except for the provisions of sections 231a(e) and 231a(f) of this title) as a spouse under subsections (a), (b), and (e) of this section (after any reduction on account of age) in the month preceding the employee's death less (ii), if such widow or widower is entitled to an old-age insurance benefit or a disability insurance benefit under the Social Security Act but was not entitled to such a benefit in the month preceding the employee's death, the amount by which the annuity amount payable under subsection (a) of this section to such widow or widower as a spouse in the month preceding the employee's death would have been reduced by reason of section 202(k) or 202(q) of the Social Security Act if such widow or widower had been entitled to an old-age insurance benefit or a disability insurance benefit under the Social Security Act in the month preceding the employee's death in an amount equal to the amount of such benefit at the time such benefit first began to accrue to such widow or widower.

(5) This subsection shall not apply to the annuity of a widow, surviving divorced wife, or surviving divorced mother who is entitled to such annuity on the basis of the provisions of section 231a(d)(1)(v) of this title.

(6) That portion of the annuity of a survivor of an individual determined under subdivisions (1) and (2) of this subsection shall be increased whenever, and by the same percentage or percentages as, the annuity of the individual would have been increased pursuant to section 231b(g)(1) of this title if such individual were still living.

(7) The first and, if necessary, the following time or times after January 1, 1983, that monthly insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] are increased, that portion of the annuity of a survivor of a deceased individual as is determined under subdivisions (1) and (2) of this subsection, or under this subsection as in effect before amendment by section 1119(g) of Public Law 97–35, shall, if such survivor's annuity under section 231a(d) of this title began to accrue before the effective date of such first increase under the Social Security Act [42 U.S.C. 301 et seq.], be reduced by the dollar amount by which that portion of the annuity provided such survivor under subsection (f) of this section was increased, after any reduction under subsection (i) of this section, as a result of such increase or increases under the Social Security Act until the total dollar amount of such reduction or reductions equals 5 per centum of the annuity amount provided such survivor under subsection (f) of this section, as reduced under subsection (i) of this section, prior to such first increase. In no case shall the reduction by reason of this paragraph operate to reduce such portion to an amount less than $10.

(8) That portion of the annuity of a survivor of a deceased individual as is determined under subdivisions (1) and (2) of this subsection shall, if the annuity of such survivor is not subject to reduction under subdivision (7) of this subsection, be reduced by an amount equal to the dollar amount by which the annuity of the deceased individual was reduced under section 231b(g)(2) of this title or would have been reduced under such section 231b(g)(2) of this title if such deceased individual had been living at the time such survivor's annuity under section 231a(d) of this title began to accrue (deeming for this purpose, if such individual died before becoming entitled to an annuity under section 231a(a)(1) of this title, that such individual became entitled to an annuity under paragraph (i) of such section 231a(a)(1) of this title in the month in which such individual died). In a case where the survivor of a deceased individual is not entitled to a monthly insurance benefit under the Social Security Act [42 U.S.C. 301 et seq.], the reduction provided by the preceding sentence of this subdivision shall be equal to the dollar amount by which the annuity of the deceased individual would have been reduced under section 231b(g)(2) of this title if the annuity of such deceased individual had not been subject to reduction under section 231b(m) of this title. In no case shall the reduction by reason of this paragraph operate to reduce such portion to an amount less than $10.

(9) That portion of the annuity of a survivor of a deceased individual as is determined under this subsection as in effect before amendment by section 1119(g) of Public Law 97–35 shall, if the annuity of such survivor is not subject to reduction under subdivision (7) of this subsection, be reduced by an amount equal to the dollar

amount by which the annuity of the deceased individual was reduced under section 231b(g)(2) of this title or, if such survivor is not entitled to a monthly insurance benefit under the Social Security Act [42 U.S.C. 301 et seq.], would have been reduced under such section 231b(g)(2) of this title if the annuity of such deceased individual had not been subject to reduction under section 231b(m) of this title. In no case shall the reduction by reason of this paragraph operate to reduce such portion to an amount less than $10.

(10)(i) If for any month the unreduced annuity provided under this section for a widow or widower is less than the widow's or widower's initial minimum amount computed pursuant to paragraph (ii) of this subdivision, the unreduced annuity shall be increased to that initial minimum amount. For the purposes of this subdivision, the unreduced annuity is the annuity without regard to any deduction on account of work, without regard to any reduction for entitlement to an annuity under section 231a(a)(1) of this title, without regard to any reduction for entitlement to a benefit under title II of the Social Security Act [42 U.S.C. 401 et seq.], and without regard to any reduction for entitlement to a public service pension pursuant to section 202(e)(7), 202(f)(2), or 202(g)(4) of the Social Security Act.[5]

(ii) For the purposes of this subdivision, the widow or widower's initial minimum amount is the amount of the unreduced annuity computed at the time an annuity is awarded to that widow or widower, except that—

(A) in subsection (g)(1)(i) of this section ''100 per centum'' shall be substituted for ''50 per centum''; and

(B) in subsection (g)(2)(ii) of this section ''130 per centum'' shall be substituted for ''80 per centum'' both places it appears.

(iii) If a widow or widower who was previously entitled to a widow's or widower's annuity under section 231a(d)(1)(ii) of this title becomes entitled to a widow's or widower's annuity under section 231a(d)(1)(i) of this title, a new initial minimum amount shall be computed at the time of award of the widow's or widower's annuity under section 231a(d)(1)(i) of this title.

(h) Increases in particular widows' and widowers' annuities

(1) The amount of the annuity of the widow or widower of a deceased employee determined under subsections (f) and (g) of this section, if such deceased employee will have completed ten years of service prior to January 1, 1975, and such widow or widower will have been permanently insured under the Social Security Act [42 U.S.C. 301 et seq.] of[6] December 31, 1974, shall be increased by an amount equal to the amount, if any, by which (A) the widow's or widower's insurance annuity to which such widow or widower would have been entitled, upon attaining age 65, under section 5(a) of the Railroad Retirement Act of 1937 [45 U.S.C. 228e(a)] as in effect on December 31, 1974 (without regard to the proviso of that section or the first proviso of section 3(e) of that Act [45 U.S.C. 228c(e)]), on the basis of the deceased employee's remuneration and service prior to January 1, 1975, increased by the same percentage, or percentages, as widow's and widower's insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] are increased during the period from January 1, 1975, to January 1, 1982 or, if earlier, to the later of the date on which such widow's or widower's annuity under section 231a(d)(1) of this title began to accrue or the date beginning the first month for which such widow or widower is entitled to an old age insurance benefit or disability insurance benefit under the Social Security Act, exceeds (B) the total of the annuity amounts to which such widow or widower was entitled (after any reductions pursuant to section 202(k) or 202(q) of the Social Security Act and subsection (i)(2) of this section but before any deductions on account of work) under subsections (f) and (g) of this section as to the later of the date on which such widow's or widower's annuity under section 231a(d)(1) of this title began to accrue or the date beginning the first month for which such widow or widower is entitled to an old-age insurance benefit or disability insurance benefit under the Social Security Act: *Provided, however*, That, if a widow or widower was entitled (or would have been entitled except for the provisions of section 231a(e) or 231a(f) of this title) to an annuity amount under subdivision (1) or (2) of subsection (e) of this section in the month preceding the employee's death, the amount of the annuity to which such widow or widower is entitled under this subsection shall not be less than an amount which would cause (A) the total of the annuity amounts to which such widow or widower is entitled (after any reductions pursuant to section 202(k) or 202(q) of the Social Security Act but before any deductions on account of work) under subsections (f) and (g) of this section and the preceding provisions of this subsection as of the date such widow's or widower's annuity under section 231a(d)(1) of this title began to accrue to equal (B) the total of the annuity amounts to which such widow or widower was entitled (or would have been entitled except for the provisions of section 231a(e) or 231a(f) of this title) as a spouse under subsections (a), (b), and (e) of this section (after any reductions on account of age) in the month preceding the employee's death.

(2) Subdivision (1) of this subsection shall not apply to the annuity of a widow, surviving divorced wife, or surviving divorced mother who is entitled to such annuity on the basis of the provisions of section 231a(d)(1)(v) of this title. No amount shall be payable to a person under subdivision (1) of this subsection unless the entitlement of such person to such amount had been determined prior to August 13, 1981.

(i) Reductions in survivors' annuities

(1) The annuity of any spouse or divorced wife under subsection (a) of this section for any month shall, after a reduction pursuant to section 231a(c)(2) of this title be reduced, but not below zero, by the amount of any insurance benefit (before any deduction on account of work) payable to such spouse or divorced wife for that month under title II of the Social Security Act [42 U.S.C. 401 et seq.].

[5] See References in Text note below.

[6] So in original. Probably should be ''on''.

(2) If a spouse or divorced wife entitled to an annuity under section 231a(c) of this title or a survivor entitled to an annuity under section 231a(d) of this title for any month is also entitled to an annuity under section 231a(a)(1) of this title for such month, the annuity amount of such spouse or divorced wife determined under subsection (a) of this section or of such survivor under subsection (f) of this section shall, after any reduction pursuant to subdivision (1) of this subsection, be reduced by the amount of the annuity of such spouse or divorced wife or such survivor determined under section 231b(a) of this title.

(3) The annuity of any survivor under subsection (f) of this section shall be reduced, but not below zero, by the amount of any insurance benefit (before any deduction on account of work) payable to such survivor under title II of the Social Security Act [42 U.S.C. 401 et seq.], unless in computing the amount under subsection (f) of this section a reduction was made for such insurance benefit pursuant to section 202(k) of the Social Security Act [42 U.S.C. 402(k)].

(Aug. 29, 1935, ch. 812, § 4, as restated June 24, 1937, ch. 382, pt. I; 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1327; amended Pub. L. 94–547, § 2(a), (b), Oct. 18, 1976, 90 Stat. 2524; Pub. L. 97–35, title XI, § 1119, Aug. 13, 1981, 95 Stat. 632; Pub. L. 98–76, title I, §§ 101(b), 102(b), (c), 106(h), title IV, §§ 406(a), 407(a), Aug. 12, 1983, 97 Stat. 411, 413, 414, 418, 435; Pub. L. 107–90, title I, §§ 101(a), 102(b), (c), 103(e), 104(b), Dec. 21, 2001, 115 Stat. 878, 879, 881, 882.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(1), (d)(3), (e)(1), (2), (4), (f)(1), (2)(ii), (g)(4), (7) to (10), (h)(1), and (i)(1), (3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42. Sections 202(e)(7), 202(f)(2), and 202(g)(4) of the Act probably mean subsecs. (e)(7), (f)(2), and (g)(4) of section 202 of the Act as classified to subsecs. (e)(7), (f)(2), and (g)(4) of section 402 of Title 42, respectively, prior to repeal by Pub. L. 108–203, title IV, § 418(b)(3)(B), (4)(A)(i), (5)(B), Mar. 2, 2004, 118 Stat. 532, 533. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Social Security Amendments of 1965, referred to in subsec. (b), is Pub. L. 89–97, July 30, 1965, 79 Stat. 286, as amended. For complete classification of this Act to the Code, see Short Title of 1965 Amendment note set out under section 1305 of Title 42 and Tables.

The Social Security Amendments of 1967, referred to in subsec. (b), is Pub. L. 90–248, Jan. 2, 1968, 81 Stat. 821, as amended. For complete classification of this Act to the Code, see Short Title of 1968 Amendment note set out under section 1305 of Title 42 and Tables.

The Social Security Amendments of 1969, referred to in subsec. (b), is title X of Pub. L. 91–172, Dec. 30, 1969, 83 Stat. 737, as amended, which amended sections 401, 402, 403, 415, 427, and 428 of Title 42, and enacted provisions set out as notes under sections 401, 402, 403, 415, and 427 of Title 42. For complete classification of this Act to the Code, see Short Title of 1969 Amendment note set out under section 1305 of Title 42 and Tables.

Sections 2, 3, and 5 of the Railroad Retirement Act of 1937, referred to in subsecs. (b), (g)(4), and (h)(1), which were classified to sections 228b, 228c, and 228e of this title, have been omitted from the Code.

Section 1119(g) of Public Law 97–35, referred to in subsec. (g)(7), (9), amended subsec. (g) of this section generally. See 1981 Amendment note below.

AMENDMENTS

2001—Subsec. (a)(2). Pub. L. 107–90, § 102(b), substituted "a spouse entitled to an annuity under section 231a(c)(1)(ii)(B) of this title" for "if an individual is entitled to an annuity under paragraph (ii) of section 231a(a)(1) of this title which did not begin to accrue before such individual attained age 62, the spouse of such individual entitled to annuity under clause (B) of paragraph (ii) of section 231a(c)(1) of this title".

Subsec. (a)(3). Pub. L. 107–90, § 103(e), added par. (3).

Pub. L. 107–90, § 102(c), struck out par. (3) which read as follows: "In the case of an individual entitled to an annuity under section 231a(a)(1)(ii) of this title which began to accrue before such individual attained age 62, the annuity of the spouse of such individual under section 231a(c) of this title shall, in lieu of an annuity amount provided under subdivision (1), be in an amount equal to—

"(i) for each month prior to the first month throughout which both the individual and the spouse are age 62, 50 per centum of that portion of the individual's annuity as is, or was prior to such individual's attaining age 62, computed under section 231b(a)(3)(i) of this title, reduced to the same extent such amount would be reduced under section 202(b)(4) of the Social Security Act (in the case of a wife) or under section 202(c)(2) of the Social Security Act (in the case of a husband) as if such amount were a wife's insurance benefit or a husband's insurance benefit, respectively, under such Act; and

"(ii) for months beginning with the first month throughout which both the individual and the spouse are age 62, the amount (after any reduction on account of age based on the spouse's age at the time the amount under this paragraph first becomes payable but before any deductions on account of work) of the wife's insurance benefit or the husband's insurance benefit to which such spouse would have been entitled under the Social Security Act if the individual's service as an employee after December 31, 1936, had been included in the term 'employment' as defined in that Act."

Subsec. (a)(4). Pub. L. 107–90, § 102(c), struck out par. (4) which read as follows: "In the case of an individual entitled to an annuity under paragraph (iv) or (v) of section 231a(a)(1) of this title, the annuity of the spouse of such individual entitled to an annuity under section 231a(c)(1)(ii)(B) of this title shall, in lieu of an annuity amount provided under subdivision (1), be in an amount equal to the amount (after any reduction on account of age but before any deductions on account of work) of the wife's insurance benefit or the husband's insurance benefit to which such spouse would have been entitled under the Social Security Act if the individual's service as an employee after December 31, 1936, had been included in the term 'employment' as defined in that Act. For purposes of this subdivision, spouses who have not attained age 62 shall be deemed to have attained age 62."

Subsec. (c). Pub. L. 107–90, § 104(b), struck out subsec. (c) which read as follows: "If (A) the total amount of the annuity of a spouse of an individual as computed under the preceding subsections of this section as of the date on which the annuity of such individual under section 231a(a)(1) of this title began to accrue (before any reduction due to such spouse's entitlement to a monthly insurance benefit under the Social Security Act) plus (B) the total amount of the annuity and supplemental annuity of the individual (before any reduction due to such individual's entitlement to a monthly insurance benefit under the Social Security Act) subject to the provisions of section 231b(f)(1) of this title would, before any reductions in the amounts specified in clauses (A) and (B) on account of age and disregarding any increases in such amounts which become effective after the date on which the individual's annuity

under section 231a(a)(1) of this title began to accrue, exceed the amount determined under clauses (A) and (B) of section 231b(f)(1) of this title, the portion of the annuity of such spouse determined under subsection (b) of this section as of the date on which the individual's annuity under section 231a(a)(1) of this title began to accrue shall be reduced until the sum of the amounts specified in clauses (A) and (B) of this subsection equals the amount determined under clauses (A) and (B) of section 231b(f)(1) of this title or until such amount under subsection (b) of this section is reduced to zero, whichever occurs first. If, after such amount under subsection (b) of this section is reduced to zero, the sum of the remaining amounts specified in clauses (A) and (B) of this subsection still exceeds the amount determined under clauses (A) and (B) of section 231b(f)(1) of this title, the supplemental annuity of the individual first, and then, if necessary, the annuity amount of the individual computed under subsections (b), (c), and (d) of section 231b of this title as of the date on which the individual's annuity under section 231a(a)(1) of this title began to accrue, shall be reduced until the amounts specified in clauses (A) and (B) of this subsection equals the amount determined under clauses (A) and (B) of section 231b(f)(1) of this title or until such supplemental annuity and such annuity amount are reduced to zero, whichever occurs first. Notwithstanding the preceding provisions of this subsection, the provisions of this subsection shall not operate to reduce the total of the amounts specified in clauses (A) and (B) of this subsection below $1,200.''

Subsec. (g)(10). Pub. L. 107–90, § 101(a), added par. (10).

1983—Subsec. (a)(2). Pub. L. 98–76, § 106(h), substituted ''retirement age (as defined in section 216(*l*) of the Social Security Act'' for ''age 65''.

Pub. L. 98–76, § 101(b)(1), substituted ''if an individual is entitled to an annuity under paragraph (ii) of section 231a(a)(1) of this title which did not begin to accrue before such individual attained age 62, the spouse of such individual'' for ''spouses''.

Subsec. (a)(3), (4). Pub. L. 98–76, § 101(b)(2), added pars. (3) and (4).

Subsec. (d). Pub. L. 98–76, § 102(b), designated existing provisions as par. (1), substituted ''231b(g)(1)'' for ''231b(g)'', and added pars. (2) and (3).

Subsec. (g)(1). Pub. L. 98–76, § 102(c)(1), inserted ''and without regard to any reduction under section 231b(g)(2) of this title''.

Subsec. (g)(4). Pub. L. 98–76, § 406(a), substituted ''subsections (a), (b), and (e)'' for ''subsections (a), (b), and (e)(3)''.

Subsec. (g)(6). Pub. L. 98–76, § 102(c)(2), substituted ''231b(g)(1)'' for ''231b(g)''.

Subsec. (g)(7) to (9). Pub. L. 98–76, § 102(c)(3), added pars. (7) to (9).

Subsec. (i)(3). Pub. L. 98–76, § 407(a), added par. (3).

1981—Subsec. (a)(1). Pub. L. 97–35, § 1119(a), substituted ''spouse or divorced wife'' for ''spouse'' in two places.

Subsec. (b). Pub. L. 97–35, § 1119(b)(1), substituted ''subsection (b)'' for ''subsections (b), (c) and (d)''.

Pub. L. 97–35, § 1119(b)(2), substituted ''45 per centum'' for ''50 per centum''.

Pub. L. 97–35, § 1119(b)(3), struck out third proviso which provided that if the total of (A) the amount of the spouse's annuity provided under subsec. (a) of this section (before any reduction due to such spouse's entitlement to a wife's or husband's insurance benefit under the Social Security Act), or, in the case of a spouse entitled to an annuity under section 231a(a)(1) of this title or to an old-age insurance benefit or a disability insurance benefit under section 202 or 223 of the Social Security Act, the amount to which such spouse would be entitled under subsec. (a) of this section if she or he were not entitled to an annuity under section 231a(a)(1) of this title or to an old-age insurance benefit or a disability insurance benefit under section 202 or 223 of the Social Security Act, plus (B) the amount of her or his annuity under this subsection would, with respect to any month, before any reductions on account of age, exceed 110 per centum of an amount equal to the maximum amount which could be paid to any one, with respect to such month, as a wife's insurance benefit under section 202(h) of the Social Security Act, the amount of the annuity of such spouse under this subsection shall be reduced until the total of such annuity amounts equals 110 per centum of such amount.

Pub. L. 97–35, § 1119(b)(4), struck out reference to third proviso in second proviso.

Pub. L. 97–35, § 1119(b)(5), inserted ''(disregarding, for this purpose, any increase in such reduction which becomes effective after the later of the date such spouse's annuity under section 231a(c) of this title began to accrue or the date such spouse's annuity under section 231a(a)(1) of this title began to accrue)''.

Subsec. (c). Pub. L. 97–35, § 1119(c), substituted ''spouse's entitlement to a monthly insurance benefit'' for ''spouse's entitlement to a wife's or husband's insurance benefit''.

Subsec. (e)(4). Pub. L. 97–35, § 1119(d)(1), substituted ''to the earlier of the date on which the individual's annuity under section 231a(a)(1) of this title began to accrue or January 1, 1982'' for ''to the date on which the individual's annuity under section 231a(a)(1) of this title began to accrue''.

Subsec. (e)(5). Pub. L. 97–35, § 1119(d)(2), added subdiv. (5).

Subsec. (f)(1). Pub. L. 97–35, § 1119(e)(1), inserted provision that in the case of a widow or widower who is entitled to an annuity under section 231a(d) of this title solely on the basis of railroad service which was performed prior to Jan. 1, 1937, the amount provided under this section with respect to any month shall not be less than the first amount appearing in column IV of the table appearing in section 215(a) of the Social Security Act as in effect on December 31, 1974, after reduction in accordance with the provisions of section 202(k) and 202(q) of that Act in the same manner as would be applicable to a widow's insurance benefit or widower's insurance benefit payable under section 202(e) or 202(f) of that Act.

Subsec. (f)(2)(iii). Pub. L. 97–35, § 1119(f), added par. (iii).

Subsec. (f)(3). Pub. L. 97–35, § 1119(e)(2), added subdiv. (3).

Subsec. (g). Pub. L. 97–35, § 1119(g), revised windfall component in computation of survivor annuity benefits and substituted provisions fixing windfall component equal to 50 per centum of employee's windfall component which would be payable to employee if he were living, 15 per centum for children, parents 35 per centum, with family minimum of 35 per centum and family maximum of 80 per centum, for provisions fixing such component equal to 30 per centum of the social security level widow's or widower's annuity which would be payable to such survivor if railroad service were covered by the Social Security Act, and clarified that divorced wives, remarried widows, and surviving divorced mothers do not receive a windfall amount.

Subsec. (h). Pub. L. 97–35, § 1119(h)(1), (4), designated existing provisions as subdiv. (1) and added subdiv. (2).

Subsec. (h)(1). Pub. L. 97–35, § 1119(h)(2), substituted ''during the period from January 1, 1975, to January 1, 1982 or, if earlier, to'' for ''during the period from January 1, 1975''.

Pub. L. 97–35, § 1119(h)(3), substituted ''pursuant to section 202(k) or 202(q) of the Social Security Act and subsection (i)(2) of this section'' for ''pursuant to section 202(k) or 202(q) of the Social Security Act''.

Subsec. (i)(1). Pub. L. 97–35, § 1119(i)(1), substituted ''spouse or divorced wife'' for ''spouse'' in two places.

Pub. L. 97–35, § 1119(i)(2), inserted '', after a reduction pursuant to section 231a(c)(2) of this title'' after ''for any month shall''.

Pub. L. 97–35, § 1119(i)(3), struck out ''wife's or husband's'' before ''insurance benefit''.

Pub. L. 97–35, § 1119(i)(4), inserted ''(before any deduction on account of work)'' after ''insurance benefit''.

Subsec. (i)(2). Pub. L. 97–35, § 1119(i)(1), substituted ''spouse or divorced wife'' for ''spouse'' in three places.

1976—Subsec. (g). Pub. L. 94–547, § 2(a), inserted references to spouses under subsection (e)(3) of this section in two places and inserted proviso that if a widow or widower of a deceased employee is entitled to an annuity under section 231a(a)(1) of this title and if either such widow or widower of such deceased employee completed ten years of service prior to Jan. 1, 1975, the amount of the annuity of such widow or widower under the preceding provisions of this subsection would be increased by an amount equal to the amount, if any, by which (A) the widow's or widower's insurance annuity to which such widow or widower would have been entitled, upon attaining age 65, under section 5(a) of the Railroad Retirement Act of 1937 as in effect on Dec. 31, 1974 (without regard to the proviso of that section or the first proviso of section 3(e) of that Act), on the basis of the deceased employee's remuneration and service prior to Jan. 1, 1975, increased by the same percentage, or percentages, as widow's and widower's insurance benefits under section 202 of the Social Security Act are increased during the period from Jan. 1, 1975, to the later of the date on which such widow's or widower's annuity under section 231a(a)(1) of this title began to accrue or the date on which such widow's or widower's annuity under section 231a(d)(1) of this title began to accrue, exceeds (B) the total of the annuity amounts to which the widow or widower was entitled (after any reductions pursuant to subsection (i)(2) of this section but before any deductions on account of work) under subsec. (f) of the section and the preceding provisions of this subsection as of the later of the date on which such widow's or widower's annuity under section 231a(a)(1) of this title began to accrue or the date on which such widow's or widower's annuity under section 231a(d)(1) of this title began to accrue.

Subsec. (h). Pub. L. 94–547, § 2(b), revised the benefit formula by providing that the additional benefit amount for the widows and widowers in question be equal to the difference between (A) the amount of the widow's or widower's insurance annuity which would have been payable under the 1937 Act railroad retirement formula on the basis of the deceased employee's remuneration and service prior to 1975, with this amount being increased by the percentages of benefit increases occurring during the period from Jan. 1, 1975, to the date on which the widow's or widower's survivor annuity or social security benefit, whichever is awarded latest, begins, and (B) the total amount of the two survivor annuity components payable to the widow or widower under this subchapter, after reduction due to the receipt of a social security benefit, as of the time the widow's or widower's survivor annuity or social security benefit, whichever is awarded latest, begins, with a proviso to assure that, where the widow or widower had been receiving a ''windfall'' dual benefit as a spouse under this subchapter, the total annuity amounts, including dual benefit amounts, payable to that widow or widower will not be less than the annuity amounts, again including dual benefit amounts, which the widow or widower received as a spouse in the month preceding the employee's death.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–90, title I, § 101(b), Dec. 21, 2001, 115 Stat. 879, provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall take effect on the first day of the first month that begins more than 30 days after enactment [Dec. 21, 2001], and shall apply to annuity amounts accruing for months after the effective date in the case of annuities awarded—

''(A) on or after that date; and

''(B) before that date, but only if the annuity amount under section 4(g) of the Railroad Retirement Act of 1974 (45 U.S.C. 231c(g)) was computed under such section, as amended by the Omnibus Budget Reconciliation Act of 1981 (Public Law 97–35; 95 Stat. 357).

''(2) SPECIAL RULE FOR ANNUITIES AWARDED BEFORE THE EFFECTIVE DATE.—In applying the amendment made by this section to annuities awarded before the effective date, the calculation of the initial minimum amount under new section 4(g)(10)(ii) of the Railroad Retirement Act of 1974 (45 U.S.C. 231c(g)(10)(ii)), as added by subsection (a), shall be made as of the date of the award of the widow's or widower's annuity.''

Pub. L. 107–90, title I, § 102(d), Dec. 21, 2001, 115 Stat. 879, provided that:

''(1) GENERALLY.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 231b of this title] shall apply to annuities that begin to accrue on or after January 1, 2002.

''(2) EXCEPTION.—The amount of the annuity provided for a spouse under section 4(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231c(a)) shall be computed under section 4(a)(3) of such Act, as in effect on December 31, 2001, if the annuity amount provided under section 3(a) of such Act (45 U.S.C. 231b(a)) for the individual on whose employment record the spouse annuity is based was computed under section 3(a)(3) of such Act, as in effect on December 31, 2001.''

Amendment by section 103(e) of Pub. L. 107–90 effective Jan. 1, 2002, see section 103(j) of Pub. L. 107–90, set out as a note under section 405 of Title 42, The Public Health and Welfare.

Amendment by section 104(b) of Pub. L. 107–90 effective Jan. 1, 2002, and applicable to annuity amounts accruing for months after Dec. 2001, see section 104(c) of Pub. L. 107–90, set out as a note under section 231b of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 101(b) of Pub. L. 98–76 effective July 1, 1984, and applicable only with respect to awards in certain specified cases, see section 101(c) of Pub. L. 98–76, set out as a note under section 231b of this title.

Amendment by section 102(b), (c) of Pub. L. 98–76 effective Aug. 12, 1983, see section 102(d) of Pub. L. 98–76, set out as a note under section 231b of this title.

Amendment by section 106(h) of Pub. L. 98–76 effective Aug. 12, 1983, except such amendment inapplicable to certain annuity amounts, see section 106(k) of Pub. L. 98–76, set out as a note under section 231a of this title.

Section 406(b) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending this section] shall be effective October 1, 1981.''

Section 407(b) of Pub. L. 98–76 provided that: ''The amendment made by this section [amending this section] shall be effective with respect to annuities awarded on and after the date of enactment [Aug. 12, 1983].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 1119(b)(5), (c), (h)(3), (i)(3) of Pub. L. 97–35 effective Jan. 1, 1975, amendment by section 1119(b)(1) of Pub. L. 97–35 not to apply with respect to annuities awarded before Oct. 1, 1981, amendment by section 1119(d)(2), (h)(1), (4) of Pub. L. 97–35 effective Aug. 13, 1981, amendment by section 1119(i)(4) of Pub. L. 97–35 effective Jan. 1, 1982, and amendment by other provisions of section 1119 of Pub. L. 97–35 effective Oct. 1, 1981, and applicable only with respect to annuities awarded on or after Oct. 1, 1981, see section 1129 of Pub. L. 97–35, set out as a note under section 231 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2(c) of Pub. L. 94–547 provided that: ''The amendments made by this section [amending this section] shall be effective with respect to annuities accruing for months after the month in which this Act is enacted [October, 1976]: *Provided, however*, That the amendments made by subsection (b) of this section [amending this section] shall not operate to decrease any annuity amounts awarded under section 4(h) of the Railroad Retirement Act of 1974 [subsec. (h) of this section] prior to the date on which these amendments become effective.''

§ 231d. Annuity beginning and ending dates

(a) Annuities under section 231a of this title

Subject to the limitations set forth below, an annuity under section 231a of this title shall begin with the month in which eligibility therefor was otherwise acquired, but—

(i) not earlier than the date specified in the application therefor;

(ii) in the case of an applicant otherwise entitled to an annuity under paragraph (iv) or (v) of section 231a(a)(1) of this title or under section 231a(d)(1)(i) of this title on the basis of disability, not earlier than the later of (A) the first day of the sixth month following the onset date of the disability for which such annuity is awarded or (B) the first day of the twelfth month before the month in which the application therefor was filed;

(iii) in the case of an applicant otherwise entitled to an annuity under section 231a(a)(1), 231a(c), or 231a(d) of this title where paragraph (ii) does not apply, not earlier than the latest of (A) the first day of the sixth month before the month in which the application therefor was filed, (B) the first day of the month in which the application therefor was filed if the effect of beginning such annuity in an earlier month would result in a greater age reduction in the annuity, unless beginning the annuity in the earlier month would enable an annuity under section 231a(c) of this title which is not subject to an age reduction to be payable in such earlier month, (C) in the case of an applicant otherwise entitled to an annuity under section 231a(a)(1) or 231a(c) of this title, the date following the last day of compensated service of the applicant, or (D) in the case of an applicant otherwise entitled to an annuity under section 231a(a)(1) or 231a(c) of this title, the first day of the first month throughout which the applicant meets the age requirement for the annuity applied for;

(iv) in the case of an applicant otherwise entitled to an annuity under section 231a(c)(4) or (d)(1)(v) of this title, not earlier than the month an annuity would begin to accrue to such individual under such section if section 202(j)(1) and section 202(j)(4) of the Social Security Act [42 U.S.C. 402(j)(1), (4)] were applicable to this subchapter.[1]

(v) an annuity amount provided by section 231b(h)(1) or 231b(h)(2) of this title shall not be paid to an individual otherwise eligible therefor for any month before the month such individual would be entitled, upon filing an application therefor, to an old-age insurance benefit or a disability insurance benefit under title II of the Social Security Act [42 U.S.C. 401 et seq.] and an annuity amount provided by section 231b(h)(3) or section 231b(h)(4) of this title shall not be paid to an individual otherwise eligible therefor for any month before the month such individual would be entitled, upon filing an application therefore,[2] to an insurance benefit as a wife, husband, widow, or widower under title II of the Social Security Act;

(vi) an annuity amount provided by section 231c(e)(1) or 231c(e)(2) of this title shall not be paid to a spouse otherwise eligible therefor for any month prior to the month such spouse would be entitled, upon filing an application therefor, to an old-age or disability insurance benefit under title II of the Social Security Act [42 U.S.C. 401 et seq.]; and

(vii) an annuity amount provided by section 231c(e)(3) of this title shall not be paid to a spouse otherwise eligible therefor for any month prior to the month such spouse would be entitled, upon filing an application therefor, to a wife's or husband's insurance benefit under title II of the Social Security Act [42 U.S.C. 401 et seq.].

For the purpose of determining annuity amounts provided under sections 231b(a), 231c(a), and 231c(f) of this title, the provisions with respect to the beginning dates of annuities set forth in this subsection shall be deemed to govern the beginning dates of monthly benefits provided under the Social Security Act [42 U.S.C. 301 et seq.].

(b) Applications for payment

An application for any payment under this subchapter shall be made and filed in such manner and form as the Board may prescribe. An application filed with the Board for an employee annuity, spouse annuity, or divorced spouse annuity on the basis of the employment record of an employee who will have completed less than ten years of service shall be deemed to be an application for any benefit to which such applicant may be entitled under this subchapter or section 202(a), section 202(b), or section 202(c) of the Social Security Act [42 U.S.C. 402(a), (b), (c)]. An application filed with the Board for an annuity on the basis of the employment record of an employee who will have completed ten years of service shall, unless the applicant specified otherwise, be deemed to be an application for any benefit to which such applicant may be entitled under this subchapter or title II of the Social Security Act [42 U.S.C. 401 et seq.]. An individual who was entitled to an annuity under paragraph (iv) or (v) of section 231a(a)(1) of this title for the month preceding the month in which he attained retirement age (as defined in section 216(*l*) of the Social Security Act [42 U.S.C. 416(*l*)]), shall be deemed to have filed an application for an annuity under paragraph (i) of section 231a(a)(1) of this title on the date on which he attained retirement age (as defined in section 216(*l*) of the Social Security Act), and a widow or widower who was entitled to an annuity under section 231a(d)(1) of this title on the basis of disability for the month preceding the month in which she or he attained age 60, shall be deemed to have filed an application for an annuity under such section 231a(d)(1) of this title on the basis of age on the date on which she or he attained age 60.

(c) Individual's entitlement

(1) An individual's entitlement to an annuity under paragraph (i), (ii), or (iii) of section 231a(a)(1) of this title or to a supplemental annuity under section 231a(b) of this title shall end with the month preceding the month in which he dies.

(2) An individual's entitlement to an annuity under paragraph (iv) or (v) of section 231a(a)(1)

[1] So in original. The period probably should be a semicolon.

[2] So in original. Probably should be ''therefor,''.

of this title shall end on (A) the last day of the second month following the month in which he ceases to be disabled as provided for purposes of such paragraphs, (B) the last day of the month preceding the month in which he attains retirement age (as defined in section 216(*l*) of the Social Security Act [42 U.S.C. 416(*l*)]) or (C) the last day of the month preceding the month in which he dies, whichever first occurs.

(3) The entitlement of a spouse of an individual to an annuity under section 231a(c) of this title shall end on the last day of the month preceding the month in which (A) the spouse or the individual dies, (B) the spouse and the individual are absolutely divorced, or (C) in the case of a wife who does not satisfy the requirements of clause (ii)(A) or (ii)(B) of section 231a(c)(1) of this title (other than a wife who is receiving such annuity by reason of an election under section 231a(c)(2) of this title), such wife no longer has in her care a child described in clause (ii)(C) of section 231a(c)(1) of this title, whichever first occurs. The entitlement of the divorced wife of an individual to an annuity under section 231a(c) of this title shall end on the last day of the month preceding the month in which (A) the divorced wife or the individual dies or (B) the divorced wife remarries.

(4) The entitlement of a widow or widower of a deceased employee to an annuity under paragraph (i) of section 231a(d)(1) of this title on the basis of age shall end on (A) the last day of the month preceding the month in which she or he dies or (B) the last day of the month preceding the month in which she or he remarries after the employee's death, whichever first occurs.

(5) The entitlement of a widow or widower of a deceased employee to an annuity under paragraph (i) of section 231a(d)(1) of this title on the basis of disability shall end on (A) the last day of the month preceding the month in which she or he dies, (B) the last day of the month preceding the month in which she or he remarries after the employee's death, (C) the last day of the second month following the month in which she or he ceases to be disabled as provided for purposes of such paragraph, or (D) the last day of the month preceding the month in which she or he attains age 60, whichever first occurs.

(6) The entitlement of a widow of a deceased employee to an annuity under paragraph (ii) of section 231a(d)(1) of this title shall end on (A) the last day of the month preceding the month in which she dies, (B) the last day of the month preceding the month in which she remarries after the employee's death, or (C) the last day of the month preceding the month in which she no longer has in her care a child described in clause (B) of such paragraph (ii) whichever first occurs.

(7) The entitlement of a child of a deceased employee to an annuity under paragraph (iii) of section 231a(d)(1) of this title shall end on (A) the last day of the month preceding the month in which he or she dies, (B) the last day of the month preceding the month in which he or she marries, (C) the last day of the month preceding the month in which he or she attains age 18 and does not meet the qualifications set forth in clause (B) or (C) of such paragraph (iii), (D) the last day of the month preceding (i) the month during no part of which he or she is a full-time elementary or secondary school student or (ii) the month in which he or she attains age 19, and does not meet the qualifications set forth in clause (A) or (C) of such paragraph (iii), or (E) the last day of the second month following the month in which he or she ceases to be disabled for purposes of such paragraph (iii) and does not meet the qualifications set forth in clause (A) or (B) of such paragraph (iii), whichever first occurs. A child whose entitlement to an annuity under paragraph (iii) of section 231a(d)(1) of this title terminated by reason of clause (E) of this subdivision because he or she ceased to be disabled and who again becomes disabled as provided in clause (C) of such paragraph (iii), may become reentitled to an annuity on the basis of such disability upon his or her application for such reentitlement. A child whose entitlement to an annuity under paragraph (iii) of section 231a(d)(1) of this title terminated with the month preceding the month in which he or she attained age 18, or with a subsequent month, may again become entitled to such an annuity (providing no event to disqualify the child has occurred) beginning with the first month thereafter in which he or she meets the qualifications set forth in clause (B) or (C) of such paragraph (iii), if he or she has filed an application for such reentitlement.

(8) The entitlement of a parent of a deceased employee to an annuity under paragraph (iv) of section 231a(d)(1) of this title shall end on the last day of the month preceding the month in which (A) such parent dies or (B) such parent remarries after the employee's death, whichever first occurs.

(9) No annuity shall accrue with respect to the calendar month in which an annuitant dies. In cases where an individual entitled to an annuity under this subchapter disappears, no annuity shall accrue to that individual with respect to any month until and unless such individual is shown, by evidence satisfactory to the Board, to have continued in life throughout such month, but—

(A) where an annuity would accrue for such month under section 231a(a)(1) of this title to an individual who had a current connection with the railroad industry at the time of such individual's disappearance, and under section 231a(c) of this title to such individual's spouse, had such individual been shown to be alive during such month, such individual shall be deemed, for the purposes of benefits under section 231a(d) of this title, to have died in the month in which such individual disappeared, and where an annuity would accrue for such month under section 231a(a)(1) of this title to an individual who did not have a current connection with the railroad industry at the time of such individual's disappearance, and under section 231a(c) of this title to such individual's spouse, had such individual been shown to be alive during such month, such individual shall be deemed, for purposes of benefits payable under section 231a(c) of this title, to be alive during such month unless the death of such individual has been established or the annuity of the spouse of such individual is otherwise terminated under subsection (c)(3) of this section, and

(B) if such individual is later determined to have been alive during any of such months, recovery of any benefits paid on the basis of such individual's compensation under section 231a(d) of this title for the months in which such individual was not known to be alive, minus the total of the amounts that would have been paid as a spouse's annuity during such months (treating the application for a widow's or widower's annuity as an application for spouse's annuity), shall be made in accordance with section 231*l* of this title.

For purposes of the payment of benefits under this subchapter, the death of an individual shall be presumed based on such individual's unexplained absence of not less than seven years, except that whenever the death of an individual is so established, such individual shall be deemed to have died in the month in which such individual disappeared.

(d) Annuities to surviving former spouses under section 231b(b) of this title

Notwithstanding any other provision of law, the payment of any portion of an annuity computed under section 231b(b) of this title to a surviving former spouse in accordance with a court decree of divorce, annulment, or legal separation or the terms of any court-approved property settlement incident to any such court decree shall not be terminated upon the death of the individual who performed the service with respect to which such annuity is so computed unless such termination is otherwise required by the terms of such court decree.

(Aug. 29, 1935, ch. 812, § 5, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1332; amended Pub. L. 97–35, title XI, § 1120, Aug. 13, 1981, 95 Stat. 636; Pub. L. 98–76, title I, §§ 103(a), 104(c), 106(i), (j), Aug. 12, 1983, 97 Stat. 415, 416, 418; Pub. L. 107–90, title I, § 103(f), Dec. 21, 2001, 115 Stat. 881; Pub. L. 109–280, title X, § 1003(a), Aug. 17, 2006, 120 Stat. 1053.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a) and (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2006—Subsec. (d). Pub. L. 109–280 added subsec. (d).

2001—Subsec. (b). Pub. L. 107–90 inserted second and third sentences and struck out former second sentence which read as follows: ''An application filed with the Board for an annuity under this subchapter shall, unless the applicant specifies otherwise, be deemed to be an application for any benefit to which such applicant may be entitled under this subchapter or title II of the Social Security Act.''

1983—Subsec. (a). Pub. L. 98–76, § 103(a)(1), substituted ''Subject to the limitations set forth below, an annuity'' for ''An annuity'' in provisions preceding cl. (i).

Pub. L. 98–76, § 103(a)(3), inserted provision following cl. (vii) that for purpose of determining annuity amounts provided under sections 231b(a), 231c(a), and 231c(f) of this title, provisions with respect to beginning dates of annuities set forth in this subsection shall be deemed to govern beginning dates of monthly benefits provided under Social Security Act.

Subsec. (a)(ii). Pub. L. 98–76, § 103(a)(2), amended cl. (ii) generally, substituting ''in the case of an applicant otherwise entitled to an annuity under paragraph (iv) or (v) of section 231a(a)(1) of this title or under section 231a(d)(1)(i) of this title on the basis of disability, not earlier than the later of (A) the first day of the sixth month following the onset date of the disability for which such annuity is awarded or (B) the first day of the twelfth month before the month in which the application therefor was filed'' for ''not earlier than the first day of the twelfth month before the month in which the application therefor was filed''.

Subsec. (a)(iii). Pub. L. 98–76, § 103(a)(2), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''in the case of an applicant otherwise eligible for an annuity under section 231a(a)(1) or 231a(c) of this title not earlier than the date following the last day of compensated service of the applicant; and''.

Subsec. (b). Pub. L. 98–76, § 106(i), substituted ''retirement age (as defined in section 216(*l*) of the Social Security Act)'' for ''the age of 65'' and ''age 65''.

Subsec. (c)(2). Pub. L. 98–76, § 106(j), substituted ''retirement age (as defined in section 216(*l*) of the Social Security Act)'' for ''age 65''.

Subsec. (c)(7)(D)(i). Pub. L. 98–76, § 104(c)(1), substituted ''full-time elementary or secondary school student'' for ''full-time student''.

Subsec. (c)(7)(D)(ii). Pub. L. 98–76, § 104(c)(2), substituted ''19'' for ''22''.

1981—Subsec. (a)(iv) to (vii). Pub. L. 97–35, § 1120(a), added pars. (iv) to (vii).

Subsec. (b). Pub. L. 97–35, § 1120(b), substituted ''title II of the Social Security Act'' for ''the Social Security Act''.

Subsec. (c)(3). Pub. L. 97–35, § 1120(c), inserted provision that entitlement of the divorced wife of an individual to an annuity under section 231a(c) shall end on the last day of the month preceding the month in which (A) the divorced wife or the individual dies or (B) the divorced wife remarries.

Subsec. (c)(9). Pub. L. 97–35, § 1120(d), added subdiv. (9).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title X, § 1003(b), Aug. 17, 2006, 120 Stat. 1053, provided that: ''The amendment made by this section [amending this section] shall take effect 1 year after the date of the enactment of this Act [Aug. 17, 2006].''

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–90 effective Jan. 1, 2002, see section 103(j) of Pub. L. 107–90, set out as a note under section 405 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 103(b) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending this section] shall become effective on the first day of the first month beginning after the date of the enactment of this Act [Aug. 12, 1983], and shall apply only with respect to annuities awarded on the basis of applications filed on or after that day.''

Amendment by section 104(c) of Pub. L. 98–76 effective with respect to annuities accruing for months after Aug. 1983, with certain exceptions, see section 104(d) of Pub. L. 98–76, set out as a note under section 231a of this title.

Amendment by section 106(i), (j) of Pub. L. 98–76 effective Aug. 12, 1983, except such amendment inapplicable to certain annuity amounts, see section 106(k) of Pub. L. 98–76, set out as a note under section 231a of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 1120(a), (d) of Pub. L. 97–35 effective Jan. 1, 1975, amendment by section 1120(b) of

Pub. L. 97–35 effective Oct. 1, 1981, and amendment by other provisions of section 1120 of Pub. L. 97–35 effective Oct. 1, 1981, and applicable only with respect to annuities awarded on or after Oct. 1, 1981, see section 1129 of Pub. L. 97–35, set out as a note under section 231 of this title.

§ 231e. Lump sum payments

(a) Eligible annuities; applications; reversion; determination of status of recipient

(1) Annuities under section 231a(a)(1) of this title and supplemental annuities under section 231a(b) of this title which will have become due an individual but will not have been paid at the time of such individual's death shall be payable to the person, if any, who is determined by the Board to be such individual's widow or widower and to have been living with such individual at the time of such individual's death and who will not have died before receiving payment of such annuities. If there be no such widow or widower, such annuities shall be payable to any person or persons, equitably entitled thereto, to the extent and in the proportions that he or they shall have paid the expenses of burial of such individual, and to the extent that he or they will not have been reimbursed under subsection (b) of this section for having paid such expenses. If there be no person or persons so entitled, or if the total of such annuities exceeds the amount payable under this subdivision to such person or persons, such total, or the remainder thereof, as the case may be, shall be paid to the children, grandchildren, parents, or brothers and sisters of the deceased individual in the same manner as if such annuities were a lump sum payable under subsection (c)(1) of this section.

(2) Annuities under section 231a(d) of this title which will have become due a survivor of an employee but will not have been paid at the time of such survivor's death shall be payable to the person, if any, who is determined by the Board to be such employee's widow or widower and to have been living with such employee at the time of the employee's death and who will not have died before receiving payment of such annuities. If there be no such widow or widower, such annuities shall be payable to the children, grandchildren, parents, or brothers and sisters of the deceased employee in the same manner as if such unpaid annuities were a lump sum payable under subsection (c)(1) of this section.

(3) Annuities under section 231a(c) of this title which will have become due a spouse or divorced wife of an individual but which will not have been paid at the time of such spouse's or divorced wife's death shall be payable to the individual from whose employment such annuities derived and who will not have died before receiving payment of such annuities. If there be no such individual, such annuities shall be paid as provided in the last two sentences of subdivision (1) of this subsection as if such annuities were annuities due to an individual but unpaid at the time of such individual's death.

(4) Applications for accrued and unpaid annuities provided for in the preceding subdivisions of this subsection shall be filed prior to the expiration of two years after the death of the person to whom such annuities were originally due.

(5) If there is no person to whom all or any part of the payments described in subdivision (1), (2), or (3) can be made, such payment or part thereof shall escheat to the credit of the Railroad Retirement Account.

(6) For the purposes of this subsection and subsection (c) of this section, a widow or widower of an individual shall be deemed to have been living with the individual at the time of the individual's death if the applicable conditions set forth in section 216(h)(2) or (3) of the Social Security Act [42 U.S.C. 416(h)(2) or (3)], as in effect before 1957, are fulfilled.

(7) In determining for purposes of this subsection and subsections (c) and (d) of this section whether an applicant is the widow, widower, child, or parent of an employee as claimed, the rules set forth in section 216(h) of the Social Security Act [42 U.S.C. 416(h)] shall be applied. In determining for purposes of this subsection and subsections (c) and (d) of this section whether an applicant is the grandchild, brother, or sister of an employee as claimed, the Board shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such employee was domiciled at the time of his death, or if such employee was not so domiciled in any State by the courts of the District of Columbia. Applicants who according to such law would have the same status relative to taking personal property as a grandchild, brother, or sister shall be deemed such.

(b) Payments in accordance with Railroad Retirement Act of 1937 and Social Security Act

(1) Upon the death of an individual who will have completed ten years of service prior to January 1, 1975, and will have had a current connection with the railroad industry at the time of his death, a lump-sum payment shall be made in accordance with the provisions of section 5(f)(1) of the Railroad Retirement Act of 1937 [45 U.S.C. 228e(f)(1)] as in effect on December 31, 1974, in an amount, if any, which would have been payable under such section on the basis of (A) the individual's compensation after December 31, 1936, and prior to January 1, 1975, and (B) the individual's wages (as defined in section 209 of the Social Security Act [42 U.S.C. 409]) prior to January 1, 1975. Any lump sum payable under this subdivision shall be in an amount computed as if the individual had died on January 1, 1975. No lump sum shall be payable under this subdivision if the employee died leaving a surviving divorced wife who would on proper application therefore be entitled to receive an annuity under section 231a(d) of this title for the month in which the employee's death occurred.

(2) Upon the death of an individual who will not have completed ten years of service prior to January 1, 1975, but who (i) will have completed ten years of service (or five or more years of service, all of which accrues after December 31, 1995) at the time of his death, (ii) will have had a current connection with the railroad industry at the time of his death, and (iii) will have died leaving no widow, surviving divorced wife, widower, child, or parent who would on proper application therefor be entitled to receive an annuity under section 231a(d) of this title for the month in which such death occurred, a lump-sum death payment shall be made in accordance

with the provisions of section 202(i) of the Social Security Act [42 U.S.C. 402(i)] in an amount equal to the amount which would have been payable under such section 202(i) if such individual's service as an employee after December 31, 1936, were included in the term ''employment'' as defined in that Act. If a lump sum would be payable to a widow or widower under this subdivision except for the fact that a survivor will have been entitled to receive an annuity for the month in which the individual will have died, but within one year after the individual's death there will not have accrued to survivors of the individual, by reason of his death, annuities which, after all deductions pursuant to section 231a(g) and 231a(h) of this title, are equal to such lump sum, a payment equal to the amount by which such lump sum exceeds such annuities so accrued after such deductions shall then nevertheless be made under this subdivision to the widow or widower to whom a lump sum would have been payable under this subdivision except for the fact that a monthly benefit under section 231a(d) of this title was payable for the month in which the individual died, if such widow or widower will not have died before receiving payment of such lump sum.

(c) Payments in the absence of further benefits

(1) Whenever it shall appear, with respect to the death of an employee, that no benefits, or no further benefits (other than benefits payable to a widow, widower, or parent under either this subchapter or the Social Security Act [42 U.S.C. 301 et seq.] upon attaining the age of eligibility therefor at a future date) will be payable under this subchapter or under the Social Security Act, a lump sum in an amount computed under subdivision (2) of this subsection shall be paid to such person or persons as the deceased employee may have designated by a writing filed with the Board prior to his or her death, or if there be no designation, to the following person (or, if more than one, in equal shares to the persons) whose relationship to the deceased employee will have been determined by the Board and who will not have died before receiving payment of the lump sum provided for in this subdivision—

(i) the widow or widower of the deceased employee who was living with such employee at the time of such employee's death; or

(ii) if there be no such widow or widower, to any child or children of such employee; or

(iii) if there be no such widow, widower, or child, to any grandchild or grandchildren of such employee; or

(iv) if there be no such widow, widower, child, or grandchild, to any parent or parents of such employee; or

(v) if there be no such widow, widower, child, grandchild, or parent, to any brother or sister of such employee; or

(vi) if there be no such widow, widower, child, grandchild, parent, brother, or sister, to the estate of such employee:

Provided, however, That if the employee is survived by a widow, widower, or parent who may upon attaining the age of eligibility be entitled to benefits under this subchapter or under the Social Security Act, such lump sum shall not be paid unless such widow, widower, or parent makes and files with the Board an irrevocable election, in such form as the Board may prescribe, to have such lump sum be paid in lieu of all benefits to which such widow, widower, or parent might otherwise become entitled under this subchapter on the basis of the deceased employee's compensation and years of service or under the Social Security Act on the basis of the deceased employee's wages from (A) employment with an employer as defined in section 231(a) of this title or (B) service as an employee representative as defined in section 231(c) of this title. Any election made and filed by a widow, widower, or parent pursuant to this subdivision shall be legally effective according to its terms. After a lump sum with respect to the death of an employee is paid pursuant to an election filed with the Board under the provisions of this subsection, no further benefits shall be paid (other than to a survivor in the circumstances described in paragraph (3)) under this subchapter or the Social Security Act on the basis of such employee's compensation and service under this subchapter, except that nothing in this subchapter or the Social Security Act shall operate to deprive a widow, widower, or parent making such election of any insurance benefit under title II of the Social Security Act [42 U.S.C. 401 et seq.] to which such individual would have been entitled if the employee had not rendered service as an employee under this subchapter.

(2) The lump sum provided under subdivision (1) of this subsection shall be in an amount equal to (A) the sum of 4 per centum of the deceased employee's compensation paid after December 31, 1936, and prior to January 1, 1947, plus 7 per centum of such employee's compensation paid after December 31, 1946, and before January 1, 1959, plus 7½ per centum of such employee's compensation paid after December 31, 1958, and before January 1, 1962, plus 8 per centum of such employee's compensation paid after December 31, 1961, and before January 1, 1966, plus an amount equal to the total of all employee taxes payable by such employee after December 31, 1965, and before January 1, 1975, under the provisions of section 3201 of the Railroad Retirement Tax Act [26 U.S.C. 3201] (excluding, for this purpose, the amount of the employee tax attributable to that portion of the tax rate derived from section 3101(b) of the Internal Revenue Code of 1986 [26 U.S.C. 3101(b)]), plus one-half of 1 per centum of the compensation on which such taxes were payable, deeming the compensation attributable to creditable military service after June 30, 1963, and before January 1, 1975, to be taxable compensation, and one-half of the taxes payable by an employee representative under section 3211 of the Railroad Retirement Tax Act [26 U.S.C. 3211] to be employee taxes under section 3201 of such Act, minus (B) the sum of all benefits paid to such employee, and to others deriving from such employee, during his or her life, or to others by reason of his or her death, under this subchapter, the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.], or the Social Security Act [42 U.S.C. 301 et seq.] (excluding, for this purpose, payments to providers of services under section 231f(d) of this title or section 21 of the Railroad Retirement Act of 1937 [45 U.S.C. 228s–2], any supplemental annuity pay-

ments made to the employee under section 231a(b) of this title or section 3(j) of the Railroad Retirement Act of 1937 [45 U.S.C. 228c(j)], any amounts by which that portion of the annuities provided the employee under section 231b(a) of this title or his spouse or divorced wife under section 231c(a) of this title were increased by reason of the employee's wages and self-employment income derived from employment and self-employment under the Social Security Act, that portion of the annuities provided the employee under section 231b(h) of this title or his spouse under section 231c(e) of this title, and so much of the benefits paid to the employee and to others deriving from him or her under the Social Security Act during his or her lifetime as would have been payable under that Act if such employee had not rendered service as an employee as defined in section 231(b) of this title). In computing compensation for purposes of this subdivision there shall be excluded compensation in excess of $300 for any month before July 1, 1954; compensation in excess of $350 for any month after June 30, 1954, and before June 1, 1959; compensation in excess of $400 for any month after May 31, 1959, and before November 1, 1963; compensation in excess of $450 for any month after October 31, 1963, and before October 1, 1965; and compensation in excess of (i) $450 or (ii) an amount equal to one-twelfth of the current maximum annual taxable ''wages'' as defined in section 3121 of the Internal Revenue Code of 1986 [26 U.S.C. 3121], whichever is greater, for any month after September 30, 1965.

(3) Notwithstanding the last sentence of paragraph (1), benefits shall be paid to a survivor who—

(A) is a divorced wife; and

(B) through administrative error received benefits otherwise precluded by the making of a lump sum payment under this section to a widow;

if that divorced wife makes an election to repay to the Board the lump sum payment. The Board may withhold up to 10 percent of each benefit amount paid after October 21, 1998, toward such reimbursement. The Board may waive such repayment to the extent the Board determines it would cause an unjust financial hardship for the beneficiary.

(d) Payments to recipients ineligible for certain other annuities

(1) Every individual who will have completed ten years of service at the time of his retirement or death, but does not meet the qualifications for an annuity amount determined under the provisions of section 231b(h)(1) or 231b(h)(2) of this title, shall, at the time his annuity under section 231a(a)(1) of this title begins to accrue, be entitled to a lump sum in the amount provided under subdivision (2) of this subsection. If an individual otherwise eligible for a lump sum under this section dies before he becomes entitled to an annuity under section 231a(a)(1) of this title, or before he receives payment of such lump sum, such lump sum shall be payable to the person, if any, who is determined by the Board to be such individual's widow or widower and who will not have died before receiving payment of such lump sum. If there be no such widow or widower, such lump sum shall be payable to the children, grandchildren, parents, brothers and sisters, or the estate of the deceased individual in the same manner as if such lump sum were a lump sum payable under subsection (c)(1) of this section.

(2) The lump sum provided under subdivision (1) of this subsection shall be in an amount equal to the sum of (A) 1.5 per centum of so much of such individual's combined earnings for any calendar year after 1950 and before 1954 as is in excess of $3,600, plus (B) 2 per centum of so much of such individual's combined earnings for any calendar year after 1953 and before 1957 as is in excess of $4,200, plus (C) 2.25 per centum of so much of such individual's combined earnings for any calendar year after 1956 and before 1959 as is in excess of $4,200, plus (D) 2.5 per centum of so much of such individual's combined earnings for the calendar year 1959 as is in excess of $4,800, plus (E) 3 per centum of so much of such individual's combined earnings for each of the calendar years 1960 and 1961 as is in excess of $4,800, plus (F) 3.125 per centum of so much of such individual's combined earnings for the calendar year 1962 as is in excess of $4,800, plus (G) 3.625 per centum of so much of such individual's combined earnings for any calendar year after 1962 and before 1966 as is in excess of $5,400, plus (H) 4.2 per centum of so much of such individual's combined earnings for the calendar year 1966 as is in excess of $6,600, plus (I) 4.4 per centum of so much of such individual's combined earnings for the calendar year 1967 as is in excess of $6,600, plus (J) 3.8 per centum of so much of such individual's combined earnings for the calendar year 1968 as is in excess of $7,800, plus (K) 4.2 per centum of so much of such individual's combined earnings for each of the calendar years 1969 and 1970 as is in excess of $7,800, plus (L) 4.6 per centum of so much of such individual's combined earnings for the calendar year 1971 as is in excess of $7,800, plus (M) 4.6 per centum of so much of such individual's combined earnings for the calendar year 1972 as is in excess of $9,000, plus (N) 4.85 per centum of so much of such individual's combined earnings for the calendar year 1973 as is in excess of $10,800, plus (O) 4.95 per centum of so much of such individual's combined earnings for the calendar year 1974 as is in excess of $13,200. For purposes of this subsection, the term ''combined earnings'' shall include ''compensation'' as defined in section 1(h) of the Railroad Retirement Act of 1937 [45 U.S.C. 228a(h)], ''wages'' as defined in section 209 of the Social Security Act [42 U.S.C. 409], and ''self-employment'' income as defined in section 211(b) of the Social Security Act [42 U.S.C. 411(b)].

(e) Additional lump sum payment in certain cases

(1) Every individual who will have completed ten years of service (or five or more years of service, all of which accrues after December 31, 1995) at the time of his retirement or death, who will have received compensation in the nature of separation or severance pay on or after January 1, 1985, and who would have been credited with additional months of service pursuant to section 231b(i)(4) of this title except for the fact that such individual was not in an employment rela-

tion to one or more employers nor an employee representative in such months, shall, at the time his annuity under section 231a(a)(1) of this title begins to accrue, be entitled to a lump sum in the amount provided under subdivision (2) of this subsection. If the full amount of a lump sum under this subsection cannot be determined at the time an individual's annuity under section 231a(a)(1) of this title begins to accrue, such lump sum shall be payable at such time thereafter as such amount can be determined. If an individual otherwise eligible for a lump sum under this section dies before he becomes entitled to an annuity under section 231a(a)(1) of this title, or before he receives payment of such lump sum, such lump sum shall be payable to the person, if any, who is determined by the Board to be such individual's widow or widower and who will not have died before receiving payment of such lump sum. If there be no such widow or widower, such lump sum shall be payable to the children, grandchildren, parents, brothers and sisters, or the estate of the deceased individual in the same manner as if such lump sum were a lump sum payable under subsection (c)(1) of this section.

(2) The lump sum provided under subdivision (*l*)[1] of this subsection shall be in an amount equal to the product of (A) the compensation attributable to the additional months of service which would have been credited to the individual due to the receipt of payments in the nature of separation or severance pay pursuant to section 231b(i)(4) of this title if such individual had remained in an employment relation to one or more employers or had continued to be an employee representative and (B) the rate of tax, or rates of tax, imposed on the compensation described in clause (A) of this subdivision by section 3201(b) of the Internal Revenue Code of 1986 [26 U.S.C. 3201(b)].

(Aug. 29, 1935, ch. 812, § 6, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1334; amended Pub. L. 97–35, title XI, § 1121, Aug. 13, 1981, 95 Stat. 637; Pub. L. 98–76, title IV, § 408, Aug. 12, 1983, 97 Stat. 435; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–647, title VII, § 7301, Nov. 10, 1988, 102 Stat. 3776; Pub. L. 105–277, div. A, § 101(f) [title VII, § 709(a)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–391; Pub. L. 107–90, title I, § 103(i)(1), (4), Dec. 21, 2001, 115 Stat. 882.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Railroad Retirement Act of 1937, referred to in subsec. (c)(2), is act Aug. 29, 1935, ch. 812, 49 Stat. 867, as amended generally by act June 24, 1937, ch. 382, part I, 50 Stat. 307, which was classified principally to subchapter III (§ 228a et seq.) of this chapter. The Railroad Retirement Act of 1937 was amended generally and redesignated the Railroad Retirement Act of 1974 by Pub. L. 93–445, title I, Oct. 16, 1974, 88 Stat. 1305. The Railroad Retirement Act of 1974 is classified generally to this subchapter. For complete classification of these Acts to the Code, see Tables.

Sections 1, 3, 5, and 21 of the Railroad Retirement Act of 1937, referred to in subsecs. (b)(1), (c)(2), and (d)(2), which were classified to sections 228a, 228c, 228e, and 228s–2 of this title, have been omitted from the Code.

AMENDMENTS

2001—Subsec. (b)(2). Pub. L. 107–90, § 103(i)(4), inserted "(or five or more years of service, all of which accrues after December 31, 1995)" after "but who (i) will have completed ten years of service".

Subsec. (e)(1). Pub. L. 107–90, § 103(i)(1), inserted "(or five or more years of service, all of which accrues after December 31, 1995)" after "ten years of service".

1998—Subsec. (c)(1). Pub. L. 105–277, § 101(f) [title VII, § 709(a)(1)], inserted "(other than to a survivor in the circumstances described in paragraph (3))" after "no further benefits shall be paid" in last sentence.

Subsec. (c)(3). Pub. L. 105–277, § 101(f) [title VII, § 709(a)(2)], added par. (3).

1988—Subsec. (e). Pub. L. 100–647 added subsec. (e).

1986—Subsec. (c)(2). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954" wherever appearing.

1983—Subsec. (b)(1). Pub. L. 98–76 inserted provision that no lump sum shall be payable under this subdivision if employee died leaving a surviving divorced wife who would on proper application therefore be entitled to receive an annuity under section 231a(d) of this title for month in which employee's death occurred.

1981—Subsec. (a)(3). Pub L. 97–35, § 1121(a), substituted "spouse or divorced wife of an individual but which will not have been paid at the time of such spouse's or divorced wife's death" for "spouse of an individual but which will not have been paid at the time of such spouse's death".

Subsec. (b)(2)(iii). Pub. L. 97–35, § 1121(b), substituted "widow, surviving divorced wife," for "widow,".

Subsec. (c)(1). Pub. L. 97–35, § 1121(c)(1), inserted provision that after a lump sum with respect to the death of an employee is paid pursuant to an election filed with the Board under the provisions of this subsection, no further benefits shall be paid under this subchapter or the Social Security Act on the basis of such employee's compensation and service under this subchapter, except that nothing in this subchapter or the Social Security Act shall operate to deprive a widow, widower, or parent making such election of any insurance benefit under title II of the Social Security Act to which such individual would have been entitled if the employee had not rendered service as an employee under this subchapter.

Subsec. (c)(2). Pub. L. 97–35, § 1121(c)(3), substituted "spouse or divorced wife" for "spouse".

Pub. L. 97–35, § 1121(c)(2), substituted "any supplemental annuity payments made to the employee under section 231a(b) of this title or section 3(j) of the Railroad Retirement Act of 1937, any amounts" for "any amounts".

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–90 effective Jan. 1, 2002, see section 103(j) of Pub. L. 107–90, set out as a note under section 405 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. A, § 101(f) [title VII, § 709(b)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–391, provided that: "The amendment made by this section [amending this section] shall apply with respect to any benefits paid before the date of enactment of this Act [Oct. 21, 1998] as well as to benefits payable on or after the date of the enactment of this Act."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 1121(c)(1), (2) of Pub. L. 97–35 effective Jan 1, 1975, and amendment by other provi-

[1] So in original. Probably should be subdivision "(1)".

sions of section 1121 of Pub. L. 97–35, effective Oct. 1, 1981, and applicable only with respect to annuities awarded on or after Oct. 1, 1981, see section 1129 of Pub. L. 97–35, set out as a note under section 231 of this title.

§ 231f. Railroad Retirement Board

(a) Administration

This subchapter shall be administered by the Railroad Retirement Board established by the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.] as an independent agency in the executive branch of the Government and composed of three members appointed by the President, by and with the advice and consent of the Senate. Each member shall hold office for a term of five years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of the term and any member holding office pursuant to appointment under the Railroad Retirement Act of 1937 when this subchapter becomes effective shall hold office until the term for which he was appointed under such Railroad Retirement Act of 1937 expires. One member shall be appointed from recommendations made by representatives of the employees and one member shall be appointed from recommendations made by representatives of employers as defined in paragraph (i) of section 231(a)(1) of this title, in both cases as the President shall direct, so as to provide representation on the Board satisfactory to the largest number, respectively, of employees and employers concerned. One member, who shall be the chairman of the Board, shall be appointed without recommendation by either employers or employees and shall not be in the employment of or be pecuniarily or otherwise interested in any employer or organization of employees. Vacancies in the Board shall not impair the powers or affect the duties of the Board or of the remaining members of the Board, of whom a majority of those in office shall constitute a quorum for the transaction of business. Upon the expiration of his term of office a member shall continue to serve until his successor is appointed and shall have qualified.

(b) Powers and duties

(1) The Board shall have and exercise all the duties and powers necessary to administer this subchapter. The Board shall take such steps as may be necessary to enforce such subchapter and make awards and certify payments. Decisions by the Board upon issues of law and fact relating to annuities or death benefits shall not be subject to review by any other administrative or accounting officer, agent, or employee of the United States.

(2) In the case of—

(A) an individual who will have completed ten years of service (or five or more years of service, all of which accrues after December 31, 1995) creditable under this subchapter,

(B) the wife or divorced wife or husband of such an individual,

(C) any survivor of such an individual if such survivor is entitled, or could upon application become entitled, to an annuity under section 231a of this title, and

(D) any other person entitled to benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] on the basis of the wages and self-employment income of such an individual (except a survivor of such an individual where such individual did not have a current connection with the railroad industry at the time of his death);

the Board shall provide for the payment on behalf of the Managing Trustee of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund of monthly benefits payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] which are certified by the Secretary to it for payment under the provisions of title II of the Social Security Act.

(3) If the Board finds that an applicant is entitled to an annuity or death benefit under the provisions of this subchapter then the Board shall make an award fixing the amount of the annuity or benefit, as the case may be, and shall certify the payment thereof as hereinafter provided; otherwise the application shall be denied. For purposes of this section, the Board shall have and exercise such of the powers, duties and remedies provided in subsections (a), (b), (d), and (n) of section 12 of the Railroad Unemployment Insurance Act [45 U.S.C. 362] as are not inconsistent with the express provisions of this subchapter. The Board is authorized to delegate to any member, officer, or employee of the Board any of the powers conferred upon the Board by this subchapter, excluding only the power to prescribe rules and regulations, including the power to make decisions on applications for annuities or other benefits: *Provided, however*, That any person aggrieved by a decision on his application for an annuity or other benefit shall have the right to appeal to the Board. Notice of a decision of the Board, or of an employee thereof, shall be communicated to the applicant in writing within thirty days after such decision shall have been made.

(4)(A) The Secretary of the Treasury shall serve as the disbursing agent for benefits payable under this subchapter, under such rules and regulations as the Secretary may in the Secretary's discretion prescribe.

(B) The Board shall from time to time certify—

(i) to the Secretary of the Treasury the amounts required to be transferred from the Social Security Equivalent Benefit Account and the Dual Benefits Payments Account to the disbursing agent to make payments of benefits and the Secretary of the Treasury shall transfer those amounts;

(ii) to the Board of Trustees of the National Railroad Retirement Investment Trust the amounts required to be transferred from the National Railroad Retirement Investment Trust to the disbursing agent to make payments of benefits and the Board of Trustees shall transfer those amounts; and

(iii) to the disbursing agent the name and address of each individual entitled to receive a payment, the amount of such payment, and the time at which the payment should be made.

(5) The Board shall establish and promulgate rules and regulations to provide for the adjust-

ment of all controversial matters arising in the administration of this subchapter. All rules, regulations, or decisions of the Board shall require the approval of at least two members, and they shall be entered upon the records of the Board, which shall be a public record.

(6) The Board shall gather, keep, compile, and publish in convenient form such records and data as may be necessary to assure proper administration of this subchapter, including subdivision (2) of this subsection. The Board shall have power to require all employers and employees and any officer, board, commission, or other agency of the United States to furnish such information and records as shall be necessary for the administration of this subchapter, including subdivision (2) of this subsection. The several district courts of the United States shall have jurisdiction upon suit by the Board to compel obedience to any order of the Board issued pursuant to this section. The orders, writs, and processes of the United States District Court for the District of Columbia in such suits may run and be served anywhere in the United States. Witnesses summoned before the Board shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. The Board shall make an annual report to the President of the United States to be submitted to Congress.

(7) Notwithstanding any other provision of law, the Secretary of Health and Human Services shall furnish the Board certified reports of wages, self-employment income, and periods of service and of other records in his possession, or which he may secure, pertinent to the administration of this subchapter, the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.],,[1] the Milwaukee Railroad Restructuring Act [45 U.S.C. 901 et seq.], and the Rock Island Railroad Transition and Employee Assistance Act [45 U.S.C. 1001 et seq.]..[1] The Board shall furnish the Secretary of Health and Human Services certified reports of records of compensation and periods of service reported to it pursuant to section 231h of this title, of determinations under section 231a of this title, and of other records in its possession, or which it may secure, pertinent to subsection (c) of this section or to the administration of the Social Security Act [42 U.S.C. 301 et seq.] as affected by section 231q of this title. Such certified reports shall be conclusive in adjudication as to the matters covered therein: *Provided*, *however*, That if the Board or the Secretary of Health and Human Services receives evidence inconsistent with a certified report and the application involved is still in course of adjudication or otherwise open for such evidence such recertification of such report shall be made as, in the judgment of the Board or the Secretary of Health and Human Services, whichever made the original certification, the evidence warrants. Such recertification and any subsequent recertification shall be treated in the same manner and be subject to the same conditions as an original certification.

(8) Any department or agency of the United States maintaining records of military service, at the request of the Board, shall certify to the Board, with respect to any individual, the number of months of military service which such department or agency finds the individual to have had during any period or periods with respect to which the Board's request is made, the date and manner of entry into such military service, and the conditions under which such service was continued. Any department or agency of the United States which is authorized to make awards of pensions, disability compensation, or any other gratuitous benefits or allowances payable, on the periodic basis or otherwise, under any other Act of Congress on the basis of military service, at the request of the Board, shall certify to the Board, with respect to any individual, the calendar months for all or part of which any such pension, compensation, benefit, or allowance is payable to, or with respect to, the individual, the amounts of any such pension, compensation, benefit, or allowance, and the military service on which such pension, compensation, benefit, or allowance is based. Any certification made pursuant to the provisions of this subdivision shall be conclusive on the Board: *Provided*, *however*, That if evidence inconsistent with any such certification is submitted, and the claim is in the course of adjudication or is otherwise open for such evidence, the Board shall refer such evidence to the department or agency which made the original certification and such department or agency shall make such recertification as in its judgment the evidence warrants. Such recertification, and any subsequent recertification, shall be conclusive, made in the same manner, and subject to the same conditions as an original certification.

(9) The Board shall maintain such offices, provide such equipment, furnishings, supplies, services, and facilities, and employ such individuals and provide for their compensation and expenses as may be necessary for the proper discharge of its functions. All positions to which such individuals are appointed, except one administrative assistant to each member of the Board, shall be in and under the competitive civil service and shall not be removed or excepted therefrom. In the employment of such individuals under the civil service laws and rules the Board shall give preference over all others to individuals who have had experience in railroad service, if, in the judgment of the Board, they possess the qualifications necessary for the proper discharge of the duties of the positions to which they are to be appointed. For purposes of its administration of this subchapter or the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.], or both, the Board may place, without regard to the numerical limitations contained in section 5108(c)(9)[2] of title 5, four positions in grade GS–16 of the General Schedule established by that Act, four positions in grade GS–17 of such schedule, and one position in grade GS–18 of such schedule.

(c) Sources of payments; adjustments

(1) Benefit payments determined by the Board to be payable under this subchapter shall be made by the disbursing agent under subsection (b)(4) of this section from money transferred to

[1] So in original.

[2] See References in Text note below.

it from the National Railroad Retirement Investment Trust or the Social Security Equivalent Benefit Account, as the case may be, except that payments of annuity amounts made under sections 231b(h), 231c(e), and 231c(h) of this title and under sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93–445 shall be made by the disbursing agent under subsection (b)(4) of this section from money transferred to it from the Dual Benefits Payments Account. In any fiscal year, the total amounts paid under such sections shall not exceed the total sums appropriated to the Dual Benefits Payments Account for that fiscal year. The Board shall prescribe regulations for allocation of annuity amounts which would without regard to such regulations be payable under sections 231b(h), 231c(e), and 231c(h) of this title and sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93–445 so that the sums appropriated to the Dual Benefits Payments Account for a fiscal year so far as practicable, are expended in equal monthly installments throughout such fiscal year, and are distributed so that recipients are paid annuity amounts which bear the same ratio to the annuity amounts such recipients would have received but for such regulations as the ratio of the total sums appropriated to pay such annuity amounts bear to the total sums necessary to pay such annuity amounts without regard to such regulations. Notwithstanding any other provision of law, the entitlement of an individual to an annuity amount under section 231b(h), 231c(e), or 231c(h) of this title or section 204(a)(3), 204(a)(4), 206(3), or 207(3) of Public Law 93–445 for any month in which the amount payable to such individual is allocated under the regulations prescribed by the Board under this subsection shall not exceed the amount so allocated for that month to such individual.

(2) At the close of the fiscal year ending June 30, 1975, and each fiscal year thereafter, the Board and the Secretary of Health and Human Services shall determine the amounts, if any, which if added to or subtracted from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund would place each such Trust Fund in the same position in which it would have been if (A) service as an employee after December 31, 1936, had been included in the term ''employment'' as defined in the Social Security Act [42 U.S.C. 301 et seq.] and in the Federal Insurance Contributions Act [26 U.S.C. 3101 et seq.] and (B) this subchapter had not been enacted. Such determination with respect to each such Trust Fund shall be made no later than June 15 following the close of the fiscal year. If, pursuant to any such determination, any amount is to be added to any such Trust Fund, the Board shall, within ten days after the determination, certify such amount to the Secretary of the Treasury for transfer from the Railroad Retirement Account to such Trust Fund. If, pursuant to any such determination, any amount is to be subtracted from any such Trust Fund, the Secretary of Health and Human Services shall, within ten days after the determination, certify such amount to the Secretary of the Treasury for transfer from such Trust Fund to the Railroad Retirement Account. Any amounts so certified shall further include interest (at the rate determined in subdivision (3) for the fiscal year under consideration) payable from the close of such fiscal year until the date of certification. The Secretary of the Treasury is authorized and directed to transfer to the Railroad Retirement Account from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, or the Federal Hospital Insurance Trust Fund or to any such Trust Fund from the Railroad Retirement Account, as the case may be, such amounts as, from time to time, may be determined by the Board and the Secretary of Health and Human Services pursuant to the provisions of this subdivision and certified by the Board or the Secretary of Health and Human Services for transfer from any such Trust Fund or from the Railroad Retirement Account.

(3) For purposes of subdivision (2), for any fiscal year, the rate of interest to be used shall be equal to the average rate of interest, computed as of May 31 preceding the close of such fiscal year, borne by all interest-bearing obligations of the United States then forming a part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest shall be the multiple of one-eighth of 1 per centum next lower than such average rate.

(4) After the end of each month beginning with the month of October 1983, the Board shall determine the net amount, if any, which if added to or subtracted from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund would, with respect to such month, place those Trust Funds, taken as a whole, in the same position in which they would have been if (A) service as an employee after December 31, 1936, had been included in the term ''employment'' as defined in the Social Security Act [42 U.S.C. 301 et seq.] and in the Federal Insurance Contributions Act [26 U.S.C. 3101 et seq.], and (B) this subchapter had not been enacted. If for any month the net amount so determined would be subtracted from those Trust Funds, the Board shall, within ten days after the end of such month, report such amount to the Secretary of the Treasury for transfer from the general fund to the Railroad Retirement Account. Any amount so reported shall further include interest (at an annual rate equal to the rate of interest borne by a special obligation issued to the Railroad Retirement Account in the month in which the transfer is made to the Account) payable from the close of the month for which the transfer is made until the date of transfer. The Secretary of the Treasury is authorized and directed to transfer to the Railroad Retirement Account from the general fund such amounts as, from time to time, may be determined by the Board pursuant to the provisions of this subdivision and reported by the Board for transfer. For such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities issued after August 12, 1983, under section 3102 of title 31, and the purpose for which securities may be issued under section

3102 of title 31 are extended to include such purpose. Each such transfer shall be made by the Secretary of the Treasury within five days after a report of the amount to be transferred is received. Not later than December 31 following the close of each fiscal year beginning with the fiscal year ending September 30, 1984, the Board shall certify to the Secretary of the Treasury the total of all amounts transferred pursuant to the provisions of this subdivision for months in such fiscal year. Within ten days after a transfer, or transfers, pursuant to subdivision (2) for a particular fiscal year, the Board shall request the Secretary of the Treasury to retransfer from the Railroad Retirement Account to the general fund an amount equal to (A) the total of all amounts, exclusive of interest, transferred to such Account pursuant to the provisions of this subdivision for months in such fiscal year, plus (B) interest (at the rate determined in subdivision (3) for such fiscal year) payable with respect to each amount transferred for a month during such fiscal year from the close of the month for which the transfer of the amount was made until the date of retransfer of such amount. The Secretary of the Treasury is authorized and directed to retransfer from the Railroad Retirement Account to the general fund such amounts as, from time to time, may be determined by the Board pursuant to the provisions of the preceding sentence of this subdivision and reported by the Board for retransfer.

(d) Hospital insurance benefits; certified beneficiaries; disability insurance benefits; services in Canada; exchange of information

(1) The Board shall, for purposes of this subsection, have the same authority to determine the rights of individuals described in subdivision (2) to have payments made on their behalf for hospital insurance benefits consisting of inpatient hospital services, posthospital extended care services, home health services, hospice care, and outpatient hospital diagnostic services (all hereinafter referred to as ''services'') under section 226 [42 U.S.C. 426], and parts A and E of title XVIII [42 U.S.C. 1395c et seq., 1395x et seq.], of the Social Security Act as the Secretary of Health and Human Services has under such section and such parts with respect to individuals to whom such sections and such parts apply. For purposes of section 231g of this title, a determination with respect to the rights of an individual under this subsection shall, except in the case of a provider of services, be considered to be a decision with respect to an annuity.

(2) Except as otherwise provided in this subsection, every person who—

(i) has attained age 65 and (A) is entitled to an annuity under this subchapter or (B) would be entitled to such an annuity had he ceased compensated service and, in the case of a spouse or divorced wife, had such spouse's husband or wife ceased compensated service or (C) bears a relationship to an employee which, by reason of section 231b(f)(2) of this title, has been, or would be, taken into account in calculating the amount of the annuity of such employee; or

(ii) has not attained age 65 and (A) has been entitled to an annuity under section 231a of this title, or under the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.] and section 231a of this title, or could have been includible in the computation of an annuity under section 231b(f)(2) of this title, for not less than 24 months and (B) could have been entitled for 24 calendar months, and could currently be entitled, to monthly insurance benefits under section 223 of the Social Security Act [42 U.S.C. 423] or under section 202 of that Act [42 U.S.C. 402] on the basis of disability if service as an employee after December 31, 1936, had been included in the term ''employment'' as defined in that Act and if an application for disability benefits had been filed,

shall be certified to the Secretary of Health and Human Services as a qualified railroad retirement beneficiary under section 226 of the Social Security Act [42 U.S.C. 426].

(3) If an individual entitled to an annuity under paragraph (iv) or (v) of section 231a(a)(1) of this title would have been insured for disability insurance benefits as determined under section 223(c)(1) of the Social Security Act [42 U.S.C. 423(c)(1)] at the time such annuity began, he shall be deemed, solely for purposes of paragraph (ii) of subdivision (2), to be entitled to a disability insurance benefit under section 223 of the Social Security Act for each month, and beginning with the first month, in which he would meet the requirements for entitlement to such a benefit, other than the requirement of being insured for disability insurance benefits, if service as an employee after December 31, 1936, had been included in the term ''employment'' as defined in the Social Security Act [42 U.S.C. 301 et seq.] and if an application for disability benefits had been filed.

(4) The rights of individuals described in subdivision (2) of this subsection to have payment made on their behalf for the services referred to in subdivision (1) but provided in Canada shall be the same as those of individuals to whom section 226 [42 U.S.C. 426] and part A of title XVIII [42 U.S.C. 1395c et seq.] of the Social Security Act apply, and this subdivision shall be administered by the Board as if the provisions of section 226 and part A of title XVIII of the Social Security Act were applicable, as if references to the Secretary of Health and Human Services were to the Board, as if references to the Federal Hospital Insurance Trust Fund were to the Railroad Retirement Account, as if references to the United States or a State included Canada or a subdivision thereof, and as if the provisions of sections 1862(a)(4), 1863, 1864, 1868, 1869, 1874(b), and 1875 [42 U.S.C. 1395y(a)(4), 1395z, 1395aa, 1395ee, 1395ff, 1395kk(b), 1395*ll*] were not included in such title. The payments for services herein provided for in Canada shall be made from the Railroad Retirement Account (in accordance with, and subject to, the conditions applicable under subsection (b) of this section, in making payment of other benefits) to the hospital, extended care facility, or home health agency providing such services in Canada to individuals to whom subdivision (2) of this subsection applies, but only to the extent that the amount of payments for services otherwise hereunder provided for an individual exceeds the amount payable for like services provided pursuant to the law in ef-

fect in the place in Canada where such services are furnished. For the purposes of section 231i of this title, any overpayment under this subdivision shall be treated as if it were an overpayment of an annuity.

(5) The Board and the Secretary of Health and Human Services shall furnish each other with such information, records, and documents as may be considered necessary to the administration of this subsection or section 226 [42 U.S.C. 426], and part A of title XVIII [42 U.S.C. 1395c et seq.], of the Social Security Act.

(e) Acceptance of gifts and bequests

The Board is authorized to accept on behalf of the United States money gifts and bequests made unconditionally to the Railroad Retirement Account, to the Railroad Retirement Supplemental Account, or to the Railroad Unemployment Insurance Account, or to the Board, or any member, officer, or employee thereof, for the benefit of such accounts or any activity financed through such accounts. Any such gift accepted pursuant to the authority granted in this subsection shall be deposited in the specific account designated by the donor or, if the donor has made no such specific designation, in the Railroad Retirement Account.

(f) Congressional copies of documents submitted or transmitted to President or Office of Management and Budget

Whenever the Board submits or transmits any budget estimate, budget request, supplemental budget estimate, or other budget information, legislative recommendation, prepared testimony for congressional hearings, or comment on legislation to the President or to the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Board to submit its budget requests or estimates, legislative recommendations, prepared testimony for congressional hearings, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

(Aug. 29, 1935, ch. 812, §7, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1338; amended Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 96–101, §10(h), Nov. 4, 1979, 93 Stat. 742; Pub. L. 96–254, title I, §106(f), May 30, 1980, 94 Stat. 402, as amended Pub. L. 96–448, title VII, §701(b)(1), Oct. 14, 1980, 94 Stat. 1960; Pub. L. 96–265, title I, §103(a)(4), June 9, 1980, 94 Stat. 444; Pub. L. 96–499, title IX, §930(r), Dec. 5, 1980, 94 Stat. 2633; Pub. L. 97–35, title XI, §1122, Aug. 13, 1981, 95 Stat. 638; Pub. L. 97–248, title I, §122(a)(2), Sept. 3, 1982, 96 Stat. 356; Pub. L. 98–76, title III, §301(a), title IV, §416, Aug. 12, 1983, 97 Stat. 430, 436; Pub. L. 98–369, div. B, title III, §2349(b)(2), July 18, 1984, 98 Stat. 1097; Pub. L. 105–33, title IV, §4002(f)(1), Aug. 5, 1997, 111 Stat. 329; Pub. L. 107–90, title I, §§103(i)(2), 104(a)(2)(B), 106(a), 107(e), (f), Dec. 21, 2001, 115 Stat. 882, 887, 889; Pub. L. 108–173, title I, §101(e)(1), Dec. 8, 2003, 117 Stat. 2150; Pub. L. 109–305, §2, Oct. 6, 2006, 120 Stat. 1719.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1937, referred to in subsecs. (a) and (d)(2)(ii), is act Aug. 29, 1935, ch. 812, as amended generally by act June 24, 1937, ch. 382, part I, 50 Stat. 307, which was classified principally to subchapter III (§228a et seq.) of this chapter. The Railroad Retirement Act of 1937 was amended generally and redesignated the Railroad Retirement Act of 1974 by Pub. L. 93–445, title I, Oct. 16, 1974, 88 Stat. 1305. The Railroad Retirement Act of 1974 is classified generally to this subchapter. For complete classification of these Acts to the Code, see Tables.

The Social Security Act, referred to in subsecs. (b)(2), (7), (c)(2), (4), and (d)(1), (3) to (5), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42. Parts A and E of title XVIII of the Social Security Act are classified generally to Parts A (§1395c et seq.) and E (1395x et seq.), respectively, of subchapter XVIII of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Railroad Unemployment Insurance Act, referred to in subsec. (b)(7), (9), is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to chapter 11 (§351 et seq.) of this title. For complete classification of this Act to the Code, see section 367 of this title and Tables.

The Milwaukee Railroad Restructuring Act, referred to in subsec. (b)(7), is Pub. L. 96–101, Nov. 4, 1979, 93 Stat. 736, which is classified principally to chapter 18 (§901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 901 of this title and Tables.

The Rock Island Railroad Transition and Employee Assistance Act, referred to in subsec. (b)(7), is title I of Pub. L. 96–254, May 30, 1980, 94 Stat. 399, which is classified principally to chapter 19 (§1001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

The civil service laws, referred to in subsec. (b)(9), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

Section 5108(c)(9) of title 5, referred to in subsec. (b)(9), was repealed by Pub. L. 95–454, §414(a)(1)(A), Oct. 13, 1978, 92 Stat. 1177.

Sections 204, 206, and 207 of Pub. L. 93–445, referred to in subsec. (c)(1), are set out as part of a Transitional Provisions note under section 231 of this title.

The Federal Insurance Contributions Act, referred to in subsec. (c)(2), (4), is act Aug. 16, 1954, ch. 736, §§3101, 3102, 3111, 3112, 3121 to 3128, 68A Stat. 415, which is classified generally to chapter 21 (§3101 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see section 3128 of Title 26 and Tables.

CODIFICATION

As originally enacted, the third sentence of subsec. (b)(6) of this section contained words ''and the District Court of the United States for the District of Columbia'' after ''the several district courts of the United States''. The words ''and the District Court of the United States for the District of Columbia'' have been deleted entirely as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that ''There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district'' and section 88 of the Title 28 which states that ''the District of Columbia constitutes one judicial district''.

In the fourth sentence of subsec. (b)(6) of this section, ''United States District Court for the District of Columbia'' substituted for ''District Court of the United States for the District of Columbia'' in conformity with

similar changes made throughout the Code pursuant to section 32(b) of act June 25, 1948, ch. 646, as amended by act May 24, 1949, ch. 139, § 127, 63 Stat. 107, which provided for such substitution to be made in all laws of the United States in force on September 1, 1948. See note captioned ''Circuit Court of Appeals:'' ''Senior Circuit Judge,'' Etc. Defined, set out under section 451 of Title 28, Judiciary and Judicial Procedure.

In subsec. (b)(9), ''section 5108(c)(9) of title 5'' substituted for ''section 505 of the Classification Act of 1949, as amended'', on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees. Section 505 of the Classification Act of 1949 had enacted section 1105 of former Title 5, Executive Departments and Government Officers and Employees.

August 12, 1983, referred to in subsec. (c)(4), was in the original ''the date of enactment of this Act'' which was translated as meaning the date of enactment of Pub. L. 98–76, which enacted subsec. (c)(4) of this section, to reflect the probable intent of Congress.

AMENDMENTS

2006—Subsec. (b)(4)(A). Pub. L. 109–305 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''The Railroad Retirement Board, after consultation with the Board of Trustees of the National Railroad Retirement Investment Trust and the Secretary of the Treasury, shall enter into an arrangement with a nongovernmental financial institution to serve as disbursing agent for benefits payable under this subchapter who shall disburse consolidated benefits under this subchapter to each recipient. Pending the taking effect of that arrangement, benefits shall be paid as under the law in effect prior to December 21, 2001.''

2003—Subsec. (d)(1). Pub. L. 108–173 substituted ''parts A and E'' for ''parts A and D''.

2001—Subsec. (b)(2)(A). Pub. L. 107–90, § 103(i)(2), inserted ''(or five or more years of service, all of which accrues after December 31, 1995)'' after ''ten years of service''.

Subsec. (b)(4). Pub. L. 107–90, § 107(e), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The Board shall from time to time certify to the Secretary of the Treasury the name and address of each individual entitled to receive a payment, the amount of such payment, and the time at which it should be made, and the Secretary of the Treasury through the Fiscal Service of the Treasury Department, and prior to audit by the General Accounting Office, shall make payment in accordance with the certification by the Board.''

Subsec. (c)(1). Pub. L. 107–90, § 107(f), substituted ''by the disbursing agent under subsection (b)(4) of this section from money transferred to it from the National Railroad Retirement Investment Trust or the Social Security Equivalent Benefit Account, as the case may be'' for ''from the Railroad Retirement Account'' and inserted ''by the disbursing agent under subsection (b)(4) of this section from money transferred to it'' after ''Public Law 93–445 shall be made''.

Pub. L. 107–90, § 106(a), struck out ''payments of supplemental annuities under section 231a(b) of this title shall be made from the Railroad Retirement Supplemental Account, and'' before ''payments of annuity amounts made under sections 231b(h),''.

Subsec. (d)(2)(i), (ii). Pub. L. 107–90, § 104(a)(2)(B), substituted ''section 231b(f)(2)'' for ''section 231b(f)(3)''.

1997—Subsec. (d)(1). Pub. L. 105–33 substituted ''parts A and D of title XVIII'' for ''parts A and C of title XVIII''.

1984—Subsec. (d)(4). Pub. L. 98–369 struck out ''1867,'' after ''1864,''.

1983—Subsec. (c)(4). Pub. L. 98–76, § 301(a), added par. (4).

Subsec. (f). Pub. L. 98–76, § 416, added subsec. (f).

1982—Subsec. (d)(1). Pub. L. 97–248 inserted ''hospice care,'' after ''home health services,''.

1981—Subsec. (b)(2)(B). Pub. L. 97–35, § 1122(a)(1), substituted ''wife or divorced wife'' for ''wife''.

Subsec. (b)(7). Pub. L. 97–35, § 1122(a)(2), inserted reference to the Railroad Unemployment Insurance Act.

Subsec. (c)(1). Pub. L. 97–35, § 1122(c), inserted provisions relating to payment of annuity amounts from the Dual Benefits Payments Account, authorization of Board to prescribe regulations for allocation of annuity amounts, and maximum limits on entitlement of an individual to an annuity amount.

Subsec. (d)(2)(i)(C). Pub. L. 97–35, § 1122(b)(2), added cl. (C).

Pub. L. 97–35, § 1122(b)(1), substituted ''spouse or divorced wife'' for ''spouse''.

1980—Subsec. (b)(7). Pub. L. 96–254, as amended by Pub. L. 96–448, inserted reference to the Rock Island Railroad Transition and Employee Assistance Act.

Subsec. (d)(1). Pub. L. 96–499 substituted ''home health services'' for ''posthospital home health services''.

Subsec. (d)(2)(ii). Pub. L. 96–265 substituted ''24 months'' and ''24 calendar months'' for ''24 consecutive months'' and ''24 consecutive calendar months'', respectively.

1979—Subsec. (b)(7). Pub. L. 96–101 substituted ''Notwithstanding any other provision of law, the Secretary'' for ''The Secretary'' and inserted ''and the Milwaukee Railroad Restructuring Act'' after ''administration of this subchapter''.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsecs. (b)(7), (c)(2), and (d)(4) and (5) pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 103(i) of Pub. L. 107–90 effective Jan. 1, 2002, see section 103(j) of Pub. L. 107–90, set out as a note under section 405 of Title 42, The Public Health and Welfare.

Amendment by section 104(a) of Pub. L. 107–90 effective Jan. 1, 2002, and applicable to annuity amounts accruing for months after Dec. 2001, see section 104(c) of Pub. L. 107–90, set out as a note under section 231b of this title.

Amendment by section 106(a) of Pub. L. 107–90 effective Jan. 1, 2002, see section 106(e)(1) of Pub. L. 107–90, set out as a note under section 231n of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, see section 2349(c) of Pub. L. 98–369, set out as a note under section 907a of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 301(c)(1) of Pub. L. 98–76 provided that: ''The amendment made by subsection (a) of this section [amending this section] shall be effective on October 1, 1983.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1)(A) of Pub. L. 97–248, as amended, set out as a note under section 1395c of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 1122(a)(2), (b)(1), (c) of Pub. L. 97–35 effective Oct. 1, 1981, and amendment by other provisions of section 1122 of Pub. L. 97–35 effective Oct. 1, 1981, and applicable only with respect to annuities awarded on or after Oct. 1, 1981, see section 1129 of Pub. L. 97–35, set out as a note under section 231 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–499 effective with respect to services furnished on or after July 1, 1981, see section

930(s)(1) of Pub. L. 96–499, set out as a note under section 1395x of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 96–448 effective Oct. 14, 1980, see section 710(d) of Pub. L. 96–448, set out as a note under section 1170 of Title 11, Bankruptcy.

Amendment by Pub. L. 96–265 applicable with respect to hospital insurance or supplementary medical insurance benefits for services provided on or after first day of sixth month which begins after June 9, 1980, see section 103(c) of Pub. L. 96–265, set out as a note under section 426 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section 602(e) of Pub. L. 93–445 provided that: ''The provisions of section 7(e) of the Railroad Retirement Act of 1974 [subsec. (e) of this section] shall be effective on the enactment date of this Act [Oct. 16, 1974] and shall apply with respect to all gifts and bequests covered thereunder, regardless of the date on which such gifts or bequests were made.''

REPEALS

Section 106(f) of Pub. L. 96–254, cited as a credit to this section, was omitted in the complete revision of section 106 of Pub. L. 96–254 by Pub. L. 97–468, title II, § 231, Jan. 14, 1983, 96 Stat. 2543.

TRANSFER OF FUNCTIONS

''Fiscal Service'' substituted for ''Division of Disbursements'' in subsec. (b)(4) on authority of section 1(a)(1) of 1940 Reorg. Plan No. III, eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231, set out in the Appendix to Title 5, Government Organization and Employees, which consolidated such division into Fiscal Service of Treasury Department. See section 306 of Title 31, Money and Finance.

LIMITATION ON THE OFFICE OF INSPECTOR GENERAL

Pub. L. 110–161, div. G, title IV, Dec. 26, 2007, 121 Stat. 2206, provided in part: ''That funds made available under the heading in this Act [the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2008, Pub. L. 110–161, div. G, see Tables for classification], or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts, may be used for any audit, investigation, or review of the Medicare Program.''

Pub. L. 105–277, div. A, § 101(f) [title IV], Oct. 21, 1998, 112 Stat. 2681–337, 2681–381, provided in part: ''That none of the funds made available under this heading in this Act [probably means the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1999, Pub. L. 105–277, div. A, § 101(f), Oct. 21, 1998, 112 Stat. 2681–337, see Tables for classification], or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts, may be used for any audit, investigation, or review of the Medicare Program.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 105–78, title IV, Nov. 13, 1997, 111 Stat. 1512.

Pub. L. 104–208, div. A, title I, § 101(e) [title IV], Sept. 30, 1996, 110 Stat. 3009–233, 3009–268.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

DELEGATION OF REPORTING AUTHORITY

Memorandum of President of the United States, Feb. 9, 2005, 70 F.R. 7631, provided:

Memorandum for the Chairman of the Railroad Retirement Board

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to you the functions and authority conferred upon the President by section 7(b)(6) of the Railroad Retirement Act [of 1974, 45 U.S.C. 231f(b)(6)] and section 12(l) of the Railroad Unemployment Insurance Act [45 U.S.C. 362(*l*)] to provide the specified report to the Congress.

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

§ 231f–1. Annual actuarial report

As part of the annual report required under section 231u(a) of this title, the Railroad Retirement Board shall submit to the Congress a report on the actuarial status of the railroad retirement system under various economic and employment assumptions. Such report shall include any recommendation for financing changes which might be advisable, including—

(1) any adjustment the Railroad Retirement Board recommends regarding the rates of taxes imposed by sections 3201(b), 3211(a)(2), and 3221(b) of the Internal Revenue Code of 1986 [26 U.S.C. 3201(b), 3211(a)(2), 3221(b)], and

(2) if there are sufficient reserves in the Railroad Retirement Account, whether—

(A) the rates of such taxes should be reduced, or

(B) any part of the tax imposed by section 3221(b) of such Code should be diverted to the Railroad Unemployment Insurance Account to aid in the repayment of its debt to the Railroad Retirement Account.

(Pub. L. 98–76, title V, § 502, Aug. 12, 1983, 97 Stat. 440; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 104–66, title II, § 2221(a), Dec. 21, 1995, 109 Stat. 733.)

CODIFICATION

Section was enacted as part of the Railroad Retirement Solvency Act of 1983, and not as part of the Railroad Retirement Act of 1974 which comprises this subchapter.

AMENDMENTS

1995—Pub. L. 104–66 which directed the amendment of this section by substituting ''As part of the annual report required under section 231u(a) of this title'' for ''On or before July 1, 1985, and each calendar year thereafter'', was executed by making the substitution for ''On or before July 1 of 1985, and of each calendar year thereafter'', to reflect the probable intent of Congress.

1986—Par. (1). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

§ 231g. Court jurisdiction

Decisions of the Board determining the rights or liabilities of any person under this subchapter shall be subject to judicial review in the same manner, subject to the same limitations, and all provisions of law shall apply in the same manner as though the decision were a determination of corresponding rights or liabilities under the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.] except that the time within which proceedings for the review of a de-

cision with respect to an annuity, supplemental annuity, or lump-sum benefit may be commenced shall be one year after the decision will have been entered upon the records of the Board and communicated to the claimant.

(Aug. 29, 1935, ch. 812, § 8, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1343.)

REFERENCES IN TEXT

The Railroad Unemployment Insurance Act, referred to in text, is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to chapter 11 (§ 351 et seq.) of this title. For complete classification of this Act to the Code, see section 367 of this title and Tables.

§ 231h. Returns of compensation; conclusiveness

Employers shall file with the Board, in such manner and form and at such times as the Board by rules and regulations may prescribe, returns of compensation of employees, and, if the Board shall so require, shall furnish employees with statements of their compensation as reported to the Board. The Board's record of the compensation so returned shall be conclusive as to the amount of compensation paid to an employee during each period covered by the return, and the fact that the Board's records show that no return was made of the compensation claimed to have been paid to an employee during a particular period shall be taken as conclusive that no compensation was paid to such employee during that period, unless the error in the amount of compensation returned in the one case, or the failure to make return of the compensation in the other case, is called to the attention of the Board within four years after the day on which return of the compensation was required to be made.

(Aug. 29, 1935, ch. 812, § 9, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1343.)

§ 231i. Erroneous payments

(a) Recovery

If the Board finds that at any time more than the correct amount of annuities or other benefits has been paid to any individual under this subchapter, or payment has been made to an individual not entitled thereto, recovery by adjustment in subsequent payments to which such individual, or any other individual on the basis of the same compensation, wages, or self-employment income, is entitled under this subchapter, or the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.] may, except as otherwise provided in this section, be made under regulations prescribed by the Board. If the individual to whom more than the correct amount has been paid dies before recovery is completed, recovery may be made by setoff or adjustments, under regulations prescribed by the Board, in subsequent payments due, under this subchapter, or the Railroad Unemployment Insurance Act, to the estate of such individual or to any person on the basis of the compensation, wages, or self-employment income of such individual. The Board shall have the authority to recover from any payment which would be made to an individual by the Board under section 231f(b)(2) of this title the amount of annuity payments made to such individual which are erroneous because of such individual's entitlement to monthly insurance benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.].

(b) Adjustments

Adjustments under this section may be made either by deductions from subsequent payments or, with respect to payments which are to be made during a lifetime or lifetimes, by subtracting the total amount of annuities or other benefits paid in excess of the proper amount from the actuarial value, as determined by the Board, of such payments to be made during a lifetime or lifetimes and recertifying such payments on the basis of the reduced actuarial value. In the latter case, recovery shall be deemed to have been completed upon such recertification.

(c) Decision not to recover

There shall be no recovery in any case in which more than the correct amount of annuities or other benefits has been paid under this subchapter to an individual or payment has been made to an individual not entitled thereto who, in the judgment of the Board, is without fault when, in the judgment of the Board, recovery would be contrary to the purpose of this subchapter or the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.] or would be against equity or good conscience.

(d) Liability of officers

No certifying or disbursing officer shall be held liable for any amount certified or paid by him in good faith to any person where the recovery of such amount is waived under subsection (c) of this section or has been begun but cannot be completed under subsection (a) of this section.

(Aug. 29, 1935, ch. 812, § 10, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1344; amended Pub. L. 97–35, title XI, § 1123, Aug. 13, 1981, 95 Stat. 638.)

REFERENCES IN TEXT

The Railroad Unemployment Insurance Act, referred to in subsecs. (a) and (c), is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to chapter 11 (§ 351 et seq.) of this title. For complete classification of this Act to the Code, see section 367 of this title and Tables.

The Social Security Act, referred to in subsec. (a), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1981—Subsec. (a). Pub. L. 97–35 inserted provisions authorizing Board to recover from any payment which would be made to an individual by Board under section 231f(b)(2) of this title amount of annuity payments made to such individual which are erroneous because of such individual's entitlement to monthly insurance benefits under title II of the Social Security Act.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Jan. 1, 1975, see section 1129 of Pub. L. 97–35, set out as a note under section 231 of this title.

§ 231j. Waiver of annuities

Any person awarded an annuity under this subchapter may decline to accept all or any part of such annuity by a waiver signed and filed with the Board. Such a waiver may be revoked in writing at any time, but no payment of the annuity waived shall be made covering the period during which such waiver was in effect. Such a waiver will have no effect on entitlement to, or the amount of, any other annuity or benefit.

(Aug. 29, 1935, ch. 812, § 11, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1344.)

§ 231k. Incompetence

(a) Every individual receiving or claiming benefits, or to whom any right or privilege is extended, under this subchapter or any other Act of Congress now or hereafter administered, in whole or in part, by the Board shall be conclusively presumed to have been competent until the date on which the Board receives written notice, in a form and manner acceptable to the Board, that he is an incompetent, or a minor, for whom a guardian or other person legally vested with the care of his person or estate has been appointed: *Provided, however*, That, regardless of the legal competency or incompetency of an individual entitled to a benefit administered by the Board, the Board may, if it finds the interest of such individual to be served thereby, recognize actions by, and conduct transactions with, and make payments to, such individual, or recognize actions by, and conduct transactions with, and make payments to, a relative or some other person for such individual's use and benefit.

(b) Every guardian or other person legally vested with the care of the person or estate of an incompetent or minor who is receiving or claiming benefits, or to whom any right or privilege is extended, under this subchapter or any other Act of Congress now or hereafter administered, in whole or in part, by the Board shall have power everywhere, in the manner and to the extent prescribed by the Board, but subject to the provisions of the preceding subsection, to take any action necessary or appropriate to perfect any right or exercise any privilege of the incompetent or minor and to conduct all transactions on his behalf under this subchapter or any other Act of Congress now or hereafter administered, in whole or in part, by the Board. Any payment made pursuant to the provisions of this section shall be a complete settlement and satisfaction of any claim, right, or interest in and to such payment.

(Aug. 29, 1935, ch. 812, § 12, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1345.)

§ 231*l*. Penalties

(a) Any person who shall knowingly fail or refuse to make any report or furnish any information required by the Board in the administration of this subchapter, including the provisions of section 231f(b)(2) of this title or who shall knowingly make or cause to be made any false or fraudulent statement or report when a statement or report is required to be made for the purpose of this subchapter, or who shall knowingly make or aid in making any false or fraudulent statement or claim for the purpose of causing an award or payment to be made, shall be punished by a fine of not more than $10,000 or by imprisonment not exceeding one year, or both.

(b) All fines and penalties imposed by a court pursuant to this subchapter shall be paid to the court and be remitted from time to time by order of the judge to the Treasury of the United States to be credited to the Railroad Retirement Account.

(Aug. 29, 1935, ch. 812, § 13, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1345.)

§ 231m. Assignability; exemption from levy

(a) Except as provided in subsection (b) of this section and the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.], notwithstanding any other law of the United States, or of any State, territory, or the District of Columbia, no annuity or supplemental annuity shall be assignable or be subject to any tax or to garnishment, attachment, or other legal process under any circumstances whatsoever, nor shall the payment thereof be anticipated[1]

(b)(1) This section shall not operate to exclude the amount of any supplemental annuity paid to an individual under section 231a(b) of this title from income taxable pursuant to the Federal income tax provisions of the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.].

(2) This section shall not operate to prohibit the characterization or treatment of that portion of an annuity under this subchapter which is not computed under section 231b(a), 231c(a), or 231c(f) of this title, or any portion of a supplemental annuity under this subchapter, as community property for the purposes of, or property subject to, distribution in accordance with a court decree of divorce, annulment, or legal separation or the terms of any court-approved property settlement incident to any such court decree. The Board shall make payments of such portions in accordance with any such characterization or treatment or any such decree or settlement.

(Aug. 29, 1935, ch. 812, § 14, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1345; amended Pub. L. 98–76, title IV, § 419(a), Aug. 12, 1983, 97 Stat. 438; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

AMENDMENTS

1986—Subsecs. (a), (b)(1). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1983—Subsec. (a). Pub. L. 98–76, § 419(a)(1), substituted ''(a) Except as provided in subsection (b) of this section and the Internal Revenue Code of 1954, notwithstanding'' for ''Notwithstanding''.

Subsec. (b)(1). Pub. L. 98–76, § 419(a)(2), substituted ''(b)(1) This'' for '': *Provided, however*, That the provisions of this''.

Subsec. (b)(2). Pub. L. 98–76, § 419(a)(3), added par. (2).

[1] So in original. Probably should be followed by a period.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 419(b) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending this section] shall apply with respect to annuity amounts payable for months beginning after the date of the enactment of this Act [Aug. 12, 1983].''

§ 231n. Railroad Retirement Account

(a) Maintenance of account; authorization of appropriations

The Railroad Retirement Account established by section 15(a) of the Railroad Retirement Act of 1937 [45 U.S.C. 228*o*(a)] shall continue to be maintained in the Treasury of the United States. There is hereby appropriated to such Account for each fiscal year, beginning with the fiscal year ending June 30, 1975, to provide for the payment of benefits to be made from such Account in accordance with the provisions of section 231f(c)(1) of this title, and to provide for expenses necessary for the Board in the administration of all provisions of this subchapter, an amount equal to amounts covered into the Treasury (minus refunds) during each fiscal year under the Railroad Retirement Tax Act [26 U.S.C. 3201 et seq.].

(b) Authorization of appropriations; military service costs and administrative expenses

In addition to the amount appropriated in subsection (a) of this section, there is hereby authorized to be appropriated to the Railroad Retirement Account for each fiscal year, beginning with the fiscal year ending June 30, 1975, such amount as the Board determines to be necessary to meet (A) the additional costs, resulting from the crediting of military service under this subchapter, of benefits payable under section 231a of this title, but only to the extent that such Account is not reimbursed for such costs under section 231f(c)(2) of this title, (B) the additional administrative expenses resulting from the crediting of military service under this subchapter, and (C) any loss in interest to such Account resulting from the payment of additional benefits based on military service credited under this subchapter: *Provided, however*, That, in determining the amount to be appropriated to the Railroad Retirement Account for any fiscal year pursuant to the provisions of this subsection, there shall not be considered any costs resulting from the crediting of military service under this subchapter for which appropriations to such Account have already been made pursuant to section 4(*l*) of the Railroad Retirement Act of 1937 [45 U.S.C. 228c–1(*l*)]. Any determination as to loss in interest to the Railroad Retirement Account pursuant to clause (C) of the first sentence of this subsection shall take into account interest from the date each annuity based, in part, on military service began to accrue or was increased to the date or dates on which the amount appropriated is credited to the Account. The cost resulting from the payment of additional benefits under this subchapter based on military service determined pursuant to the preceding provisions of this subsection shall be adjusted by applying thereto the ratio of the total net level cost of all benefits under this subchapter to the portion of such net level cost remaining after the exclusion of administrative expenses and interest charges on the unfunded accrued liability as determined under the last completed actuarial valuation pursuant to the provisions of subsection (g) of this section. At the close of the fiscal year ending June 30, 1975, and each fiscal year thereafter, the Board shall, as promptly as practicable, determine the amount to be appropriated to the Account pursuant to the provisions of this subsection, and shall certify such amount to the Secretary of the Treasury for transfer from the general fund in the Treasury to the Railroad Retirement Account. When authorized by an appropriation Act, the Secretary of the Treasury shall transfer to the Railroad Retirement Account from the general fund in the Treasury such amounts as, from time to time, may be determined by the Board pursuant to the provisions of this subsection and certified by the Board for transfer to such Account. In any determination made pursuant to section 231f(c)(2) of this title, no further charges shall be made against the Trust Funds established by title II of the Social Security Act [42 U.S.C. 401 et seq.] for military service rendered before January 1, 1957, and with respect to which appropriations authorized by clause (2) of the first sentence of section 4(*l*) of the Railroad Retirement Act of 1937 shall have been credited to the Railroad Retirement Account, but the additional benefit payments incurred by such Trust Funds by reason of such military service shall be taken in account in making any such determination.

(c) Repealed. Pub. L. 107–90, title I, § 106(b), Dec. 21, 2001, 115 Stat. 887

(d) Dual Benefits Payments Account

(1) There is hereby created an account in the Treasury of the United States to be known as the Dual Benefits Payments Account. There is hereby authorized to be appropriated to such account for each fiscal year beginning with the fiscal year ending September 30, 1982, such sums as are necessary to pay during such fiscal year the amounts of annuities estimated by the Board to be paid under sections 231b(h), 231c(e), and 231c(h) of this title and under sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93–445. Not more than 30 days prior to each fiscal year beginning with the fiscal year ending September 30, 1982, the Board may request the Secretary of the Treasury to transfer from the Railroad Retirement Account to the credit of the Dual Benefits Payments Account any amount not exceeding the amount that the Board estimates will be necessary to pay on the first day of the next succeeding month the annuity amounts under sections 231b(h), 231c(e), and 231c(h) of this title and under sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93–445, taking into account any reduction in such annuity amounts as determined under section 231f(c)(1) of this title, and the Secretary of the Treasury shall make such transfer, but at no time shall the total amount of money outstanding to the Dual Benefits Payments Account from the Railroad Retirement Account exceed the amount necessary to pay the annuity amounts under sections 231b(h), 231c(e), and 231c(h) of this title and sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93–445 for one month. Not more than 10 days

after the funds appropriated to the Dual Benefits Payments Account for each such fiscal year are received into such Account, the Board shall request the Secretary of the Treasury to retransfer from the Dual Benefits Payments Account to the credit of the Railroad Retirement Account an amount equal to the amount transferred to the Dual Benefits Payments Account prior to or during such fiscal year under the preceding sentence, together with such additional amount determined by the Board to be equal to the loss of interest to the Railroad Retirement Account resulting from such transfer, and the Secretary of the Treasury shall make such retransfer. The Secretary of the Treasury shall from time to time transfer from the Dual Benefits Payments Account to the disbursing agent under section 231f(b)(4) of this title amounts necessary to pay benefits payable from that Account.

(2) The Secretary of the Treasury—

(i) shall transfer from the general fund as a loan to the Board on January 1, 1984, one-third of the special amount described in subdivision (3) of this subsection;

(ii) shall transfer from the general fund as a loan to the Board on January 1, 1985, one-third of the special amount described in subdivision (3) of this subsection, plus an amount equal to the interest that one-third would have earned had it been in the Railroad Retirement Account since January 1, 1984; and

(iii) shall transfer from the general fund as a loan to the Board on January 1, 1986, the final one-third of the special amount described in subdivision (3) of this subsection, plus an amount equal to the interest that one-third would have earned had it been in the Railroad Retirement Account since January 1, 1984.

(3) The special amount referred to in subdivision (2) of this subsection is the amount which, as of January 1, 1984, would place the Railroad Retirement Account in the same position it would have been on that date if no annuity amounts had been paid during the period beginning January 1, 1975 and ending September 30, 1981, under sections 231b(h), 231c(e), and 231c(h) of this title and under sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93–445, and no sums had been appropriated as authorized in this subsection.

(4) For the purposes of subdivision (2) of this subsection, the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities issued after August 12, 1983, under section 3102 of title 31 and the purposes for which securities may be so issued are extended to include such purposes.

(5) The amounts transferred to the Board as loans under subdivision (2) of this subsection shall be deposited in the Railroad Retirement Account.

(6) The amounts transferred as loans under subdivision (2) of this subsection shall be repaid to the general fund to the extent sums are appropriated for that purpose, and there are hereby authorized to be appropriated, in addition to any other sums authorized to be appropriated for the purposes of this subchapter and from any sums in the Treasury not otherwise appropriated, such sums as may be necessary to make such repayments.

(e) Investments

At the request and direction of the Board, it shall be the duty of the Secretary of the Treasury (hereinafter referred to as the ''Secretary'') to invest such portion of the amounts credited to the Railroad Retirement Account and the Dual Benefits Payments Account as are not transferred to the National Railroad Retirement Investment Trust as the Board may determine in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (A) on original issue at the issue price; or (B) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31, are hereby extended to authorize the issuance at par of special obligations exclusively to the accounts. Such obligations issued for purchase by the accounts shall have maturities fixed with due regard for the needs of the accounts, and shall bear interest at a rate equal to the average market yield, computed as of the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing notes of the United States then forming a part of the public debt that are not due or callable until after the expiration of three years from the end of such calendar month, except that where such rate is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligation shall be the multiple of one-eighth of 1 per centum nearest such rate: *Provided*, That the rate of interest on such obligations shall in no case be less than 3 per centum per annum. At the request of the Board the Secretary shall purchase other interest-bearing obligations of the United States, or obligations guaranteed as to both principal and interest by the United States, or other obligations which are lawful investments for trust funds of the United States, on original issue or at the market price: *Provided*, That the interest yield of such obligations shall not be less than the interest rate determined in accordance with the preceding sentence. At the request of the Board, the Secretary shall sell at the market price such obligations in the accounts (other than special obligations issued exclusively to the accounts) as the Board designates. The Board shall from time to time request the Secretary to redeem such special obligations issued exclusively to the accounts as the Board designates and upon such request the Secretary shall redeem such obligations at par plus accrued interest. All requests of the Board to the Secretary, provided for in this subsection, shall be mandatory upon the Secretary. It shall be the duty of the Board to determine at all times what proportion of the accounts shall be invested in other than special obligations issued to the accounts and further to determine which of such obligations available to the accounts consistent with the requirements of this subsection will provide the greatest rate of return on the funds invested.

(f) Actuarial Advisory Committee

The Board is hereby authorized and directed to select two actuaries, one from recommendations made by representatives of employees and

the other from recommendations made by representatives of employers as defined in paragraph (i) of section 231(a)(1) of this title. These actuaries, along with a third who shall be designated by the Secretary of the Treasury, shall be known as the Actuarial Advisory Committee with respect to the Railroad Retirement Account. The actuaries so selected shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of pension plans: *Provided, however*, That these requirements shall not apply to any actuary who served as a member of the Committee prior to January 1, 1975. The Committee shall examine the actuarial reports and estimates made by the Board and shall have authority to recommend to the Board such changes in actuarial methods as they may deem necessary. The compensation of the members of the Committee, exclusive of the member designated by the Secretary, shall be fixed by the Board on a per diem basis.

(g) Annual report

The Board shall include in its annual report a statement of the status and the operations of the Railroad Retirement and Railroad Retirement Supplemental Accounts, and the Dual Benefits Payments Account. At intervals not longer than three years the Board shall make an estimate of the liabilities created by this subchapter and shall include such estimate in its annual report.

(h) Authorization of appropriations; administrative expenses of subchapter

There are hereby authorized to be appropriated from time to time such sums as may be necessary to provide for the expenses of the Board in administering the provisions of this subchapter.

(i) Crediting of accounts for unnegotiated benefit checks

(1) The Secretary of the Treasury shall implement procedures to permit the identification of each check issued for benefits under this subchapter that has not been presented for payment by the close of the sixth month following the month of its issuance.

(2) The Secretary of the Treasury shall, on a monthly basis, credit each account established in the Treasury for the payment of benefits under this subchapter for the proportionate amount of benefit checks (including interest thereon) drawn on each such Account more than six months previously but not presented for payment and not previously credited to such Account, to the extent provided in advance in appropriation Acts.

(3) If a benefit check is presented for payment to the Treasury and the amount of the appropriate portion thereof has been previously credited pursuant to paragraph (2) to an Account or Accounts, the Secretary of the Treasury shall nevertheless pay such check, if otherwise proper, recharge such Account or Accounts for the amount of such check attributable to such Account or Accounts and notify the Board.

(4) A benefit check bearing a current date may be issued to an individual who did not negotiate the original benefit check and who surrenders such check for cancellation if the Secretary of the Treasury determines it is necessary to effect proper payment of benefits.

(j) National Railroad Retirement Investment Trust

(1) Establishment

The National Railroad Retirement Investment Trust (hereinafter in this subsection referred to as the ''Trust'') is hereby established as a trust domiciled in the District of Columbia and shall, to the extent not inconsistent with this subchapter, be subject to the laws of the District of Columbia applicable to such trusts. The Trust shall manage and invest its assets in the manner set forth in this subsection.

(2) Not a Federal agency or instrumentality

The Trust is not a department, agency, or instrumentality of the Government of the United States and shall not be subject to title 31.

(3) Board of Trustees

(A) Generally

(i) Membership

The Trust shall have a Board of Trustees, consisting of 7 members. Three shall represent the interests of labor, 3 shall represent the interests of management, and 1 shall be an independent Trustee. The members of the Board of Trustees shall not be considered officers or employees of the Government of the United States.

(ii) Selection

(I) The 3 members representing the interests of labor shall be selected by the joint recommendation of labor organizations, national in scope, organized in accordance with sections 151a and 152 of this title, and representing at least ⅔ of all active employees, represented by such national labor organizations, covered under this subchapter.

(II) The 3 members representing the interests of management shall be selected by the joint recommendation of carriers as defined in section 151 of this title employing at least ⅔ of all active employees covered under this subchapter.

(III) The independent member shall be selected by a majority of the other 6 members of the Board of Trustees.

A member of the Board of Trustees may be removed in the same manner and by the same constituency that selected that member.

(iii) Dispute resolution

In the event that the parties specified in subclause (I), (II), or (III) of the previous clause cannot agree on the selection of Trustees within 60 days of the date of enactment or 60 days from any subsequent date that a position of the Board of Trustees becomes vacant, an impartial umpire to decide such dispute shall, on the petition of a party to the dispute, be appointed by the District Court of the United States for the District of Columbia.

(B) Qualifications

Members of the Board of Trustees shall be appointed only from among persons who have experience and expertise in the management of financial investments and pension plans. No member of the Railroad Retirement Board shall be eligible to be a member of the Board of Trustees.

(C) Terms

Except as provided in this subparagraph, each member shall be appointed for a 3-year term. The initial members appointed under this paragraph shall be divided into equal groups so nearly as may be, of which one group will be appointed for a 1-year term, one for a 2-year term, and one for a 3-year term. The Trustee initially selected pursuant to clause (ii)(III) shall be appointed to a 3-year term. A vacancy in the Board of Trustees shall not affect the powers of the Board of Trustees and shall be filled in the same manner as the selection of the member whose departure caused the vacancy. Upon the expiration of a term of a member of the Board of Trustees, that member shall continue to serve until a successor is appointed.

(4) Powers of the Board of Trustees

The Board of Trustees shall—

(A) retain independent advisers to assist it in the formulation and adoption of its investment guidelines;

(B) invest assets of the Trust in a manner consistent with such investment guidelines, either directly or through the retention of independent investment managers;

(C) adopt bylaws and other rules to govern its operations;

(D) employ professional staff, and contract with outside advisers, including the Railroad Retirement Board, to provide legal, accounting, investment advisory or management services (compensation for which may be on a fixed contract fee basis or on such other terms as are customary for such services), or other services necessary for the proper administration of the Trust;

(E) sue and be sued and participate in legal proceedings, have and use a seal, conduct business, carry on operations, and exercise its powers within or without the District of Columbia, form, own, or participate in entities of any kind, enter into contracts and agreements necessary to carry out its business purposes, lend money for such purposes, and deal with property as security for the payment of funds so loaned, and possess and exercise any other powers appropriate to carry out the purposes of the Trust;

(F) pay administrative expenses of the Trust from the assets of the Trust; and

(G) transfer money to the disbursing agent or as otherwise provided in section 231f(b)(4) of this title, to pay benefits payable under this subchapter from the assets of the Trust.

(5) Reporting requirements and fiduciary standards

The following reporting requirements and fiduciary standards shall apply with respect to the Trust:

(A) Duties of the Board of Trustees

The Trust and each member of the Board of Trustees shall discharge their duties (including the voting of proxies) with respect to the assets of the Trust solely in the interest of the Railroad Retirement Board and through it, the participants and beneficiaries of the programs funded under this subchapter—

(i) for the exclusive purpose of—

(I) providing benefits to participants and their beneficiaries; and

(II) defraying reasonable expenses of administering the functions of the Trust;

(ii) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(iii) by diversifying investments so as to minimize the risk of large losses and to avoid disproportionate influence over a particular industry or firm, unless under the circumstances it is clearly prudent not to do so; and

(iv) in accordance with Trust governing documents and instruments insofar as such documents and instruments are consistent with this subchapter.

(B) Prohibitions with respect to members of the Board of Trustees

No member of the Board of Trustees shall—

(i) deal with the assets of the Trust in the Trustee's own interest or for the Trustee's own account;

(ii) in an individual or in any other capacity act in any transaction involving the assets of the Trust on behalf of a party (or represent a party) whose interests are adverse to the interests of the Trust, the Railroad Retirement Board, or the interests of participants or beneficiaries; or

(iii) receive any consideration for the Trustee's own personal account from any party dealing with the assets of the Trust.

(C) Exculpatory provisions and insurance

Any provision in an agreement or instrument that purports to relieve a Trustee from responsibility or liability for any responsibility, obligation, or duty under this subchapter shall be void: *Provided, however*, That nothing shall preclude—

(i) the Trust from purchasing insurance for its Trustees or for itself to cover liability or losses occurring by reason of the act or omission of a Trustee, if such insurance permits recourse by the insurer against the Trustee in the case of a breach of a fiduciary obligation by such Trustee;

(ii) a Trustee from purchasing insurance to cover liability under this section from and for his own account; or

(iii) an employer or an employee organization from purchasing insurance to cover potential liability of one or more Trustees with respect to their fiduciary responsibil-

ities, obligations, and duties under this section.

(D) Bonding

Every Trustee and every person who handles funds or other property of the Trust (hereafter in this subsection referred to as ''Trust official'') shall be bonded. Such bond shall provide protection to the Trust against loss by reason of acts of fraud or dishonesty on the part of any Trust official, directly or through the connivance of others, and shall be in accordance with the following:

(i) The amount of such bond shall be fixed at the beginning of each fiscal year of the Trust by the Railroad Retirement Board. Such amount shall not be less than 10 percent of the amount of the funds handled. In no case shall such bond be less than $1,000 nor more than $500,000, except that the Railroad Retirement Board, after consideration of the record, may prescribe an amount in excess of $500,000, subject to the 10 per centum limitation of the preceding sentence.

(ii) It shall be unlawful for any Trust official to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of the Trust without being bonded as required by this subsection and it shall be unlawful for any Trust official, or any other person having authority to direct the performance of such functions, to permit such functions, or any of them, to be performed by any Trust official, with respect to whom the requirements of this subsection have not been met.

(iii) It shall be unlawful for any person to procure any bond required by this subsection from any surety or other company or through any agent or broker in whose business operations such person has any control or significant financial interest, direct or indirect.

(E) Audit and report

(i) The Trust shall annually engage an independent qualified public accountant to audit the financial statements of the Trust.

(ii) The Trust shall submit an annual management report to the Congress not later than 180 days after the end of the Trust's fiscal year. A management report under this subsection shall include—

(I) a statement of financial position;

(II) a statement of operations;

(III) a statement of cash flows;

(IV) a statement on internal accounting and administrative control systems;

(V) the report resulting from an audit of the financial statements of the Trust conducted under clause (i); and

(VI) any other comments and information necessary to inform the Congress about the operations and financial condition of the Trust.

(iii) The Trust shall provide the President, the Railroad Retirement Board, and the Director of the Office of Management and Budget a copy of the management report when it is submitted to Congress.

(F) Enforcement

The Railroad Retirement Board may bring a civil action—

(i) to enjoin any act or practice by the Trust, its Board of Trustees, or its employees or agents that violates any provision of this subchapter; or

(ii) to obtain other appropriate relief to redress such violations, or to enforce any provisions of this subchapter.

(6) State and local taxes

The Trust shall be exempt from any income, sales, use, property, or other similar tax or fee imposed or levied by a State, political subdivision, or local taxing authority. The district courts of the United States shall have original jurisdiction over a civil action brought by the Trust to enforce this subsection and may grant equitable or declaratory relief requested by the Trust.

(7) Quorum

Five members of the Board of Trustees constitute a quorum to do business. Investment guidelines must be adopted by a unanimous vote of the Trustees then holding office. All other decisions of the Board of Trustees shall be decided by a majority vote of the quorum present. All decisions of the Board of Trustees shall be entered upon the records of the Board of Trustees.

(k) Transfers to the Trust

The Board shall, upon establishment of the National Railroad Retirement Investment Trust and from time to time thereafter, direct the Secretary of the Treasury to transfer, in such manner as will maximize the investment returns to the Railroad Retirement system, that portion of the Railroad Retirement Account that is not needed to pay current administrative expenses of the Board to the National Railroad Retirement Investment Trust. The Secretary shall make that transfer.

***(l)* National Railroad Retirement Investment Trust**

The National Railroad Retirement Investment Trust shall from time to time transfer to the disbursing agent described in section 231f(b)(4) of this title or as otherwise directed by the Railroad Retirement Board pursuant to section 231f(b)(4) of this title, such amounts as may be necessary to pay benefits under this subchapter (other than benefits paid from the Social Security Equivalent Benefit Account or the Dual Benefit Payments Account).

(Aug. 29, 1935, ch. 812, § 15, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1346; amended Pub. L. 94–92, title II, § 201(a)–(d), Aug. 9, 1975, 89 Stat. 464, 465; Pub. L. 94–547, § 3(a), Oct. 18, 1976, 90 Stat. 2525; Pub. L. 97–34, title VII, § 742, Aug. 13, 1981, 95 Stat. 348; Pub. L. 97–35, title XI, §§ 1124, 1127(a), Aug. 13, 1981, 95 Stat. 639, 641; Pub. L. 98–76, title III, § 301(b), title IV, §§ 401(a), 417(a), Aug. 12, 1983, 97 Stat. 431, 433, 437; Pub. L. 107–90, title I, §§ 105(a), (b), 106(b), (c), 107(a), (b), (d), Dec. 21, 2001, 115 Stat. 882, 886–889; Pub. L. 108–203, title IV, § 426(a)–(d), (f), Mar. 2, 2004, 118 Stat. 537, 538.)

REFERENCES IN TEXT

Sections 4 and 15 of the Railroad Retirement Act of 1937, referred to in subsecs. (a) and (b)(1), which were classified to sections 228c–1 and 228*o* of this title, have been omitted from the Code.

The Railroad Retirement Tax Act, referred to in subsec. (a), is act Aug. 16, 1954, ch. 736, §§3201, 3202, 3211, 3212, 3221, and 3231 to 3233, 68A Stat. 431, as amended, which is classified generally to chapter 22 (§3201 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see section 3233 of Title 26 and Tables.

The Social Security Act, referred to in subsec. (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Sections 204, 206, and 207 of Pub. L. 93–445, referred to in subsec. (d)(1), (3), are sections 204, 206, and 207 of title II of Pub. L. 93–445, and are set out as part of a Transitional Provisions note under section 231 of this title.

Within 60 days of the date of enactment, referred to in subsec. (j)(3)(A)(iii), probably means within 60 days of the date of enactment of Pub. L. 107–90, which enacted subsec. (j) and was approved Dec. 21, 2001.

AMENDMENTS

2004—Subsec. (j)(4). Pub. L. 108–203, §426(b), reenacted heading without change and amended text of par. (4) generally, substituting provisions relating to retention of independent advisers, investment of assets, adoption of bylaws, employment of professional staff, possession and exercise of any powers appropriate to carry out purposes of Trust, and payment of administrative expenses, consisting of subpars. (A) to (G), for provisions relating to retention of independent advisers, retention of independent investment managers, investment of assets, payment of administrative expenses, and transfer of moneys for payment of benefits, consisting of subpars. (A) to (E).

Subsec. (j)(5)(B). Pub. L. 108–203, §426(f)(1), substituted ''Trustee's'' for ''trustee's'' wherever appearing.

Subsec. (j)(5)(C). Pub. L. 108–203, §426(f)(2), substituted ''Trustee'' for ''trustee'' wherever appearing and ''Trustees'' for ''trustees'' in two places.

Subsec. (j)(5)(D). Pub. L. 108–203, §426(f)(3), substituted ''Trustee'' for ''trustee'' in introductory provisions.

Subsec. (j)(6). Pub. L. 108–203, §426(c), amended heading and text of par. (6) generally. Prior to amendment, text read as follows: ''The Board of Trustees shall have the authority to make rules to govern its operations, employ professional staff, and contract with outside advisers, including the Railroad Retirement Board, to provide legal, accounting, investment advisory, or other services necessary for the proper administration of this subsection. In the case of contracts with investment advisory services, compensation for such services may be on a fixed contract fee basis or on such other terms and conditions as are customary for such services.''

Subsec. (j)(7). Pub. L. 108–203, §426(a), substituted ''Trustees then holding office'' for ''entire Board of Trustees''.

Subsec. (j)(8). Pub. L. 108–203, §426(d), struck out heading and text of par. (8). Text read as follows: ''The expenses of the Trust and the Board of Trustees incurred under this subsection shall be paid from the Trust.''

2001—Subsec. (a). Pub. L. 107–90, §106(c), struck out before period at end '', except those portions of the amounts covered into the Treasury under sections 3211(b), 3221(c), and 3221(d) of such Tax Act as are necessary to provide sufficient funds to meet the obligation to pay supplemental annuities at the level provided under section 231b(e) of this title and, with respect to those entitled to supplemental annuities under section 205(a) of title II of this Act, at the level provided under section 205(a). The Board is directed to determine what portion of the taxes collected under sections 3211(b), 3221(c), and 3221(d) of the Railroad Retirement Tax Act is to be credited to the Railroad Retirement Account pursuant to the preceding provisions of this subsection and what portion of such taxes is to be credited to the Railroad Retirement Supplemental Account pursuant to the provisions of subsection (c) of this section. The Board shall make such a determination with respect to each calendar quarter commencing with the quarter beginning January 1, 1975, shall make each such determination not later than fifteen days before each calendar quarter, and shall, as soon as practicable after each such determination, advise the Secretary of the Treasury of the determination made. The Secretary of the Treasury shall credit the amounts covered into the Treasury under sections 3211(b), 3221(c), and 3221(d) of the Railroad Retirement Tax Act to the Railroad Retirement Account and the Railroad Retirement Supplemental Account in such proportions as is determined by the Board pursuant to the provisions of this subsection''.

Subsec. (c). Pub. L. 107–90, §106(b), struck out subsec. (c) which read as follows: ''The Railroad Retirement Supplemental Account established by section 15(b) of the Railroad Retirement Act of 1937 shall continue to be maintained in the Treasury of the United States. There is hereby appropriated to such account for each fiscal year, beginning with the fiscal year ending June 30, 1975, out of any moneys in the Treasury not otherwise appropriated, to provide for the payment of supplemental annuities under section 231a(b) of this title, and to provide for the expenses necessary for the Board in the administration of the payment of such supplemental annuities, an amount equal to such portions of the amounts covered into the Treasury (minus refunds) during each fiscal year under sections 3211(b), 3221(c), and 3221(d) of the Railroad Retirement Tax Act as are not appropriated to the Railroad Retirement Account pursuant to the provisions of subsection (a) of this section. Whenever the Board finds at any time that the balance in the Railroad Retirement Supplemental Account will be insufficient to pay the supplemental annuities which it estimates are due, or will become due, under section 231a(b) of this title, it shall request the Secretary of the Treasury to transfer from the Railroad Retirement Account to the credit of the Railroad Retirement Supplemental Account such moneys as the Board estimates would be necessary for the payment of such supplemental annuities, and the Secretary shall make such transfer. Whenever the Board finds that the balance in the Railroad Retirement Supplemental Account, without regard to the amounts transferred pursuant to the next preceding sentence, is sufficient to pay such supplemental annuities, it shall request the Secretary of the Treasury to retransfer from the Railroad Retirement Supplemental Account to the credit of the Railroad Retirement Account such moneys as in its judgment are not needed for the payment of such supplemental annuities, plus interest at an annual rate equal to the average rate of interest borne by all special obligations held by the Railroad Retirement Account on the last day of the preceding fiscal year, rounded to the nearest multiple of one-eighth of 1 per centum, and the Secretary shall make such retransfer.''

Subsec. (d)(1). Pub. L. 107–90, §107(d), inserted at end ''The Secretary of the Treasury shall from time to time transfer from the Dual Benefits Payments Account to the disbursing agent under section 231f(b)(4) of this title amounts necessary to pay benefits payable from that Account.''

Subsec. (e). Pub. L. 107–90, §105(b)(1), substituted ''and the Dual Benefits Payments Account as are not transferred to the National Railroad Retirement Investment Trust as the Board may determine'' for '', the Dual Benefits Payments Account and the Railroad Retirement Supplemental Account as, in the judgment of the

Board, is not immediately required for the payment of annuities, supplemental annuities, and death benefits. Such investments may be made only''.

Pub. L. 107–90, § 105(b)(2), (3), substituted ''chapter 31 of title 31'' for ''the Second Liberty Bond Act, as amended'' and ''the requirements of this subsection'' for ''the foregoing requirements''.

Subsec. (j). Pub. L. 107–90, § 105(a), added subsec. (j).

Subsec. (k). Pub. L. 107–90, § 107(a), added subsec. (k).

Subsec. (*l*). Pub. L. 107–90, § 107(b), added subsec. (*l*).

1983—Subsec. (b). Pub. L. 98–76, § 301(b), amended subsec. (b) generally, redesignating par. (1) as subsec. (b) and striking out par. (2) which read as follows: ''In any month when the Board finds that the balance in the Railroad Retirement Account is insufficient to pay annuity amounts due to be paid during the following month, the Board shall report to the Secretary of the Treasury the additional amount of money necessary in order to make such annuity payments, and the Secretary shall transfer to the credit of the Railroad Retirement Account such additional amount upon receiving such report from the Board. The total amount of money outstanding to the Railroad Retirement Account from the general fund at any time during any fiscal year shall not exceed the total amount of money the Board and the Trustees of the Social Security Trust Fund estimate will be transferred to the Railroad Retirement Account pursuant to section 231f(c)(2) of this title with respect to such fiscal year. Whenever the Board determines that the sums in the Railroad Retirement Account are sufficient to pay annuity amounts, the Board shall request the Secretary of the Treasury to retransfer to the general fund from the Railroad Retirement Account all or any part of the amount outstanding, and the Secretary of the Treasury shall make such retransfer of the amount requested. Not later than 10 days after a transfer to the Railroad Retirement Account under section 231f(c)(2) of this title, any amount of money outstanding to the Railroad Retirement Account from the general fund under this subdivision shall be retransferred in accordance with this subdivision. Any amount retransferred shall include an amount of interest computed at a rate determined in accordance with the following two sentences: The rate of interest payable with respect to an amount outstanding for any month shall be equal to the average investment yield for the most recent auction (before such month) of United States Treasury bills with maturities of 52 weeks, deeming any amount outstanding at the beginning of a month to have been borrowed at the beginning of such month. For this purpose the amount of interest computed in accordance with the preceding sentence but not repaid by the end of such month shall be added to the amount outstanding at the beginning of the next month.''

Subsec. (d)(1). Pub. L. 98–76, § 401(a)(1)–(3), designated existing provisions as par. (1), substituted ''the amount that the Board estimates will be necessary to pay on the first day of the next succeeding month the annuity amounts under sections 231b(h), 231c(e), and 231c(h) of this title and under sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93–445, taking into account any reduction in such annuity amounts as determined under section 231f(c)(1) of this title, and the Secretary of the Treasury shall make such transfer, but at no time shall the total amount of money outstanding to the Dual Benefits Payments Account from the Railroad Retirement Account exceed the amount necessary to pay the annuity amounts under sections 231b(h), 231c(e), and 231c(h) of this title and sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93–445 for one month'' for ''one-twelfth of the amount which the Board has determined will be the amount of the appropriation to be made to the Dual Benefits Payments Account under the applicable public law making such appropriation for such fiscal year, and the Secretary of the Treasury shall make such transfer'', and inserted ''or during'' after ''prior to'' in last sentence.

Subsec. (d)(2) to (6). Pub. L. 98–76, § 401(a)(4), added pars. (2) to (6).

Subsec. (i). Pub. L. 98–76, § 417(a), added subsec. (i).

1981—Subsec. (b). Pub. L. 97–35, § 1127(a), made amendments identical to those of Pub. L. 97–34. See Amendment note below.

Pub. L. 97–34 designated existing provisions as subdiv. (1) and added subdiv. (2).

Subsec. (d). Pub. L. 97–35, § 1124(a), substituted provisions relating to creation of Dual Benefits Payments Account, authorizations of appropriations, and transfer and retransfer of funds for provisions relating to authorization of appropriations to Railroad Retirement Account.

Subsecs. (e), (g). Pub. L. 97–35, § 1124(b), (c), inserted reference to Dual Benefits Payments Account.

1976—Subsec. (c). Pub. L. 94–547 permitted Supplemental Account to borrow enough money from regular Railroad Retirement Account to continue payment of supplemental annuities during any period in which Supplemental Account was otherwise temporarily lacking in funds for this purpose, with any amounts so borrowed to be repaid, with interest, as soon as Supplemental Account has been credited with sufficient tax payments to both pay supplemental annuities on a current basis and repay amount of loan, and with authority granted to increase tax rate for calendar quarter following existence of a deficiency in Supplemental Account's funds to take account of deficiency.

1975—Subsec. (a). Pub. L. 94–92, § 201(a), substituted in second sentence ''is hereby appropriated'' for ''is hereby authorized to be appropriated''.

Subsec. (b). Pub. L. 94–92, § 201(b), substituted in introductory text ''amount appropriated'' for ''amount authorized to be appropriated''.

Subsec. (c). Pub. L. 94–92, § 201(c), substituted in second sentence ''is hereby appropriated'' for ''is hereby authorized to be appropriated'' and inserted ''out of any moneys in the Treasury not otherwise appropriated'' after ''June 30, 1975,''.

Subsec. (h). Pub. L. 94–92, § 201(d), added subsec. (h).

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–90, title I, § 105(d), Dec. 21, 2001, 115 Stat. 887, provided that: ''The amendments made by this section [amending this section] shall take effect on the first day of the month that begins more than 30 days after enactment [Dec. 21, 2001].''

Pub. L. 107–90, title I, § 106(e), Dec. 21, 2001, 115 Stat. 887, provided that:

''(1) IN GENERAL.—Subject to paragraph (2), the amendments made by subsections (a), (b), and (c) [amending this section and section 231f of this title] shall take effect January 1, 2002.

''(2) ACCOUNT IN EXISTENCE UNTIL TRANSFER MADE.—The Railroad Retirement Supplemental Account under section 15(c) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(c)) shall continue to exist until the date that the Secretary of the Treasury makes the transfer described in subsection (d)(2) [set out as a note below].''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 301(c)(2) of Pub. L. 98–76 provided that: ''The amendments made by subsection (b) of this section [amending this section] shall be effective on the date immediately following the day in June 1984 when the total amount of money outstanding to the Railroad Retirement Account under section 15(b)(2) of the Railroad Retirement Act of 1974 [subsec. (b)(2) of this section] is retransferred to the general fund under that section.''

Section 401(b) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending this section] shall be effective upon enactment [Aug. 12, 1983].''

Section 417(b) of Pub. L. 98–76 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to all checks for benefits under this Act [this subchapter] which are issued on or after May 1, 1985.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35, effective Oct. 1, 1981, see section 1129(g) of Pub. L. 97–35, set out as a note under section 231 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 3(b) of Pub. L. 94–547 provided that: ''The amendment made by this section [amending this section] shall be effective on the enactment date of this Act [Oct. 18, 1976].''

EFFECTIVE DATE OF 1975 AMENDMENT

Section 201(e) of Pub. L. 94–92 provided that: ''The amendments [amending this section] made by this section shall be effective January 1, 1975.''

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

PURCHASE OR SALE OF NON-FEDERAL ASSETS; MEANS OF FINANCING

Pub. L. 107–90, title I, §105(c), Dec. 21, 2001, 115 Stat. 887, provided that: ''For all purposes of the Congressional Budget Act of 1974 [see Short Title note set out under section 621 of Title 2, The Congress], the Balanced Budget and Emergency Deficit Control Act of 1985 [see Short Title note set out under section 900 of Title 2], and chapter 11 of title 31, United States Code, and notwithstanding section 20 of the Office of Management and Budget Circular No. A–11, the purchase or sale of non-Federal assets (other than gains or losses from such transactions) by the National Railroad Retirement Investment Trust shall be treated as a means of financing.''

TRANSFER OF FUNDS IN THE RAILROAD RETIREMENT SUPPLEMENTAL ACCOUNT

Pub. L. 107–90, title I, §106(d), Dec. 21, 2001, 115 Stat. 887, provided that:

''(1) DETERMINATION.—As soon as possible after December 31, 2001, the Railroad Retirement Board shall—

''(A) determine the amount of funds in the Railroad Retirement Supplemental Account under section 15(c) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(c)) as of the date of such determination; and

''(B) direct the Secretary of the Treasury to transfer such funds to the National Railroad Retirement Investment Trust under section 15(j) of such Act [45 U.S.C. 231n(j)] (as added by section 105).

''(2) TRANSFER BY THE SECRETARY OF THE TREASURY.—The Secretary of the Treasury shall make the transfer described in paragraph (1).''

TRANSITIONAL RULE FOR EXISTING OBLIGATION

Pub. L. 107–90, title I, §107(g), Dec. 21, 2001, 115 Stat. 889, provided that: ''In making transfers under sections 15(k) and 15A(d)(2) of the Railroad Retirement Act of 1974 [45 U.S.C. 231n(k), 231n–1(d)(2)], as amended by subsections (a) and (c), respectively, the Railroad Retirement Board shall consult with the Secretary of the Treasury to design an appropriate method to transfer obligations held as of the date of enactment of this Act [Dec. 21, 2001] or to convert such obligations to cash at the discretion of the Railroad Retirement Board prior to transfer. The National Railroad Retirement Investment Trust may hold to maturity any obligations so received or may redeem them prior to maturity, as the Trust deems appropriate.''

COMMISSION ON RAILROAD RETIREMENT REFORM

Pub. L. 100–203, title IX, §9033, Dec. 22, 1987, 101 Stat. 1330–296, as amended by Pub. L. 100–647, title VII, §7108, Nov. 10, 1988, 102 Stat. 3774, established a commission, known as Commission on Railroad Retirement Reform, to conduct a comprehensive study of the issues pertaining to long-term financing of railroad retirement system and the system's short-term and long-term solvency, required Commission to submit not later than Oct. 1, 1990, a report containing a detailed statement of its findings and conclusions together with recommendations to Congress for revisions in, or alternatives to, current system to assure provision of retirement benefits to former, present, and future railroad employees on an actuarially sound basis, and provided for termination of Commission 60 days after submission of report.

SECTION 72(r) REVENUE INCREASE TRANSFERRED TO CERTAIN RAILROAD RETIREMENT ACCOUNTS

Section 224(c) of Pub. L. 98–76, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–203, title IX, §9034, Dec. 22, 1987, 101 Stat. 1330–299; Pub. L. 101–239, title X, §10102, Dec. 19, 1989, 103 Stat. 2471; Pub. L. 101–508, title V, §5126, Nov. 5, 1990, 104 Stat. 1388–286; Pub. L. 103–296, title III, §317, Aug. 15, 1994, 108 Stat. 1532, provided that:

''(1) IN GENERAL.—

''(A) TRANSFERS TO RAILROAD RETIREMENT ACCOUNT.—There are hereby appropriated to the Railroad Retirement Account amounts (other than amounts described in subparagraph (B)) equivalent to the aggregate increase in tax liabilities under chapter 1 of the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.] which is attributable to the application of section 72(r) of the Internal Revenue Code of 1986 [26 U.S.C. 72(r)] (as added by this Act).

''(B) REVENUE INCREASES ATTRIBUTABLE TO WINDFALL BENEFITS RECEIVED AFTER SEPTEMBER 30, 1988, TRANSFERRED TO DUAL BENEFITS PAYMENTS ACCOUNT.—There are hereby appropriated to the Dual Benefits Payments Account amounts equivalent to the aggregate increase in tax liabilities under chapter 1 of such Code which is attributable to the application of section 72(r) of such Code (as added by this Act) with respect to windfall benefits received after September 30, 1988.

''(C) WINDFALL BENEFITS DEFINED.—For purposes of this paragraph, the term 'windfall benefits' means any benefit paid under section 3(h), 4(e), or 4(h) of the Railroad Retirement Act of 1974 [sections 231b(h), 231(e), (h) of this title].

''(2) TRANSFERS.—The amounts appropriated by paragraph (1) shall be transferred from time to time (but not less frequently than quarterly) from the general fund of the Treasury on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in paragraph (1). Any such quarterly payment shall be made on the first day of such quarter and shall take into account benefits estimated to be received during such quarter. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

''(3) REVENUE INCREASES FROM TAX ON SUPPLEMENTAL ANNUITIES NOT INCLUDED.—Paragraph (1) shall not apply to tax liabilities attributable to supplemental annuities paid under section 2(b) of the Railroad Retirement Act of 1974 [section 231a(b) of this title].''

TAX USED TO REPAY LOANS MADE TO RAILROAD UNEMPLOYMENT INSURANCE ACCOUNT

Section 232 of Pub. L. 98–76, as amended by Pub. L. 99–272, title XIII, §13301(c), Apr. 7, 1986, 100 Stat. 326; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–647, title VII, §7106(c)(6), (7), Nov. 10, 1988, 102 Stat. 3774; Pub. L. 101–508, title XI, §11704(a)(40), Nov. 5, 1990, 104 Stat. 1388–520, provided that:

''(a) TRANSFER TO RAILROAD RETIREMENT ACCOUNT.—

''(1) IN GENERAL.—The Secretary of the Treasury shall transfer from the general fund of the Treasury to the Railroad Retirement Account an amount equal

to the additional railroad unemployment taxes received in the Treasury.

''(2) TAXES CREDITED AGAINST LOANS TO RAILROAD UNEMPLOYMENT INSURANCE ACCOUNT.—

''(A) TAXES ATTRIBUTABLE TO BASIC RATE TO REDUCE RAILROAD UNEMPLOYMENT LOANS MADE BEFORE OCTOBER 1, 1985.—So much of the amount transferred under paragraph (1) as is not attributable to the surtax rate under section 7106(b) of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 [Pub. L. 100–647, set out as a note under section 3321 of Title 26, Internal Revenue Code] shall be credited against, and operate to reduce, the outstanding balance of railroad unemployment loans made before October 1, 1985.

''(B) TAXES ATTRIBUTABLE TO SURTAX RATE TO REDUCE RAILROAD UNEMPLOYMENT LOANS MADE AFTER SEPTEMBER 30, 1985.—So much of the amount transferred under paragraph (1) as is attributable to the surtax rate under section 7106(b) of such Act shall be credited against, and operate to reduce, the outstanding balance of railroad unemployment loans made after September 30, 1985.

''(b) TRANSFERS MADE MONTHLY.—Transfers under subsection (a) shall be made at least monthly on the basis of estimates made by the Secretary of the Treasury of the amount of the additional railroad unemployment taxes received in the Treasury. Proper adjustments shall be made in the amount subsequently transferred to the extent prior estimates were in excess of or were less than the amounts required to be transferred.

''(c) TRANSFERS TO RAILROAD UNEMPLOYMENT FUND AFTER LOANS REPAID.—If—

''(1) the amount described in subparagraph (A) or (B) of subsection (a)(2) which (but for this subsection) would be transferred to the Railroad Retirement Account under subsection (a), exceeds—

''(2) the outstanding balance of railroad unemployment loans (as of the time of such transfer) against which the amount described in such subparagraph may be credited under such subparagraph,

such transfer (to the extent it exceeds such outstanding balance) shall be made to the Railroad Unemployment Account.

''(d) DEFINITIONS.—For purposes of this section—

''(1) ADDITIONAL RAILROAD UNEMPLOYMENT TAXES.—The term 'additional railroad unemployment taxes' means the taxes imposed by chapter 23A of the Internal Revenue Code of 1986 [26 U.S.C. 3321 et seq.].

''(2) RAILROAD UNEMPLOYMENT ACCOUNT.—The term 'Railroad Unemployment Account' means the railroad unemployment insurance account in the unemployment trust fund established pursuant to section 904 of the Social Security Act [42 U.S.C. 1104].

''(3) RAILROAD UNEMPLOYMENT LOANS.—The term 'railroad unemployment loans' means transfers under section 10(d) of the Railroad Unemployment Insurance Act [45 U.S.C. 360(d)] from the Railroad Retirement Account to the Railroad Unemployment Account. The outstanding balance of such loans shall include any interest required to be paid under such section 10(d).''

REIMBURSEMENT OF RAILROAD RETIREMENT ACT ACCOUNTS; ''UNNEGOTIATED BENEFIT CHECKS'' DEFINED

Section 417(c) of Pub. L. 98–76 provided that:

''(1) The Secretary of the Treasury shall transfer from the general fund of the Treasury to each Account established in the Treasury for the payment of benefits under the Railroad Retirement Act of 1974 [this subchapter] in the month following the month in which this section is enacted [Aug. 1983] and in each of the next succeeding months until May, 1985, such sums as may be necessary to reimburse such Accounts in the proportionate amount of all checks (including interest thereon) attributable to such Accounts which the Secretary and the Board jointly determine to be unnegotiated benefit checks, to the extent provided in advance in appropriation Acts. After any amounts authorized by this subsection have been transferred to an Account or Accounts with respect to any benefit check, the provisions of paragraphs (3) and (4) of section 15(i) of the Railroad Retirement Act of 1974 (as added by subsection (a) of this section) [subsec. (i)(3), (4) of this section] shall be applicable to such check.

''(2) As used in paragraph (1) of this subsection, the term 'unnegotiated benefit checks' means checks for benefits under the Railroad Retirement Act of 1974 [this subchapter] or under the Railroad Retirement Act of 1937 [subchapter III of this chapter] which are issued prior to May 1, 1985, which remain unnegotiated after the sixth month following the date on which they were issued, and with respect to which no transfers have previously been made in accordance with the first sentence of such paragraph.''

TREATMENT OF CERTAIN CREDITS AS AMOUNTS COVERED INTO THE TREASURY

Pub. L. 98–21, title I, § 123(b)(5), Apr. 20, 1983, 97 Stat. 89, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''For purposes of subsection (a) of section 15 of the Railroad Retirement Act of 1974 [subsec. (a) of this section], amounts allowed as a credit under subsection (e) of section 3510 of the Internal Revenue Code of 1986 [26 U.S.C. 3510(e)] shall be treated as amounts covered into the Treasury under subsection (a) of section 3201 of such Code [26 U.S.C. 3201(a)].''

ANALYSIS OF OPTIONS THAT WILL ASSURE LONG-TERM FINANCIAL INTEGRITY OF THE RAILROAD RETIREMENT SYSTEM: REPORT AND RECOMMENDATIONS TO CONGRESS

Section 1126(a) of Pub. L. 97–35 directed President, not later than Oct. 1, 1982, to analyze options that would assure long-term financial integrity of railroad retirement system and report to Congress results of such analysis, together with recommendations with respect to such options and such comments as may have been submitted by representatives of railroad labor and management.

§ 231n–1. Social Security Equivalent Benefit Account

(a) Establishment

There is hereby created an account in the Treasury of the United States to be known as the ''Social Security Equivalent Benefit Account''.

(b) Transfers, etc., to Social Security Equivalent Benefit Account

(1) There is hereby appropriated to the Social Security Equivalent Benefit Account for each fiscal year, beginning with the fiscal year beginning October 1, 1984, an amount equal to the sum of the following amounts:

(A) Amounts covered into the Treasury (minus refunds) during such fiscal year under sections 3201(a), 3211(a)(1), and 3221(a) of the Railroad Retirement Tax Act [26 U.S.C. 3201(a), 3211(a)(1), 3221(a)].

(B) The amount which (but for this section) would have been transferred to the Railroad Retirement Account under section 121(e) of the Social Security Amendments of 1983 to the extent that the amount which would have been so transferred is attributable to taxation of social security equivalent benefits.

Amounts appropriated to the Railroad Retirement Account shall be appropriately reduced to take into account the amounts appropriated under this paragraph to the Social Security Equivalent Benefit Account.

(2) On and after October 1, 1984, any amount which (but for this section) would have been

transferred to the Railroad Retirement Account pursuant to paragraph (2) or (4) of section 231f(c) of this title shall be transferred to the Social Security Equivalent Benefit Account. On and after October 1, 1984, no transfer shall be made to the Railroad Retirement Account pursuant to paragraph (2) or (4) of section 231f(c) of this title.

(3) To the extent that the authorization for appropriation contained in section 231n(b) of this title is attributable to the cost of social security equivalent benefits, on and after October 1, 1984, any reference in such section to the Railroad Retirement Account shall be treated as a reference to the Social Security Equivalent Benefit Account.

(4) Amounts appropriated or transferred to the Social Security Equivalent Benefit Account under this section shall be credited or transferred to such Account at the same time and in the same manner as such amounts would have been credited or transferred to the Railroad Retirement Account but for this section.

(c) Availability and transfer of funds

(1) Except as otherwise provided in this section, amounts in the Social Security Equivalent Benefit Account shall be available only for purposes of paying social security equivalent benefits under this subchapter and to provide for the administrative expenses of the Board allocable to social security equivalent benefits. The Secretary shall from time to time transfer to the disbursing agent under section 231f(b)(4) of this title amounts necessary to pay those benefits.

(2) On and after October 1, 1984, any transfer which (but for this paragraph) would be required to be made from the Railroad Retirement Account under paragraph (2) or (4) of section 231f(c) of this title shall be made from the Social Security Equivalent Benefit Account.

(d) Transfers to Social Security Equivalent Benefit Account and National Railroad Retirement Investment Trust

(1) Whenever the Board finds that the balance in the Social Security Equivalent Benefit Account will be insufficient to pay social security equivalent benefits which it estimates are due in any month, it shall request the Secretary of the Treasury to transfer from the Railroad Retirement Account to the credit of the Social Security Equivalent Benefit Account such moneys as the Board estimates will be necessary for the payment of such benefits, and the Secretary shall make such transfer.

(2) Upon establishment of the National Railroad Retirement Investment Trust and from time to time thereafter, the Board shall direct the Secretary of the Treasury to transfer, in such manner as will maximize the investment returns to the Railroad Retirement system, the balance of the Social Security Equivalent Benefit Account not needed to pay current benefits and administrative expenses required to be paid from that Account to the National Railroad Retirement Investment Trust or the Railroad Retirement Account, and the Secretary shall make that transfer. Any balance transferred under this paragraph shall be used by the National Railroad Retirement Investment Trust or the Railroad Retirement Board only to pay benefits under this subchapter or to purchase obligations of the United States (either directly or through a commingled account consisting only of such obligations) that are backed by the full faith and credit of the United States pursuant to chapter 31 of title 31. The proceeds of sales of, and the interest income from, such obligations shall be used by the Trust only to pay benefits under this subchapter or to purchase such additional obligations.

(e) Applicability of section 231n

The provisions of subsections (e), (f), and (g) of section 231n of this title are hereby made applicable to the Social Security Equivalent Benefit Account.

(f) References to Railroad Retirement Account deemed references to Social Security Equivalent Benefit Account; "social security equivalent benefits" defined

(1) For purposes of making payments of social security equivalent benefits, references in the[1] subchapter to the Railroad Retirement Account shall be treated as references to the Social Security Equivalent Benefit Account.

(2) For purposes of this section, the term ''social security equivalent benefits'' means benefits payable under this subchapter which are of a kind taken into account in determining the amount of transfers made under section 231f(c)(2) of this title.

(Aug. 29, 1935, ch. 812, § 15A, as added Pub. L. 98–76, title V, § 501(a), Aug. 12, 1983, 97 Stat. 438; amended Pub. L. 107–90, title I, § 107(c), Dec. 21, 2001, 115 Stat. 888; Pub. L. 108–203, title IV, § 426(e), Mar. 2, 2004, 118 Stat. 538.)

REFERENCES IN TEXT

Section 121(e) of the Social Security Amendments of 1983, referred to in subsec. (b)(1)(B), is section 121(e) of Pub. L. 98–21, title I, Apr. 20, 1983, 97 Stat. 83, which is set out as a note under section 401 of Title 42, The Public Health and Welfare.

AMENDMENTS

2004—Subsec. (d)(2). Pub. L. 108–203 inserted ''or the Railroad Retirement Account'' before '', and the Secretary shall make'', ''or the Railroad Retirement Board'' before ''only to pay benefits'', ''(either directly or through a commingled account consisting only of such obligations)'' after ''obligations of the United States'', and ''or to purchase such additional obligations'' before period at end.

2001—Subsec. (c)(1). Pub. L. 107–90, § 107(c)(2), inserted at end ''The Secretary shall from time to time transfer to the disbursing agent under section 231f(b)(4) of this title amounts necessary to pay those benefits.''

Subsec. (d)(1). Pub. L. 107–90, § 107(c)(3), struck out at end: ''Whenever later in such month there is a transfer to the Social Security Equivalent Benefit Account under paragraph (2) or (4) of section 231f(c) of this title, the amount so transferred shall be immediately retransferred to the Railroad Retirement Account. The amount retransferred under the preceding sentence shall not exceed the amount of any outstanding transfers under this paragraph from the Railroad Retirement Account plus such additional amounts determined by the Board to be equal to the loss of interest to the Railroad Retirement Account resulting from such outstanding transfers.''

Subsec. (d)(2). Pub. L. 107–90, § 107(c)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Whenever the Board determines that—

[1] So in original. Probably should be ''this''.

''(A) amounts in the Railroad Retirement Account will not be sufficient to pay the annuities which it estimates are due, or will become due, from such Account, and

''(B) the transfer under this paragraph will not jeopardize the present or future payment of social security equivalent benefits,

the Board shall request the Secretary of the Treasury to transfer from the Social Security Equivalent Benefit Account to the Railroad Retirement Account such moneys as the Board estimates will be necessary for the payment of such annuities, and the Secretary shall make such transfer. No transfer under this paragraph shall be required to be repaid.''

EFFECTIVE DATE

Section 501(b)(1) of Pub. L. 98–76 provided that: ''The amendment made by this section [enacting this section] shall take effect on October 1, 1984.''

TREATMENT OF TIER 1 PORTION OF TAX IMPOSED WITH RESPECT TO COMPENSATION PAID BEFORE 1985

Section 501(b)(2) of Pub. L. 98–76, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) The tier 1 portion of the tax imposed by section 3201, 3211, or 3221 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 3201, 3211, 3221], as the case may be, with respect to compensation paid before 1985 shall be treated as described in subparagraph (A) of section 15A(b)(1) of the Railroad Retirement Act of 1974 [subsec. (b)(1)(A) of this section].

''(B) For purposes of subparagraph (A), the tier 1 portion of any tax is so much of such tax as is determined by reference to the rates of taxes imposed by chapter 21 of the Internal Revenue Code of 1986 [26 U.S.C. 3101 et seq.].''

§ 231*o*. Private pensions

Nothing in this subchapter shall be taken as restricting or discouraging payment by employers to retired employees of pensions or gratuities in addition to the annuities paid to such employees under this subchapter, nor shall this subchapter be taken as terminating any trust heretofore created for the payment of such pensions or gratuities. The annuity, except a supplemental annuity under section 231a(b) of this title, of an individual shall not be reduced on account of any pension or gratuity paid by an employer to such individual.

(Aug. 29, 1935, ch. 812, § 16, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1349.)

§ 231p. Free transportation

It shall not be unlawful for carriers by railroad subject to this subchapter to furnish free transportation to individuals receiving annuities under this subchapter in the same manner as such transportation is furnished to employees in their service.

(Aug. 29, 1935, ch. 812, § 17, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1349.)

§ 231q. Crediting service under Social Security Act

(1) Except as provided in subdivision (2), the term ''employment'' as defined in section 216 of the Social Security Act [42 U.S.C. 416] shall not include service performed by an individual as an employee as defined in section 231(b) of this title.

(2) For the purpose of determining (i) monthly insurance benefits under the Social Security Act [42 U.S.C. 301 et seq.] to an employee who will have completed less than ten years of service (or less than five years of service, all of which accrues after December 31, 1995) and to others deriving from him or her during his or her life and (ii) monthly insurance benefits and lump-sum death benefits under such Act with respect to the death of an employee who (A) will have completed less than ten years of service (or less than five years of service, all of which accrues after December 31, 1995) or (B) will have completed ten or more years of service (or five or more years of service, all of which accrues after December 31, 1995) but will not have had a current connection with the railroad industry at the time of his death, and for the purposes of section 203 and section 216(i) of that Act [42 U.S.C. 403, 416(i)], section 210(a)(9) of the Social Security Act [42 U.S.C. 410(a)(9)] and subdivision (1) of this section shall not operate to exclude from ''employment'' under the Social Security Act service which would otherwise be included in such ''employment'' but for such sections. For such purpose, compensation paid in a calendar year shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the year in which the employee will have been in service as an employee. In the application of the Social Security Act pursuant to this subdivision to service as an employee, all service as defined in section 231(d) of this title shall be deemed to have been performed within the United States.

(Aug. 29, 1935, ch. 812, § 18, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1349; amended Pub. L. 97–35, title XI, § 1125, Aug. 13, 1981, 95 Stat. 639; Pub. L. 107–90, title I, § 103(g), Dec. 21, 2001, 115 Stat. 881.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2001—Par. (2). Pub. L. 107–90 inserted ''(or less than five years of service, all of which accrues after December 31, 1995)'' after ''ten years of service'' in two places and inserted ''(or five or more years of service, all of which accrues after December 31, 1995)'' after ''ten or more years of service''.

1981—Par. (2). Pub. L. 97–35 inserted ''and section 216(i)'' after ''203''.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–90 effective Jan. 1, 2002, see section 103(j) of Pub. L. 107–90, set out as a note under section 405 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Jan. 1, 1975, see section 1129(b)(2) of Pub. L. 97–35, set out as a note under section 231 of this title.

§ 231r. Automatic benefit eligibility requirement adjustments

(a) Reduced benefits

If title II of the Social Security Act [42 U.S.C. 401 et seq.] is amended at any time after December 31, 1974, to reduce the eligibility requirements for old-age insurance benefits, disability insurance benefits, wife's insurance benefits payable to a wife, husband's insurance benefits, child's insurance benefits payable to a child of a deceased individual, widow's insurance benefits payable to a widow, widower's insurance benefits, mother's insurance benefits payable to a widow, or parent's insurance benefits, such reduced eligibility requirements shall be applicable, in accordance with regulations prescribed by the Board, to individuals, spouses, or survivors, as the case may be, under section 231a of this title to the extent that such reduced eligibility requirements would provide such individuals, spouses, or survivors with entitlement to annuities under such section 231a of this title to which they would not be entitled except for such reduced eligibility requirements: *Provided, however*, That no annuity shall be paid to any person pursuant to the provisions of this subsection if that person does not satisfy an eligibility requirement imposed by section 231a of this title of a kind not imposed by the Social Security Act [42 U.S.C. 301 et seq.] on December 31, 1974, or an eligibility requirement imposed by section 231a of this title of a kind which was imposed by the Social Security Act on December 31, 1974, but which was not reduced by the amendment to that Act: *Provided further*, That the annuity amounts to which such individuals, spouses, or survivors will be entitled under this subchapter by reason of the provisions of this subsection shall be only such amounts as are determined under the provisions of section 231b(a), 231c(a), or 231c(f), respectively, of this title.

(b) Additional eligible beneficiaries

If title II of the Social Security Act [42 U.S.C. 401 et seq.] is amended at any time after December 31, 1974, to provide monthly insurance benefits under that Act to a class of beneficiaries not entitled to such benefits thereunder prior to January 1, 1975, every person who is a member of such class of beneficiaries shall be entitled to annuities under section 231a of this title, in accordance with regulations prescribed by the Board, in an amount equal to the amount of the monthly insurance benefit to which such person would have been entitled under the Social Security Act [42 U.S.C. 301 et seq.] if service as an employee after December 31, 1936, had been included in the term ''employment'' as defined in that Act.

(c) Reduced conditions of entitlement; expanded benefits

If section 226 [42 U.S.C. 426] or title XVIII [42 U.S.C. 1395 et seq.] of the Social Security Act is amended at any time after December 31, 1974, to reduce the conditions of entitlement to, or to expand the nature of, the benefits payable thereunder, or if health care benefits in addition to, or in lieu of, the benefits payable under such section 226 or such title XVIII are provided by any provision of law which becomes effective at any time after December 31, 1974, such reductions in the conditions of entitlement to benefits, such expanded benefits, or such additional, or substituted, health care benefits shall be available to every employee (as defined in this subchapter), and those deriving from him, in the same manner, and to the same extent, as if his service as an employee after December 31, 1936, had been included in the term ''employment'' as defined in the Social Security Act [42 U.S.C. 301 et seq.]. The Board shall have the same authority, in accordance with regulations prescribed by it, to determine the rights of employees who will have completed ten years of service (or five or more years of service, all of which accrues after December 31, 1995), and of those deriving from such employees, to benefits provided by reason of the provisions of this subsection as the Secretary of Health and Human Services has with respect to individuals insured under the Social Security Act.

(d) Limitations

Notwithstanding the provisions of subsections (a), (b), and (c) of this section—

(1) No annuity or other benefit shall be payable to any person on the basis of the compensation and years of service of an individual by reason of the provisions of subsection (a), (b), or (c) of this section if, and to the extent that, such annuity or other benefit would duplicate a benefit payable to such person on the basis of such compensation and years of service under a provision of the Social Security Act [42 U.S.C. 301 et seq.], or any other Act of Congress, which becomes effective after December 31, 1974.

(2) No annuity shall be payable to a person by reason of subsection (a) or (b) of this section unless the individual upon whose compensation and years of service such annuity would be based will have (A) completed ten years of service (or five or more years of service, all of which accrues after December 31, 1995), and (B) in the case of a survivor, had a current connection with the railroad industry at the time of his death.

(3) If the Social Security Act [42 U.S.C. 301 et seq.] is amended after December 31, 1974, to remove any, or all, restriction on the receipt of more than one monthly insurance benefit thereunder, annuity amounts provided a person under section 231b(h), 231c(e), or 231c(h) of this title, or under section 204(a)(3), 204(a)(4), 206(3), or 207(3) of title II of this Act, shall be reduced (but not below zero) by the amount of any annuity provided such person under this subchapter by reason of such amendment.

(4) If and to the extent that an annuity or other benefit payable to a person by reason of the provisions of subsection (a), (b), or (c) of this section duplicates an annuity or other benefit then payable to such person under other provisions of this subchapter, such annuity or other benefit then payable under other provisions of this subchapter shall be reduced (but not below zero) by the amount of the annuity or other benefit payable by reason of subsection (a), (b), or (c) of this section.

(Aug. 29, 1935, ch. 812, § 19, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub.

L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1350; amended Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 107–90, title I, § 103(h), Dec. 21, 2001, 115 Stat. 881.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a), (b), (c), and (d)(1), (3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. Titles II and XVIII of the Social Security Act are classified generally to subchapters II (§ 401 et seq.) and XVIII (§ 1395 et seq.), respectively, of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Sections 204(a)(3), 204(a)(4), 206(3), 207(3) of title II of this Act, referred to in subsec. (d)(3), are sections 204(a)(3), 204(a)(4), 206(3), 207(3) of title II of Pub. L. 93–445 and are set out as part of a Transitional Provisions note under section 231 of this title.

AMENDMENTS

2001—Subsec. (c). Pub. L. 107–90, § 103(h)(1), inserted ''(or five or more years of service, all of which accrues after December 31, 1995)'' after ''ten years of service''.

Subsec. (d)(2). Pub. L. 107–90, § 103(h)(2), inserted ''(or five or more years of service, all of which accrues after December 31, 1995)'' after ''ten years of service''.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (c) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–90 effective Jan. 1, 2002, see section 103(j) of Pub. L. 107–90, set out as a note under section 405 of Title 42, The Public Health and Welfare.

§ 231s. Separability

If any provision of this subchapter, or the application thereof to any person or circumstance, should be held invalid, the remainder of such subchapter, or the application of such provision to other persons or circumstances, shall not be affected thereby.

(Aug. 29, 1935, ch. 812, § 20, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1351.)

§ 231t. Short title

This subchapter may be cited as the ''Railroad Retirement Act of 1974''.

(Aug. 29, 1935, ch. 812, § 21, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1351.)

SHORT TITLE OF 2007 AMENDMENT

Pub. L. 109–478, § 1, Jan. 12, 2007, 120 Stat. 3573, provided that: ''This Act [amending section 231a of this title and enacting provisions set out as a note under section 231a of this title] may be cited as the 'Railroad Retirement Disability Earnings Act'.''

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–305, § 1, Oct. 6, 2006, 120 Stat. 1719, provided that: ''This Act [amending section 231f of this title] may be cited as the 'Railroad Retirement Technical Improvement Act of 2006'.''

SHORT TITLE OF 2001 AMENDMENT

Pub. L. 107–90, § 1(a), Dec. 21, 2001, 115 Stat. 878, provided that: ''This Act [enacting section 231v of this title and subchapter E of chapter 22 of Title 26, Internal Revenue Code, amending sections 231a to 231f, 231n, 231n–1, 231q, 231r, and 231u of this title, sections 24, 72, 501, 3201, 3211, 3221, and 3231 of Title 26, and section 405 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under sections 231b, 231c, and 231n of this title, sections 24 and 3211 of Title 26, and section 405 of Title 42] may be cited as the 'Railroad Retirement and Survivors' Improvement Act of 2001'.''

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 98–76, § 1, Aug. 12, 1983, 97 Stat. 411, provided: ''That this Act [enacting sections 231f–1, 231n–1 and 231v of this title and sections 3321 to 3323 and 6050G of Title 26, Internal Revenue Code, amending sections 231 to 231f, 231m, 231n, 231u, 351 to 354, 358, and 360 of this title, sections 72, 86, 105, 3201, 3202, 3211, 3221, 3231, 6157, 6201, 6317, 6513, and 6601 of Title 26, and section 430 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under sections 231 to 231d, 231f, 231m, 231n, 231n–1, 351, 352, and 362 of this title and sections 1, 72, 105, 3201, 3321, and 6302 of Title 26] may be cited as the 'Railroad Retirement Solvency Act of 1983'.''

§ 231u. Benefit preservation

(a)(1) On or before May 1 of each year beginning in 1984, the Railroad Retirement Board shall prepare a five-year projection of anticipated revenues to and payments from the Railroad Retirement Account to determine the ability of such Account to pay benefits in each of the next succeeding five calendar years. On or before May 1 of each year beginning in 2003, the Railroad Retirement Board shall compute its projection of the account benefits ratio and the average account benefits ratio (as defined by section 3241(c) of the Internal Revenue Code of 1986 [26 U.S.C. 3241(c)]) for each of the next succeeding five fiscal years. No later than July 1 of each year, the Board shall submit a written report to the President, the Speaker of the House, and the President of the Senate setting forth the results of the projections prepared pursuant to the preceding two sentences. If the projection indicates that the funds in the Railroad Retirement Account will be insufficient to pay the full amount of the benefits under this subchapter which are payable from that Account at any time during the five-year period, the Board's report shall include—

(A) the first fiscal year during which benefits under this subchapter must be reduced, in the absence of any adjustments, because insufficient funds (including any general revenue borrowing authority under this subchapter) would preclude payment of full benefits (other than benfits[1] payable from the Dual Benefits Payments Account) for every month in such fiscal year;

(B) the first fiscal year during which the Board would recommend suspension of the authority to borrow contained in section 360(d) of this title, in order to prevent depletion of the Railroad Retirement Account; and

(C) the amount, if any, of adjustments (stated in terms of percentage of taxable payroll), and any other changes such as cash flow adjustments, necessary to preserve the financial solvency of the Railroad Retirement Account,

[1] So in original. Probably should be ''benefits''.

if such adjustments were effective at the beginning of the next succeeding fiscal year.

(2) Not less than 20 nor more than 30 days after the submission of a written report under this subsection which indicates that, in the absence of any adjustments, the Railroad Retirement Account will contain insufficient funds to pay the full amount of the benefits under this subchapter which are payable from that Account at some time during the five-year period covered by the report, the Board shall publish such report in the Federal Register.

(b) Not later than 180 days after the publication in the Federal Register of any Board report referred to in subsection (a) of this section which states an amount of adjustments (in terms of percentage of taxable payroll) necessary to preserve the financial solvency of the railroad retirement account—

(1) representatives of railroad employees and carriers shall, jointly or separately, submit to the President, the Speaker of the House, and the President of the Senate, funding proposals designed to preserve the financial solvency of the Railroad Retirement Account; and

(2) the President shall submit to the Speaker of the House and the President of the Senate such recommendations as he may deem appropriate with respect to the preservation of the Railroad Retirement Account, including a specific proposal to assure continuous payments of social security equivalent benefits by separating the social security equivalent benefits from industry pension equivalent benefits payable under this subchapter.

(c) Not later than 180 days after the submission of a written report under subsection (a) of this section which states the first fiscal year during which benefits under this subchapter must be reduced because insufficient funds would preclude payment of full benefits for every month of that year, the Board shall issue and publish in the Federal Register such regulations as may be necessary which shall be designed to—

(1) provide a constant level of benefits at the maximum level possible for every month of that fiscal year; and

(2) provide that no individual shall receive less during that fiscal year than the amount otherwise payable if the employee's service as an employee after December 31, 1936, had been covered under the Social Security Act [42 U.S.C. 301 et seq.], minus the amount of any reduction required under section 231b(m) or 231c(i) of this title.

Unless otherwise provided by law enacted after August 13, 1981, or by a later report filed by the Board under subsection (a) of this section, regulations issued by the Board under this subsection shall apply beginning with the fiscal year designated by the Board in its written report under subsection (a) of this section. Any Board regulation which becomes effective under this subsection may be modified, rescinded, or superseded in the same manner and to the same extent as in the case of any other Board regulation issued under authority of this subchapter.

(Aug. 29, 1935, ch. 812, § 22, as added Pub. L. 97–35, title XI, § 1126(b), Aug. 13, 1981, 95 Stat. 639; amended Pub. L. 98–76, title I, § 105, Aug. 12, 1983, 97 Stat. 416; Pub. L. 104–66, title II, § 2221(b), Dec. 21, 1995, 109 Stat. 733; Pub. L. 107–90, title I, § 108(a), Dec. 21, 2001, 115 Stat. 890.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2001—Subsec. (a)(1). Pub. L. 107–90 in introductory provisions, inserted after first sentence "On or before May 1 of each year beginning in 2003, the Railroad Retirement Board shall compute its projection of the account benefits ratio and the average account benefits ratio (as defined by section 3241(c) of the Internal Revenue Code of 1986) for each of the next succeeding five fiscal years." and substituted "the projections prepared pursuant to the preceding two sentences" for "the projection prepared pursuant to the preceding sentence".

1995—Subsec. (a)(1). Pub. L. 104–66 substituted "May 1" and "July 1" for "February 1" and "April 1", respectively, in introductory provisions.

1983—Subsec. (a). Pub. L. 98–76 amended subsec. (a) generally, substituting provisions requiring Railroad Retirement Board to annually prepare and report on a five-year projection of ability of Railroad Retirement Account to pay benefits during five-year period for provisions which required Board to prepare a report in any fiscal year in which it determined that more than 50 percent of borrowing authority under this subchapter would be used.

EFFECTIVE DATE

Section effective Oct. 1, 1981, see section 1129(g) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 231 of this title.

§ 231v. Computation and certification of account benefit ratios

(a) Initial computation and certification

On or before November 1, 2003, the Railroad Retirement Board shall—

(1) compute the account benefits ratios for each of the most recent 10 preceding fiscal years, and

(2) certify the account benefits ratios for each such fiscal year to the Secretary of the Treasury.

(b) Computations and certifications after 2003

On or before November 1 of each year after 2003, the Railroad Retirement Board shall—

(1) compute the account benefits ratio for the fiscal year ending in such year, and

(2) certify the account benefits ratio for such fiscal year to the Secretary of the Treasury.

(c) Definition

As used in this section, the term "account benefits ratio" has the meaning given that term in section 3241(c) of the Internal Revenue Code of 1986 [26 U.S.C. 3241(c)].

(Aug. 29, 1935, ch. 812, § 23, as added Pub. L. 107–90, title I, § 108(b), Dec. 21, 2001, 115 Stat. 890.)

PRIOR PROVISIONS

A prior section 231v, act Aug. 29, 1935, ch. 812, § 23, as added Aug. 12, 1983, Pub. L. 98–76, title IV, § 418, 97 Stat. 438, provided that for purposes of Inspector General Act

of 1978, the Railroad Retirement Board is an ''establishment'' and the Chairman of such Board the ''head of the establishment'', prior to repeal by Pub. L. 100–504, title I, §§102(e)(3), 113, Oct. 18, 1988, 102 Stat. 2517, 2530, effective 180 days after Oct. 18, 1988.

CHAPTER 10—TAX ON CARRIERS AND EMPLOYEES

§§ 241 to 253. Repealed. June 29, 1937, ch. 405, § 11, 50 Stat. 440

Section 241, act Aug. 29, 1935, ch. 813, §1, 49 Stat. 974, defined terms for purposes of this subchapter.

Section 242, act Aug. 29, 1935, ch. 813, §2, 49 Stat. 975, related to income tax on employees.

Section 243, act Aug. 29, 1935, ch. 813, §3, 49 Stat. 975, related to deduction of tax from wages.

Section 244, act Aug. 29, 1935, ch. 813, §4, 49 Stat. 975, related to excise tax on carriers.

Section 245, act Aug. 29, 1935, ch. 813, §5, 49 Stat. 975, related to adjustment of tax.

Section 246, act Aug. 29, 1935, ch. 813, §6, 49 Stat. 975, related to refunds and deficiencies.

Section 247, act Aug. 29, 1935, ch. 813, §7, 49 Stat. 975, related to income tax on employees' representatives.

Section 248, act Aug. 29, 1935, ch. 813, §8, 49 Stat. 976, related to collection and payment of taxes.

Section 249, act Aug. 29, 1935, ch. 813, §9, 49 Stat. 976, related to court jurisdiction.

Section 250, act Aug. 29, 1935, ch. 813, §10, 49 Stat. 976, related to penalties under this subchapter.

Section 251, act Aug. 29, 1935, ch. 813, §11, 49 Stat. 976, related to meaning of ''employment''.

Section 252, acts Aug. 29, 1935, ch. 813, §12, 49 Stat. 976; Feb. 27, 1937, ch. 19, 50 Stat. 23, related to termination of taxes.

Section 253, act Aug. 29, 1935, ch. 813, §13, 49 Stat. 977, related to separability of provisions.

§§ 261 to 273. Omitted

CODIFICATION

Sections 261 to 273 were omitted pursuant to section 4 of act Feb. 10, 1939, ch. 2, 53 Stat. 1, which provided that all laws or parts of laws codified into the Internal Revenue Code of 1939, enacted by act Feb. 10, 1939, to the extent they related exclusively to internal revenue laws, were repealed. The Internal Revenue Code of 1939 was generally repealed by section 7851 of act Aug. 16, 1954, ch. 736, 68A Stat. 919 (section 7851 of Title 26, Internal Revenue Code), which act enacted the Internal Revenue Code of 1954 [now 1986]. See section 7807 of Title 26, relating to applicability of rules in effect upon the enactment of the Internal Revenue Code of 1986.

Section 261, acts June 29, 1937, ch. 405, §1, 50 Stat. 435; Aug. 13, 1940, ch. 664, §§1, 3, 54 Stat. 785, 786, defined terms for purposes of this subchapter.

Section 262, act June 29, 1937, ch. 405, §2, 50 Stat. 437, related to income tax on employees.

Section 263, act June 29, 1937, ch. 405, §3, 50 Stat. 437, related to excise tax on employers.

Section 264, act June 29, 1937, ch. 405, §4, 50 Stat. 438, related to refunds and deficiencies.

Section 265, act June 29, 1937, ch. 405, §5, 50 Stat. 438, related to income tax on employee representatives.

Section 266, act June 29, 1937, ch. 405, §6, 50 Stat. 439, related to deductibility from regular income tax.

Section 267, act June 29, 1937, ch. 405, §7, 50 Stat. 439, related to collection and payment of taxes.

Section 268, act June 29, 1937, ch. 405, §8, 50 Stat. 439, related to court jurisdiction.

Section 269, act June 29, 1937, ch. 405, §9, 50 Stat. 439, related to Social Security Act.

Section 270, act June 29, 1937, ch. 405, §10, 50 Stat. 440, related to separability of provisions.

Section 271, act June 29, 1937, ch. 405, §11, 50 Stat. 440, related to repeals.

Section 272, act June 29, 1937, ch. 405, §12, 50 Stat. 440, related to rules and regulations.

Section 273, act June 29, 1937, ch. 405, §13, 50 Stat. 440, related to short title of this subchapter.

For provisions formerly set out in this subchapter which were covered by sections of the Internal Revenue Code of 1939, see the sections of the Internal Revenue Code of 1986, Title 26, Internal Revenue Code, indicated in the following table:

Omitted sections	I.R.C. 1939	I.R.C. 1986
261 (as amended Aug. 13, 1940, ch. 664, §§1, 3, 54 Stat. 785, 786).	1532	3231, 7701.
262	1500, 1501	3201, 3202, 6205(a)(1), 6413(a)(1).
263	1520, 1521	3221, 6205(a)(1), 6413(a)(1).
264	1502, 1522	6205(b), 6413(b).
265	1510, 1511	3211, 3212.
266	1503, 1508, 1512	3502.
267	1422, 1530, 1531, 1536	3501, 3503, 6011(a), 6071, 6081(a), 6091(a), 6151(a), 6313, 6601(a), (f)(1).
268	1534	3232.
269	1426(b)(9), (10), 1428	3121(b)(9), (10), 3124.
270	3802	7511.
271		
272	1535	7805(a), (c).
273		

COMPENSATION FROM LOCAL DIVISION OF RAILWAY-LABOR-ORGANIZATION EMPLOYER TAX—UNPAID BEFORE JULY 1, 1940

Act Oct. 10, 1940, ch. 842, §27(b), 54 Stat. 1101, provided that, for the purpose of determining the amount of taxes under sections 262(a) and 263(a) of this title, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than $3 and the taxes thereon under such sections are not paid before July 1, 1940.

CHAPTER 11—RAILROAD UNEMPLOYMENT INSURANCE

Sec.
351. Definitions.
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363. Exclusiveness of provisions; transfers from State unemployment compensation accounts to railroad unemployment insurance account.
363a. Refunds of State unemployment contributions by employees; amount; application period; definitions.
364. District of Columbia account, transfer of funds to railroad unemployment insurance account.
365. Omitted.
366. Separability.
366a. Effect of Internal Revenue Code.
367. Short title.
368. Repealed.
369. Annual report.

§ 351. Definitions

For the purposes of this chapter, except when used in amending the provisions of other Acts—