Omitted sections	I.R.C. 1939	I.R.C. 1986
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.
352. Benefits.
353. Qualifying condition.
354. Disqualifying conditions.
355. Claims for benefits.
355a. Acceptance of claims for benefits.
356. Returns of compensation; conclusiveness; failure to make.
357. Free transportation.
358. Contributions.
359. Penalties.
360. Railroad unemployment insurance account.
361. Railroad unemployment insurance administration fund.
362. Duties and powers of Board.
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 Repealed.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—

(a) The term ''employer'' means any carrier (as defined in subsection (b) of this section), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, 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, and 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 such employer: *Provided, however*, That the term ''employer'' shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-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 proviso. The term ''employer'' shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies, and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act [45 U.S.C. 151 et seq.], and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and bylaws of such organizations. The term ''employer'' shall not include 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.

(b) The term ''carrier'' means a railroad subject to the jurisdiction of the Surface Transportation Board under part A of subtitle IV of title 49.

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

(d) The term ''employee'' (except when used in phrases establishing a different meaning) means any individual who is or has been (i) in the service of one or more employers for compensation, or (ii) an employee representative. 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 a carrier on or after August 29, 1935. The term ''employee'' includes an officer of an employer.

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.

(e) An individual is in the service of an employer whether his service is rendered within or without the United States if (i) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or he is rendering professional or tech-

nical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, and (ii) he renders such service for compensation: *Provided, however*, That 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; and an individual shall be deemed to be in the service of such a local lodge or division only if (1) all, or substantially all, the individuals constituting its membership are employees of an employer conducting the principal part of its business in the United States; or (2) the headquarters of such local lodge or division is located in the United States; and an individual shall be deemed to be in the service of such a general committee only if (1) he is representing a local lodge or division described in clauses (1) or (2) immediately above; or (2) all, or substantially all, the individuals represented by it are employees of an employer conducting the principal part of its business in the United States; or (3) 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: *Provided further*, That 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.

(f) 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 said subsection and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act [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.

(g) The term ''employment'' means service performed as an employee. For the purposes of determining eligibility for and the amount of benefits and the amount of contributions due pursuant to this chapter, employment after June 30, 1940, in the service of a local lodge or division of a railway-labor-organization employer or as an employee representative shall be disregarded. For purposes of determining eligibility for and the amount of benefits and the amount of contributions due pursuant to this chapter, employment as a delegate to a national or international convention of a railway labor organization defined as an ''employer'', in subsection (a) of this section, shall be disregarded if the individual having such employment has not previously rendered service, other than as such a delegate, which may be included in his ''years of service'' for purposes of the Railroad Retirement Act [45 U.S.C. 231 et seq.].

(h) The term ''registration period'' means, with respect to any employee, the period which begins with the first day for which such employee registers at an employment office in accordance with such regulations as the Board may prescribe, and ends with whichever is the earlier of (i) the thirteenth day thereafter, or (ii) the day immediately preceding the day for which he next registers at a different employment office; and thereafter each period which begins with the first day for which he next registers at an employment office after the end of his last preceding registration period which began with a day for which he registered at an employment office and ends with whichever is the earlier of (i) the thirteenth day thereafter, or (ii) the day immediately preceding the day for which he next registers at a different employment office.

The term ''registration period'' means also, with respect to any employee, the period which begins with the first day with respect to which a statement of sickness for a ''period of continuing sickness'' (as defined in section 352(a) of this title) is filed in his behalf in accordance with such regulations as the Board may prescribe, or the first such day after the end of a registration period which will have begun with a day with respect to which a statement of sickness for a ''period of continuing sickness'' (as defined in section 352(a) of this title) was filed in his behalf, and ends with whichever is the earlier of (i) the thirteenth day thereafter, or (ii) the day immediately preceding the day with respect to which a statement of sickness for a new ''period of continuing sickness'' (as defined in section 352(a) of this title) is filed in his behalf.

(i)(1) IN GENERAL.—The term ''compensation'' means any form of money remuneration, including pay for time lost but excluding tips, paid for services rendered as an employee to one or more employers, or as an employee representative, except that in computing the compensation paid to any employee, no part of any month's compensation in excess of the monthly compensation base (as defined in subdivision (2)) for any month shall be recognized. Solely for the purpose of determining the compensation received by an employee in a base year, the term ''compensation'' shall include any separation allowance or subsistence allowance paid under any

benefit schedule provided under section 701[1] of title VII of the Regional Rail Reorganization Act of 1973 [45 U.S.C. 797] 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 payable under a benefit schedule provided pursuant to section 701[1] of the Regional Rail Reorganization Act of 1973 shall be considered as being compensation in the month in which the employee first timely filed a claim for such an allowance. Such term does not include remuneration for service which is performed by a nonresident 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 and which is performed to carry out the purpose specified in subparagraph (F) or (J) as the case may be. A payment made by an employer to an individual through the employer's pay roll 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. 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. 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 356 of this title, the period during which such compensation will have been earned.

(2) MONTHLY COMPENSATION BASE.—

(A) IN GENERAL.—For purposes of subdivision (1), the term ''monthly compensation base'' means the amount—

(i) of $400 for calendar months before January 1, 1984;

(ii) of $600 for calendar months after December 31, 1983 and before January 1, 1989; and

(iii) computed under subparagraph (B) for months after December 31, 1988.

(B) COMPUTATION.—

(i) IN GENERAL.—The amount of the monthly compensation base for each calendar year beginning after December 31, 1988, is the greater of—

(I) $600; or

(II) the amount, as rounded under clause (iii) if applicable, computed under the formula:

$$B=600\left(1+\frac{A-37{,}800}{56{,}700}\right)$$

(ii) MEANING OF SYMBOLS.—For the purposes of the formula in clause (i)—

(I) ''B'' is the dollar amount of the monthly compensation base; and

(II) ''A'' is the amount of the applicable base with respect to tier 1 taxes, for the calendar year for which the monthly compensation base is being computed, as determined under section 3231(e)(2) of title 26.

(iii) ROUNDING RULE.—If the monthly compensation base computed under this formula is not a multiple of $5, it shall be rounded to the nearest multiple of $5, with such rounding being upward in the event the amount computed is equidistant between two multiples of $5.

(j) The term ''remuneration'' means pay for services for hire, including pay for time lost, and tips, but pay for time lost shall be deemed earned on the day on which such time is lost. The term ''remuneration'' includes also earned income other than for services for hire if the accrual thereof in whole or in part is ascertainable with respect to a particular day or particular days. The term ''remuneration'' does not include any money payments received pursuant to any nongovernmental plan for unemployment insurance, maternity insurance, or sickness insurance.

(k) Subject to the provisions of section 354 of this title (1) a day of unemployment, with respect to any employee, means a calendar day on which he is able to work and is available for work and with respect to which (i) no remuneration is payable or accrues to him, and (ii) he has, in accordance with such regulations as the Board may prescribe, registered at an employment office; and (2) a ''day of sickness'', with respect to any employee, means a calendar day on which because of any physical, mental, psychological, or nervous injury, illness, sickness, or disease he is not able to work, or, with respect to a female employee, a calendar day on which, because of pregnancy, miscarriage, or the birth of a child, (i) she is unable to work or (ii) working would be injurious to her health, and with respect to which (i) no remuneration is payable or accrues to him, and (ii) in accordance with such regulations as the Board may prescribe, a statement of sickness is filed within such reasonable period, not in excess of ten days, as the Board may prescribe: *Provided, however*, That ''subsidiary remuneration'', as hereinafter defined in this subsection, shall not be considered remuneration for the purpose of this subsection except with respect to an employee whose base-year compensation, exclusive of earnings from

[1] See References in Text note below.

the position or occupation in which he earned such subsidiary remuneration, is less than an amount that is equal to 2.5 times the monthly compensation base for months in such base year as computed under subsection (i) of this section: *Provided further*, That remuneration for a working day which includes a part of each of two consecutive calendar days shall be deemed to have been earned on the first of such two days, and any individual who takes work for such working day shall not by reason thereof be deemed not available for work on the second of such calendar days: *Provided further*, That any calendar day on which no remuneration is payable to or accrues to an employee solely because of the application to him of mileage or work restrictions agreed upon in schedule agreements between employers and employees or solely because he is standing by for or laying over between regularly assigned trips or tours of duty shall not be considered either a day of unemployment or a day of sickness.

For the purpose of this subsection, the term ''subsidiary remuneration'' means, with respect to any employee, remuneration not in excess of an average of $15 a day for the period with respect to which such remuneration is payable or accrues, if the work from which the remuneration is derived (i) requires substantially less than full time as determined by generally prevailing standards, and (ii) is susceptible of performance at such times and under such circumstances as not to be inconsistent with the holding of normal full-time employment in another occupation.

(*l*)(1) The term ''benefits'' (except in phrases clearly designating other payments) means the money payments payable to an employee as provided in this chapter, with respect to his unemployment or sickness.

(2) The term ''statement of sickness'' means a statement with respect to days of sickness of an employee, executed in such manner and form by an individual duly authorized pursuant to section 362(i) of this title to execute such statements, and filed as the Board may prescribe by regulations.

(m) The term ''benefit year'' means the twelve-month period beginning July 1 of any year and ending June 30 of the next year, except that a registration period beginning in June and ending in July shall be deemed to be in the benefit year ending in such month of June.

(n) The term ''base year'' means the completed calendar year immediately preceding the beginning of the benefit year.

(*o*) The term ''employment office'' means a free employment office operated by the Board, or designated as such by the Board pursuant to section 362(i) of this title.

(p) The term ''account'' means the railroad unemployment insurance account established pursuant to section 360 of this title in the unemployment trust fund.

(q) The term ''fund'' means the railroad unemployment insurance administration fund, established pursuant to section 361 of this title in the unemployment trust fund.

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

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

(t) The term ''State'' means any of the States or the District of Columbia.

(u) Any reference in this chapter to any other Act of Congress, including such reference in amendments to other Acts, includes a reference to such other Act as amended from time to time.

(June 25, 1938, ch. 680, § 1, 52 Stat. 1094; June 20, 1939, ch. 227, §§ 1–6, 20, 53 Stat. 845, 848; Aug. 13, 1940, ch. 664, §§ 1, 3, 54 Stat. 785, 786; Oct. 10, 1940, ch. 842, §§ 2–8, 54 Stat. 1094, 1095; Apr. 8, 1942, ch. 227, § 15, 56 Stat. 210; July 31, 1946, ch. 709, §§ 1, 2, 301–304, 60 Stat. 722, 735, 736; Oct. 30, 1951, ch. 632, § 26, 65 Stat. 691; Aug. 31, 1954, ch. 1164, pt. III, §§ 301–303, 68 Stat. 1041; Pub. L. 85–927, pt. II, § 201, Sept. 6, 1958, 72 Stat. 1782; Pub. L. 86–28, pt. III, § 301, May 19, 1959, 73 Stat. 30; Pub. L. 89–700, title II, § 201, Oct. 30, 1966, 80 Stat. 1087; Pub. L. 90–257, title II, § 201, Feb. 15, 1968, 82 Stat. 23; Pub. L. 90–624, § 3, Oct. 22, 1968, 82 Stat. 1316; Pub. L. 94–92, title I, § 1(a), (b), Aug. 9, 1975, 89 Stat. 461; Pub. L. 98–76, title IV, §§ 402(b), 403(b), 411(a)(1), title V, § 503(b), Aug. 12, 1983, 97 Stat. 434, 436, 441; Pub. L. 100–647, title VII, §§ 7101(a), (b), 7203(a), Nov. 10, 1988, 102 Stat. 3757, 3758, 3776; Pub. L. 104–88, title III, § 324(1), (2), Dec. 29, 1995, 109 Stat. 950.)

REFERENCES IN TEXT

The Railway Labor Act, referred to in subsecs. (a) and (f), 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.

The Railroad Retirement Act, referred to in subsec. (g), probably means the Railroad Retirement Act of 1937, 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 chapter 9 of this title. 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 subchapter IV (§ 231 et seq.) of chapter 9 of this title. For complete classification of these Acts to the Code, see Tables.

The Regional Rail Reorganization Act of 1973, referred to in subsec. (i)(1), 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.

AMENDMENTS

1995—Subsec. (a). Pub. L. 104–88, § 324(1), 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. (b). Pub. L. 104–88, § 324(2), added subsec. (b) and struck out former subsec. (b) which read as follows: ''The term 'carrier' means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act.''

1988—Subsec. (i). Pub. L. 100–647, § 7101(a), designated existing provisions as par. (1), inserted par. heading,

substituted ‘‘, except that in computing the compensation paid to any employee, no part of any month’s compensation in excess of the monthly compensation base (as defined in subdivision (2)) for any month shall be recognized’’ for ‘‘: *Provided, however*, That in computing the compensation paid to any employee, 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 the calendar month next following the month in which this chapter was amended in 1959, or in excess of $400 for any month after the month in which this chapter was so amended and before January 1984, or in excess of $600 for any month after 1983, shall be recognized’’, and added par. (2).

Subsec. (k). Pub. L. 100–647, § 7203(a), which directed amendment of second par. of subsec. (k) by substituting ‘‘$15’’ for ‘‘$10’’, was executed by making the substitution for ‘‘ten dollars’’ as the probable intent of Congress.

Pub. L. 100–647, § 7101(b), substituted ‘‘an amount that is equal to 2.5 times the monthly compensation base for months in such base year as computed under subsection (i) of this section’’ for ‘‘$1,500’’.

1983—Subsec. (i). Pub. L. 98–76, § 503(b), inserted ‘‘and before January 1984, or in excess of $600 for any month after 1983’’.

Pub. L. 98–76, § 403(b), inserted after first sentence ‘‘Solely for the purpose of determining the compensation received by an employee in a base year, the term ‘compensation’ shall include 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 and any termination allowance paid under section 702 of that Act, but does not include any other benefits payable under that title. The total amount of any subsistence allowance payable under a benefit schedule provided pursuant to section 701 of the Regional Rail Reorganization Act of 1973 shall be considered as being compensation in the month in which the employee first timely filed a claim for such an allowance.’’

Subsec. (j). Pub. L. 98–76, § 402(b), struck out ‘‘(i) the voluntary payment by another, without deduction from the pay of an employee, of any tax or contribution now or hereafter imposed with respect to the remuneration of such employee, or (ii)’’ after ‘‘‘remuneration’ does not include’’.

Subsec. (k). Pub. L. 98–76, § 411(a)(1), substituted ‘‘$1,500’’ for ‘‘$1,000’’.

1975—Subsec. (h). Pub. L. 94–92, § 1(a), inserted ‘‘for a period of continuing sickness (as defined in section 352(a) of this title)’’ after ‘‘a statement of sickness’’ wherever appearing and incorporated ‘‘and ends with the thirteenth day thereafter’’ in provision reading ‘‘and ends with whichever is the earlier of (i) the thirteenth day thereafter,’’ and inserted cl. (ii) thereafter.

Subsec. (k). Pub. L. 94–92, § 1(b), substituted in second sentence ‘‘ten’’ for ‘‘three’’ dollars.

1968—Subsec. (i). Pub. L. 90–624 excluded remuneration for services performed by nonresident alien individuals temporarily in the United States as participants in a cultural exchange or training program.

Subsec. (k). Pub. L. 90–257, § 201(a), amended definitions of ‘‘day of sickness’’ so as to remove reference to a day in a maternity period and inserted references to a day of sickness for female employees when, because of pregnancy, miscarriage, or the birth of a child, she is unable to work or working is injurious to her health and raised from $750 to $1,000 the amount specified in the subsidiary remuneration provision.

Subsec. (*l*). Pub. L. 90–257, § 201(b), redesignated subsec. (*l*) defining ‘‘benefits’’ as subsec. (*l*)(1). Former subsec. (*l*)(1) redesignated (*l*)(2).

Subsec. (*l*)(1). Pub. L. 90–257, § 201(b), redesignated as subsec. (*l*)(1) former subsec. (*l*) defining ‘‘benefits’’.

Subsec. (*l*)(2). Pub. L. 90–257, § 201(b), redesignated as subsec. (*l*)(2) former subsec. (*l*)(1) defining ‘‘statement of sickness’’ and struck out reference to statement of maternity sickness. Former subsec. (*l*)(2) defining ‘‘maternity period’’ was struck out.

1966—Subsec. (i). Pub. L. 89–700, § 201(a), substituted ‘‘section 356 of this title’’ for ‘‘section 358 of this title.’’

Subsec. (k). Pub. L. 89–700, § 201(b), substituted ‘‘$750’’ for ‘‘500’’.

Subsecs. (s), (t). Pub. L. 89–700, § 201(c), struck out ‘‘, Alaska, Hawaii,’’ after ‘‘States’’.

1959—Subsec. (i). Pub. L. 86–28, § 301(a), increased, for any month after May 1959, from $350 to $400 the maximum amount of monthly compensation to be used in computing benefits.

Subsec. (k). Pub. L. 86–28, § 301(b), substituted ‘‘$500’’ for ‘‘$400’’.

1958—Subsec. (k). Pub. L. 85–927, § 201(a), substituted ‘‘first’’ for ‘‘second’’ and ‘‘second’’ for ‘‘first’’ in second proviso of first paragraph, and substituted ‘‘three dollars’’ for ‘‘one dollar’’ in second paragraph.

Subsec. (q). Pub. L. 85–927, § 201(b), inserted ‘‘in the unemployment trust fund’’.

1954—Subsec. (g). Act Aug. 31, 1954, § 301, provided that compensation for service by an individual as a delegate to a convention of a national railway labor organization shall be disregarded in determining eligibility for benefits, if he has no previous creditable service.

Subsec. (i). Act Aug. 31, 1954, § 302, increased, after June 30, 1954, from $300 to $350 the maximum amount of monthly compensation to be used in computing benefits.

Subsec. (k). Act Aug. 31, 1954, § 303 (part), substituted ‘‘$400’’ for ‘‘$150’’.

1951—Subsec. (k). Act Oct. 30, 1951, inserted last proviso of first par.

1946—Subsec. (e). Act July 31, 1946, § 1, changed opening par. to include professional or technical services when integrated into staff of employer or other personal services the rendition of which is integrated into the employer’s operations and added clause at end of first proviso excluding compensation of less than 10% of remuneration.

Subsec. (h). Act July 31, 1946, § 301, changed definition of registration period to cover days of sickness as well as days of unemployment.

Subsec. (i). Act July 31, 1946, § 2, changed definition of compensation to remuneration ‘‘paid’’ instead of ‘‘payable’’ and inserted provisions relating to presumption that a payment is compensation; payments for time lost and with respect to personal injury; and payments after the end of a calendar year earned during that year.

Subsec. (j). Act July 31, 1946, § 302, inserted reference to maternity insurance and sickness insurance.

Subsec. (k)(2). Act July 31, 1946, § 303, inserted cl. (2) defining day of sickness.

Subsec. (*l*). Act July 31, 1946, § 304, expanded definition of benefits to include payment with respect to sickness and added pars. (1) and (2), defining statement of sickness, statement of maternity sickness, and maternity period.

1942—Subsec. (e). Act Apr. 8, 1942, amended first proviso.

1940—Subsec. (a). Act Aug. 13, 1940, § 1, excluded from definition of employer companies engaged in mining coal, supplying coal not beyond the mine tipple, and the operation of equipment or facilities therefor.

Subsec. (d). Act Aug. 13, 1940, § 3, excluded from definition of employee individuals engaged in mining coal, preparation of coal, handling (other than rail movement by standard locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

Subsec. (*l*). Act Oct. 10, 1940, § 6, redesignated subsec. (m) as (*l*). Former subsec. (*l*) redesignated (n) by act Oct. 10, 1940, § 8.

Subsec. (m). Act Oct. 10, 1940, § 7, redesignated subsec. (n) as (m). Former subsec. (m) redesignated (*l*) by act Oct. 10, 1940, § 6.

Subsec. (n). Act Oct. 10, 1940, § 8, redesignated former subsec. (*l*) as (n), and amended provisions generally. Former subsec. (n) redesignated (m) by act Oct. 10, 1940, § 7.

Subsec. (g). Act Oct. 10, 1940, § 2, inserted provisions relating to employment after June 30, 1940, in service of a local lodge, etc.

Subsec. (h). Act Oct. 10, 1940, § 3, substituted provisions defining ''registration period'' for provisions defining ''half month''.

Subsec. (j). Act Oct 10, 1940, § 4, inserted provisions relating to earned income other than for services for hire to definition of ''remuneration''.

Subsec. (k). Act Oct. 10, 1940, § 5, inserted in cl. (i) ''accrues'' after ''or'', inserted provisions relating to ''subsidiary remuneration'', and substituted provisions relating to working days which include part of each of two consecutive calendar days, for provisions relating to work shifts which include part of two consecutive calendar days.

1939—Subsec. (d). Act June 20, 1939, § 1, designated second paragraph as subsec. (e).

Subsec. (e). Act June 20, 1939, §§ 1, 2, designated second paragraph of subsec. (d) as (e) and inserted proviso relating to an individual not deemed a citizen or resident of the United States. Former subsec. (e) redesignated (f).

Subsec. (f). Act June 20, 1939, §§ 2, 3, redesignated former subsec. (e) as (f). Former subsec. (f), which defined ''part-time worker'', was struck out.

Subsec. (h). Act June 20, 1939, § 4, substituted provisions authorizing Board to define ''half-month'' for provisions defining ''half-month'' as a period of any fifteen consecutive days, with no day to be included in more than one period for any individual.

Subsec. (i). Act June 20, 1939, § 5, struck out comma after ''money''.

Subsec. (k). Act June 20, 1939, § 6, struck out proviso relating to calendar days for part-time workers.

Subsec. (n). Act June 20, 1939, § 20, inserted provisions relating to inclusion within ''benefit year'' half-months containing days of unemployment.

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 7101(f) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and sections 352, 354, and 362 of this title] shall take effect upon the date of the enactment of this Act [Nov. 10, 1988].''

Section 7203(b) of Pub. L. 100–647 provided that: ''The amendment made by this section [amending this section] shall take effect on July 1, 1988.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 402(b) of Pub. L. 98–76 applicable to compensation paid for services rendered after June 30, 1983, see section 402(c) of Pub. L. 98–76, set out as a note under section 231 of this title.

Amendment by section 403(b) of Pub. L. 98–76 effective Aug. 13, 1981, see section 403(c) of Pub. L. 98–76, set out as a note under section 231 of this title.

Section 411(b) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending this section and sections 353 and 354 of this title] shall apply to compensation paid for services rendered after December 31, 1983.''

Section 503(c) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending this section and section 358 of this title] shall apply to compensation paid for services rendered after December 31, 1983.''

EFFECTIVE DATE OF 1975 AMENDMENT

Section 2 of Pub. L. 94–92 provided that:

''(a) The amendment made by section 1(a) of this Act [amending this section] shall be effective with respect to days of sickness in registration periods beginning after June 30, 1975.

''(b) The amendment with respect to qualifying conditions made by section 1(f) [amending section 353 of this title] shall be effective for services rendered after December 31, 1973.

''(c) The amendments made by sections 1(b), 1(c), and 1(d)(1) of this Act [amending this section and section 352 of this title] shall be effective with respect to days of unemployment and days of sickness in registration periods beginning after June 30, 1975: *Provided, however*, That the amount of benefits paid for days of unemployment or days of sickness in a registration period beginning after June 30, 1975, and prior to the date of enactment of this Act [Aug. 9, 1975] shall, if paid to an employee who is covered by a nongovernmental plan for unemployment or sickness insurance and who has been paid benefits under such plan for one or more days within the registration period, be reduced by the amount, if any, by which the benefits paid to him under the nongovernmental plan would have been reduced if this Act [amending this section, sections 231m, 352, 353, 358, 360, 361 of this title, and sections 1402 and 3231 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under this section and sections 231 and 231m of this title, and section 1402 of Title 26] had been enacted prior to July 1, 1975, so that the employee will receive, the full amount of the combined benefits that he would have received under the Railroad Unemployment Insurance Act [this chapter] and the nongovernmental plan if the benefit increases provided by this Act had been enacted prior to said date. The amount of each such reduction in the benefits paid under the amendment made by section 1(c)(2) of this Act [amending section 352 of this title] shall be paid over by the Board to the insurer of the nongovernmental plan or to the employer if a self-insurer. Reductions in benefits and payments to insurers and employers hereunder shall be made on claims filed with the Board by such insurers and employers within thirty days after the date of enactment of this Act [Aug. 9, 1975].

''(d) The amendments made by sections 1(d)(2) and 1(e) of this Act [amending section 352 of this title] shall be effective with respect to days of unemployment in registration periods beginning after June 30, 1975.

''(e) The amendments made by sections 1(g), 1(h), 1(i)(1), and 1(j) of this Act [amending sections 358, 360, and 361 of this title] shall be effective with respect to compensation paid for services rendered after December 31, 1975.

''(f) The amendment made by section 1(i)(2) of this Act [amending section 360 of this title] shall be effective on the date of enactment of this Act [Aug. 9, 1975].''

EFFECTIVE DATE OF 1968 AMENDMENTS

Section 4(b) of Pub. L. 90–624 provided that: ''The amendments made by section 3 [amending this section] shall apply with respect to service performed after December 31, 1967.''

Amendment by section 201(a)(1) of Pub. L. 90–257 effective as of July 1, 1968, and amendment by section 201(a)(2) of Pub. L. 90–257 effective with respect to base years beginning in calendar years after December 31, 1966, see section 208 of Pub. L. 90–257, set out as a note under section 352 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 309 of Pub. L. 86–28 provided that: ''The amendments made by section 301(b) [amending this section] shall be effective with respect to days in registration periods beginning after June 30, 1959. The amendments made by sections 302, 303(a), and 305 [amending sections 352 and 354 of this title] shall be effective with respect to benefits accruing in general benefit years which begin after the benefit year ending June 30, 1958, and in extended benefit periods which begin after December 31, 1957. The amendment made by section 304 [amending section 353 of this title] shall be effective with respect to base years after the base year ending December 31, 1957. The amendments made by clauses (4) and (5) of section 306 [amending section 358 of this title, increasing the contribution rates for compensation paid after May, 1959] and clause (1) of section 307

[amending section 358 of this title, increasing the contribution rate from 3 to 3¾ percent] shall be effective as of the first day of the calendar month next following the month in which this Act was enacted [May, 1959], and shall apply only with respect to compensation paid for services rendered in calendar months after the month in which this Act was enacted [May, 1959].''

EFFECTIVE DATE OF 1958 AMENDMENT

Section 207 of Pub. L. 85–927 provided that:

''(a) The amendments made by section 201(a) [amending this section] shall be effective with respect to registration periods in benefit years after the benefit year ending on June 30, 1958.

''(b) The amendments made by section 202 [amending section 354 of this title] shall be effective with respect to days in benefit years after the benefit year ending on June 30, 1958.

''(c) The remaining amendments made by this part [amending this section, sections 358, 361, 362 of this title, and section 1104 of Title 42, The Public Health and Welfare] shall be effective, except as otherwise indicated therein, on the date of the enactment of this Act [Sept. 6, 1958].''

EFFECTIVE DATE OF 1954 AMENDMENT

Sections 401 and 402 of act Aug. 31, 1954, provided that:

''SEC. 401. The amendments made by this Act [enacting section 228s–1 of this title, amending this section, sections 228a, 228b, 228c, 228e, 352, 353, and 358 of this title, sections 3201, 3202, 3211, 3221, and 3231 of Title 26, Internal Revenue Code, and sections 1500, 1501, 1510, 1520, 1532 of the Internal Revenue Code of 1939] shall be effective July 1, 1954, except as otherwise provided.

''SEC. 402. The provisions of sections 1, 205, and 301 of this Act [amending this section, section 228a of this title, and section 1532 of the Internal Revenue Code of 1939] shall be effective with respect to compensation paid on and after April 1, 1954.''

EFFECTIVE DATE OF 1951 AMENDMENT

Section 28 of act Oct. 30, 1951, provided that: ''The provisions of sections 26 and 27 of the Act [amending sections 350 and 354 of this title] shall become effective with respect to registration periods beginning on and after January 1, 1952.''

EFFECTIVE DATE OF 1946 AMENDMENTS

Amendment by sections 1 and 2 of act July 31, 1946, effective July 31, 1946, see section 401 of act July 31, 1946.

Amendment by sections 301 to 304 of act July 31, 1946, effective as of July 1, 1947, see section 403 of act July 31, 1946, set out as a note under section 352 of this title.

EFFECTIVE DATE OF 1942 AMENDMENT

Act Apr. 8, 1942, besides amending subsec. (e) of this section, contained the following paragraph: ''The amendment in this section shall operate in the same manner and have the same effect as if it had been part of the Railroad Unemployment Insurance Act [this chapter] when that Act was enacted on June 25, 1938: *Provided, however*, That no interest or penalties shall accrue or be deemed to have accrued for the failure to make returns under, or pay contributions levied by, section 8 of said Railroad Unemployment Insurance Act [section 358 of this title] with respect to the compensation of employees of any local lodge or division of a railway-labor-organization employer earned prior to July 1, 1940, and with respect to the compensation of employees of any general committee of a railway-labor-organization employer earned prior to the enactment of this amendment if, with respect to any such local lodge or division (1) the headquarters of such a local lodge or division was not located in the United States or (2) all, or substantially all, the individuals constituting the membership of such a local lodge or division were employees of an employer not conducting the principal part of its business in the United States; and if, with respect to any such general committee (1) the individuals represented by such a general committee were employees of an employer not conducting the principal part of its business in the United States, or (2) the service to such a general committee was rendered outside the United States, or (3) the office or headquarters of the individual rendering service to such a general committee was not located in the United States and if such returns are made and such contributions are paid by such a local lodge or division or by such a general committee within the time allowed for making returns and paying contributions with respect to the first calendar quarter beginning after the enactment of this amendment.''

EFFECTIVE DATE OF 1940 AMENDMENT

Section 1 of act Oct. 10, 1940, provided: ''That the provisions of this act [amending this section, sections 228a, 228i, 352 to 355, 356, 361, and 362 of this title, and section 1532 of former Title 26, Internal Revenue Code of 1939, and enacting provisions set out as notes under this section and section 262 of this title] shall take effect on November 1, 1940, except that sections 2, 11, 25, 26, and 27 [amending sections 228a, 228i, 351, and 352 of this title and section 1532 of former Title 26 and enacting provisions set out as a note under section 262 of this title] shall be effective as of July 1, 1940, and sections 19 and 20 [amending section 355 of this title] shall become effective upon the approval of this act: *Provided, however*, That—

''(a) A half-month which has begun prior to November 1, 1940, in accordance with the Railroad Unemployment Insurance Act [this chapter] and regulations thereunder, and which includes such date, shall continue, and benefits with respect thereto shall be computed and paid as if this act had not been enacted;

''(b) All benefit years current on October 31, 1940, shall terminate (1) on October 31, 1940, or (2) on the last day of a half-month which includes October 31, 1940 and November 1, 1940, whichever is later, and, for the purposes of section 2(c) of the Railroad Unemployment Insurance Act [section 352(c) of this title], as amended by this act, all benefits paid for unemployment in half-months begun subsequent to June 30, 1940, and prior to November 1, 1940, shall be deemed to have been paid for unemployment within the benefit year ending June 30, 1941;

''(c) Benefits for unemployment in the first registration period, beginning after October 31, 1940, of an employee who has, subsequent to June 30, 1940, completed a waiting period under section 3(b) of the Railroad Unemployment Insurance Act [section 353(b) of this title], shall be determined and computed as though such registration period were a subsequent registration period in the same benefit year.''

EXCLUSION FROM WAGES AND COMPENSATION OF REFUNDS REQUIRED FROM EMPLOYERS TO COMPENSATE FOR DUPLICATION OF MEDICARE BENEFITS BY HEALTH CARE BENEFITS PROVIDED BY EMPLOYERS

For purposes of this chapter, the term ''compensation'' shall not include the amount of any refund required under section 421 of Pub. L. 100–360 [42 U.S.C. 1395b note], see section 10202 of Pub. L. 101–239, set out as a note under section 1395b of Title 42, The Public Health and Welfare.

§ 352. Benefits

(a) Days for which benefits payable; determination of amount

(1)(A) PAYMENT OF UNEMPLOYMENT BENEFITS.—

(i) GENERALLY.—Except as otherwise provided in this subparagraph, benefits shall be payable to any qualified employee for each day of unemployment in excess of 4 during any registration period within a period of continuing unemployment.

(ii) WAITING PERIOD FOR FIRST REGISTRATION PERIOD.—Benefits shall be payable to any qualified employee for each day of unemployment in excess of 7 during that employee's first registration period in a period of continuing unemployment if such period of continuing unemployment is the employee's initial period of continuing unemployment commencing in the benefit year.

(iii) STRIKES.—

(I) INITIAL 14-DAY WAITING PERIOD.—If the Board finds that a qualified employee has a period of continuing unemployment that includes days of unemployment due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which such employee was last employed, no benefits shall be payable for such employee's first 14 days of unemployment due to such stoppage of work.

(II) SUBSEQUENT DAYS OF UNEMPLOYMENT.—For subsequent days of unemployment due to the same stoppage of work, benefits shall be payable as provided in clause (i) of this subparagraph.

(III) SUBSEQUENT PERIODS OF CONTINUING UNEMPLOYMENT.—If such period of continuing unemployment ends by reason of clause (v) but the stoppage of work continues, the waiting period established in clause (ii) shall apply to the employee's first registration period in a new period of continuing unemployment based upon the same stoppage of work.

(iv) DEFINITION OF PERIOD OF CONTINUING UNEMPLOYMENT.—Except as limited by clause (v), for the purposes of this subparagraph, the term ''period of continuing unemployment'' means—

(I) a single registration period that includes more than 4 days of unemployment;

(II) a series of consecutive registration periods, each of which includes more than 4 days of unemployment; or

(III) a series of successive registration periods, each of which includes more than 4 days of unemployment, if each succeeding registration period begins within 15 days after the last day of the immediately preceding registration period.

(v) SPECIAL RULE REGARDING END OF PERIOD.—For purposes of applying clause (ii), a period of continuing unemployment ends when an employee exhausts rights to unemployment benefits under subsection (c) of this section.

(vi) LIMIT ON AMOUNT OF BENEFITS.—No benefits shall be payable to an otherwise eligible employee for any day of unemployment in a registration period where the total amount of the remuneration (as defined in section 351(j) of this title) payable or accruing to him for days within such registration period exceeds the amount of the base year monthly compensation base. For purposes of the preceding sentence, an employee's remuneration shall be deemed to include the gross amount of any remuneration that would have become payable to that employee but did not become payable because that employee was not ready or willing to perform suitable work available to that employee on any day within such registration period.

(B) PAYMENT OF SICKNESS BENEFITS.—

(i) GENERALLY.—Except as otherwise provided in this subparagraph, benefits shall be payable to any qualified employee for each day of sickness after the 4th consecutive day of sickness in a period of continuing sickness but excluding 4 days of sickness in any registration period in such period of continuing sickness.

(ii) WAITING PERIOD FOR FIRST REGISTRATION PERIOD.—Benefits shall be payable to any qualified employee for each day of sickness in excess of 7 during that employee's first registration period in a period of continuing sickness if such period of continuing sickness is the employee's initial period of continuing sickness commencing in the benefit year. For the purposes of this clause, the first registration period in a period of continuing sickness is that registration period that first begins with 4 consecutive days of sickness and includes more than 4 days of sickness.

(iii) DEFINITION OF PERIOD OF CONTINUING SICKNESS.—For the purposes of this subparagraph, a period of continuing sickness means—

(I) a period of consecutive days of sickness, whether from 1 or more causes; or

(II) a period of successive days of sickness due to a single cause without interruption of more than 90 consecutive days which are not days of sickness.

(iv) SPECIAL RULE REGARDING END OF PERIOD.—For purposes of applying clause (ii), a period of continuing sickness ends when an employee exhausts rights to sickness benefits under subsection (c) of this section.

(2) The daily benefit rate with respect to any such employee for such day of unemployment or sickness shall be in an amount equal to 60 per centum of the daily rate of compensation for the employee's last employment in which he engaged for an employer in the base year, but not less than $12.70: *Provided, however*, That for registration periods beginning after June 30, 1975, but before July 1, 1976, such amount shall not exceed $24 per day of such unemployment or sickness, that for registration periods beginning after June 30, 1976, but before July 1, 1988, such amount shall not exceed $25 per day of such unemployment or sickness, that for registration periods beginning after June 30, 1988, but before July 1, 1989, such amount shall not exceed $30 per day of unemployment or sickness, and that for registration periods beginning after June 30, 1989, such amount shall not exceed the maximum daily benefit rate provided in paragraph (3) of this subsection. The daily rate of compensation referred to in this paragraph shall be determined by the Board on the basis of information furnished to the Board by the employee, his employer, or both.

(3) The maximum daily benefit rate computed by the Board under section 362(r)(2) of this title shall be the product of the monthly compensation base, as computed under section 351(i)(2) of this title for the base year immediately preceding the beginning of the benefit year, multiplied by 5 percent. If the maximum daily benefit rate so computed is not a multiple of $1, it shall be rounded down to the nearest multiple of $1.

(4) In computing benefits to be paid, days of unemployment shall not be combined with days of sickness in the same registration period.

(b) Time of payments

The benefits provided for in this section shall be paid to an employee at such reasonable intervals as the Board may prescribe.

(c) Maximum number of days for benefits

(1) Normal benefits

(A) Generally

The maximum number of days of unemployment within a benefit year for which benefits may be paid to an employee shall be 130, and the maximum number of days of sickness within a benefit year for which benefits may be paid to an employee shall be 130.

(B) Limitation

The total amount of benefits that may be paid to an employee for days of unemployment within a benefit year shall in no case exceed the employee's compensation in the base year; and the total amount of benefits that may be paid to an employee for days of sickness within a benefit year shall in no case exceed the employee's compensation in the base year, except that notwithstanding section 351(i) of this title, in determining the employee's compensation in the base year for the purpose of this sentence, any money remuneration paid to the employee for services rendered as an employee shall be taken into account that is not in excess of an amount that bears the same ratio to $775 as the monthly compensation base for that year as computed under section 351(i) of this title bears to $600.

(2) Extended benefits

(A) Generally

With respect to an employee who has 10 or more years of service as defined in section 231(f) of this title, who did not voluntarily retire and (in a case involving exhaustion of rights to normal benefits for days of unemployment) did not voluntarily leave work without good cause, and who had current rights to normal benefits for days of unemployment or days of sickness in a benefit year but has exhausted such rights, the benefit year in which such rights are exhausted shall be deemed not to be ended until the last day of the extended benefit period determined under this paragraph, and extended unemployment benefits or extended sickness benefits (depending on the type of normal benefit rights exhausted) may be paid for not more than 65 days of unemployment or 65 days of sickness within such extended benefit period.

(B) Beginning date

An employee's extended benefit period shall begin on the employee's first day of unemployment or first day of sickness, as the case may be, following the day on which the employee exhausts the employee's then current rights to normal benefits for days of unemployment or days of sickness and shall continue for 7 consecutive 14-day periods, each of which shall constitute a registration period, but no such extended benefit period shall extend beyond the beginning of the first registration period in a benefit year in which the employee is again qualified for benefits in accordance with section 353 of this title on the basis of compensation earned after the first of such consecutive 14-day periods has begun.

(C) Termination when employee reaches age of 65

Notwithstanding any other provision of this paragraph, an extended benefit period for sickness benefits shall terminate on the day next preceding the date on which the employee attains age 65, except that it may continue for the purpose of paying benefits for days of unemployment.

(3) Accelerated benefits

(A) General rule

With respect to an employee who has 10 or more years of service as defined in section 231(f) of this title, who did not voluntarily retire, and (in a case involving unemployment benefits) did not voluntarily leave work without good cause, who has 14 or more consecutive days of unemployment, or 14 or more consecutive days of sickness, and who is not a qualified employee with respect to the general benefit year current when such unemployment or sickness commences but is or becomes a qualified employee for the next succeeding general benefit year, such succeeding general benefit year shall, in that employee's case, begin on the first day of the month in which such unemployment or sickness commences.

(B) Exception

In the case of a succeeding benefit year beginning in accordance with subparagraph (A) by reason of sickness, such sentence shall not operate to permit the payment of benefits in the period provided for in such sentence for any day of sickness beginning with the date on which the employee attains age 65, and continuing through the day preceding the first day of the next succeeding general benefit year.

(C) Determination of age

For the purposes of this subsection, the Board may rely on evidence of age available in its records and files at the time determinations of age are made.

(d) Overpayment of benefits; recovery; liability of officers

If the Board finds that at any time more than the correct amount of benefits has been paid to any individual under this chapter or a payment has been made to an individual not entitled thereto (including payments made prior to July 1, 1940), recovery by adjustments in subsequent payments to which such individual is entitled under this chapter or any other Act administered by the Board may, except as otherwise provided in this subsection, be made under regulations prescribed by the Board. If such individ-

ual dies before recovery is completed, recovery may be made by set-off or adjustments, under regulations prescribed by the Board, in subsequent payments due, under this chapter or any other Act administered by the Board, to the estate, designee, next of kin, legal representative, or surviving spouse of such individual, with respect to the employment of such individual.

Adjustments under this subsection 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 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.

There shall be no recovery in any case in which more than the correct amount of benefits has been paid to an individual or payment has been made to an individual not entitled thereto (including payments made prior to July 1, 1940) 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 chapter or would be against equity or good conscience.

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 the third paragraph of this subsection or has been begun but cannot be completed under the first paragraph of this subsection.

(e) Assignment, taxation, garnishment, attachment, etc., of benefits

Notwithstanding any other law of the United States, or of any State, Territory, or the District of Columbia, no benefits 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.

(f) Effect of payment of benefits for remunerable period; payment of surplus remuneration to Board

If (i) benefits are paid to any employee with respect to unemployment or sickness in any registration period, and it is later determined that remuneration is payable to such employee with respect to any period which includes days in such registration period which had been determined to be days of unemployment or sickness, and (ii) the person or company from which such remuneration is payable has, before payment thereof, notice of the payment of benefits upon the basis of days of unemployment or sickness included in such period, the remuneration so payable shall not be reduced by reason of such benefits but the remuneration so payable, to the extent to which benefits were paid upon the basis of days which had been determined to be days of unemployment or sickness and which are included in the period for which such remuneration is payable, shall be held to be a special fund in trust for the Board. The amount of such special fund shall be paid to the Board and in the collection thereof the Board shall have the same authority, and the same penalties shall apply, as are provided in section 358 of this title with respect to contributions. The proceeds of such special fund shall be credited to the account. Such benefits, to the extent that they are represented in such a special fund which has been collected by the Board, shall be disregarded for the purposes of subsection (c) of this section.

(g) Payment of accrued benefits upon death

Benefits accrued to an individual but not yet paid at death shall, upon certification by the Board, be paid, without necessity of filing further claims therefor, to the same individual or individuals to whom any accrued annuities under section 231e(a)(1) of this title are paid. In the event that no such accrued annuities are paid, and if application for such accrued benefits is filed prior to the expiration of two years after the death of the individual to whom such benefits accrued, such accrued benefits shall be paid, upon certification by the Board, to the individual or individuals who would be entitled thereto under section 231e(a)(1) of this title if such accrued benefits were accrued annuities. If there is no individual to whom all or any part of such accrued benefits can be paid in accordance with the foregoing provisions, such benefits or part thereof shall escheat to the credit of the account.

(June 25, 1938, ch. 680, § 2, 52 Stat. 1096; June 20, 1939, ch. 227, §§ 7–9, 21, 53 Stat. 845, 848; Oct. 10, 1940, ch. 842, §§ 9–12, 54 Stat. 1095, 1096; July 31, 1946, ch. 709, §§ 305–307, 60 Stat. 736, 737; May 15, 1952, ch. 290, § 1, 66 Stat. 73; Aug. 31, 1954, ch. 1164, pt. III, § 304, 68 Stat. 1041; Aug. 12, 1955, ch. 869, § 4, 69 Stat. 716; Pub. L. 86–28, pt. III, §§ 302, 303(a), May 19, 1959, 73 Stat. 30; Pub. L. 89–700, title II, § 202, Oct. 30, 1966, 80 Stat. 1087; Pub. L. 90–257, title II, § 202, Feb. 15, 1968, 82 Stat. 23; Pub. L. 93–445, title IV, § 401, Oct. 16, 1974, 88 Stat. 1359; Pub. L. 94–92, title I, § 1(c)–(e), Aug. 9, 1975, 89 Stat. 461, 462; Pub. L. 98–76, title IV, § 412(a), Aug. 12, 1983, 97 Stat. 436; Pub. L. 100–647, title VII, §§ 7101(c), 7201(a), Nov. 10, 1988, 102 Stat. 3758, 3774; Pub. L. 104–88, title III, § 324(3), Dec. 29, 1995, 109 Stat. 950; Pub. L. 104–251, §§ 2–5(b), Oct. 9, 1996, 110 Stat. 3161–3165.)

AMENDMENTS

1996—Subsec. (a)(1)(A). Pub. L. 104–251, § 2, inserted heading and amended text generally. Prior to amendment, text read as follows: ''(A)(i) Except as otherwise provided in this subparagraph, benefits shall be payable to any qualified employee for each day of unemployment in excess of 4 during any registration period.

''(ii) No benefits shall be payable for days of unemployment during the first registration period within a benefit year in which the employee has more than 4 days of unemployment.

''(iii) In any case in which the Board finds that an employee's unemployment was due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which such employee was last employed, no benefits shall be payable for the first 14 days of unemployment due to such stoppage of work. However, for subsequent days of unemployment due to such stoppage of work, benefits shall be payable to days in excess of 4 during any registration period.''

Subsec. (a)(1)(B). Pub. L. 104–251, § 3, inserted heading and amended text generally. Prior to amendment, text read as follows:

''(B)(i) Except as otherwise provided in this subparagraph, benefits shall be payable to any qualified employee for each day of sickness after the 4th consecutive day of sickness in a period of continuing sickness but excluding 4 days of sickness in any registration period.

''(ii) No benefits shall be payable for days of sickness in the first registration period within a benefit year in which the employee has both 4 consecutive days of sickness and more than 4 days of sickness.

''(iii) For the purposes of this subparagraph, a period of continuing sickness means (I) a period of consecutive days of sickness, whether from one or more causes, or (II) a period of successive days of sickness due to a single cause without interruption of more than 90 consecutive days which are not days of sickness.''

Subsec. (a)(3). Pub. L. 104–251, §4, amended par. (3) generally. Prior to amendment, par. (3) provided the formula under which the Board was required to compute the maximum daily benefit rate under section 362(r)(2) of this title which could not be less than $30.

Subsec. (c). Pub. L. 104–251, §5(a), inserted heading and amended text generally, designating existing provisions relating to normal benefits, extended benefits, and accelerated benefits as pars. (1) to (3), respectively, making technical changes in pars. (1) and (3), and in par. (2), deleting provisions which authorized extended benefits for certain employees with less than ten years of service as defined in section 231(f) of this title.

Subsec. (h). Pub. L. 104–251, §5(b), struck out subsec. (h), which provided for determining extended benefit period for employees with less than 10 years of service under former subsec. (c).

1995—Subsec. (h)(3). Pub. L. 104–88 substituted ''Surface Transportation Board, adjusted, as determined by the Railroad Retirement Board'' for ''Interstate Commerce Commission, adjusted, as determined by the Board''.

1988—Subsec. (a)(1). Pub. L. 100–647, §7201(a)(1), (2), inserted ''(1)'' after ''(a)'' and substituted subpars. (A) and (B) for ''Benefits shall be payable to any qualified employee for each day of unemployment in excess of four during any registration period: *Provided, however*, That in any case in which the Board finds that his unemployment was due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which he was last employed, no benefits shall be payable for the first fourteen days of unemployment due to such stoppage of work. Benefits shall be payable to any qualified employee for each day of sickness after the fourth consecutive day of sickness in a period of continuing sickness, but excluding four days of sickness in any registration period. A period of continuing sickness means (i) a period of consecutive days of sickness, whether from one or more causes, or (ii) a period of successive days of sickness due to a single cause without interruption of more than ninety consecutive days which are not days of sickness.''

Subsec. (a)(2). Pub. L. 100–647, §7201(a)(3)–(6), inserted ''(2)'' before ''The daily benefit'', substituted ''sickness, that for'' for ''sickness and that for'', inserted ''but before July 1, 1988,'' after ''June 30, 1976,'' and inserted '', that for registration periods beginning after June 30, 1988, but before July 1, 1989, such amount shall not exceed $30 per day of unemployment or sickness, and that for registration periods beginning after June 30, 1989, such amount shall not exceed the maximum daily benefit rate provided in paragraph (3) of this subsection.'' after ''unemployment or sickness''.

Subsec. (a)(3). Pub. L. 100–647, §7201(a)(7), added par. (3).

Subsec. (a)(4). Pub. L. 100–647, §7201(a)(8), inserted ''(4)'' before ''In computing benefits''.

Subsec. (c). Pub. L. 100–647, §7101(c), substituted ''shall be taken into account that is not in excess of $775 in any month before 1989 and, in any month in a base year after 1988, is not in excess of an amount that bears the same ratio to $775 as the monthly compensation base for that year as computed under section 351(i) of this title bears to $600'' for ''not in excess of $775 in any month shall be taken into account''.

1983—Subsec. (a). Pub. L. 98–76 substituted ''That in any case in which the Board finds that his unemployment was due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which he was last employed, no benefits shall be payable for the first fourteen days of unemployment due to such stoppage of work'' for ''That notwithstanding the provisions of section 351(h) of this title, in any case in which the Board finds that his unemployment was due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which he was last employed, other than a strike subject to the disqualification in section 354(a–2)(iii) of this title, none of the first seven days of unemployment due to such stoppage of work shall be included in any registration period; and subject to the registration provisions of section 351(h) of this title, so many of the ensuing seven consecutive calendar days during which his unemployment continues to be caused by such stoppage of work shall constitute a registration period, during which benefits shall be payable for each day of unemployment''.

1975—Subsec. (a), first par. Pub. L. 94–92, §1(c)(1), inserted proviso and definition of registration period, provided for payment of sickness benefits after four rather than after seven days of sickness, and inserted definition of period of continuing sickness.

Subsec. (a), second par. Pub. L. 94–92, §1(c)(2), substituted provisions for a daily rate of unemployment and sickness benefits, for registration periods beginning after June 30, 1975, but before July 1, 1976, equal to the smaller of $24 or 60 percent of the employee's last daily rate of pay in the base period (but not less than $12.70), and for registration periods beginning after June 30, 1976, a daily rate of $25 for prior provision for such benefits set out in a table with ten levels of base year compensation and corresponding daily benefit rates starting at $8.00, payable to those with the minimum qualifying base year compensation, and rising to a maximum of $12.70, which is reached by those who received base year compensation totalling $4,000 or more and prescribing a minimum daily benefit not less than the smaller of the table maximum ($12.70) or 60 percent of the employee's last daily rate of pay in the base period.

Subsec. (c). Pub. L. 94–92, §1(d), inserted exception provision in first proviso and proviso respecting an employee with less than ten years of service.

Subsec. (h). Pub. L. 94–92, §1(e), added subsec. (h).

1974—Subsec. (c). Pub. L. 93–445, §401(a), substituted ''ten or more years of service as defined in section 231(f) of this title'' for ''ten or more years of service as defined in section 228a(f) of this title'' and struck out ''and section 360(h) of this title'' after ''For purposes of this subsection''.

Subsec. (g). Pub. L. 93–445, §401(b), substituted ''section 231e(a)(1) of this title'' for ''section 228c(f)(1) of this title'' in two places.

1968—Subsec. (a). Pub. L. 90–257, §202(a), struck out all references to the payment of maternity benefits, amended table of benefit rates by striking out the line for persons in the compensation range of $750 to $999.99 and by increasing the rates of benefits for the remaining categories from $5.50 to $8.00, $6.00 to $8.50, $6.50 to $9.00, $7.00 to $9.50, $7.50 to $10.00, $8.00 to $10.50, $8.50 to $11.00, $9.00 to $11.50, $9.50 to $12.00, and $10.20 to $12.70 respectively, and raised from $10.20 to $12.70 the maximum rate applicable if the formula of 60 per centum of the daily rate of compensation for the employee's last employment in which he engaged for an employer in the base year is used.

Subsec. (c). Pub. L. 90–257, §202(b), removed all references to payment of maternity benefits, made provision for extended sickness benefits similar to extended unemployment benefits, added to existing provisions for the early beginning of a general benefit year (or accelerated benefit year) in certain cases involving days of unemployment similar provisions for a similar early beginning of a general benefit year in certain cases involving days of sickness, and inserted provisions dealing with the effect of the attainment of age 65 on an

employee's receipt of extended sickness benefits and on his receipt of sickness benefits in an accelerated benefit year and relating to the evidence of age on which the Board may rely for purposes of determining the attainment of age 65.

1966—Subsec. (a). Pub. L. 89–700, § 202(a), struck out daily benefit rate of $4.50 for the compensation range of $500 to $699.99 from the table, and substituted ''750'' for ''700'' in Column I.

Subsec. (g). Pub. L. 89–700, § 202(b), amended subsec. (g) generally, and among other changes, provided that if there is no individual to whom accrued benefits can be paid, such benefits or parts thereof shall escheat to the credit of the account.

1959—Subsec. (a). Pub. L. 86–28, § 302, substituted ''for each day of unemployment in excess of four during any registration period, and'' for ''for each day of unemployment in excess of seven during the first registration period, within a benefit year, in which he will have had seven or more days of unemployment, and for each day of unemployment in excess of four during any subsequent registration period in the same benefit year, and'', ''60 per centum'' for ''50 per centum'', and ''not to exceed $10.20'' for ''not to exceed $8.50'', and increased the daily benefit rates.

Subsec. (c). Pub. L. 86–28, § 303(a), provided for an extended benefit period with respect to employees who have ten or more years of service, who did not voluntarily leave work without good cause or voluntarily retire, and who have exhausted their rights to normal benefits for days of unemployment in a benefit year.

1955—Subsec. (e). Act Aug. 12, 1955, specified that exemption applies to the laws of the several States, the District of Columbia, and the Territories.

1954—Subsec. (a). Act Aug. 31, 1954, § 304(a), changed the table of daily benefit rates and qualifying amounts of earnings in the base year so that such rates and amounts will begin with $3.50 and $4.00, respectively, to a maximum of $8.50 for $4,000 and over, and inserted proviso immediately after the table.

Subsec. (c). Act Aug. 31, 1954, § 304(b), inserted proviso at end.

1952—Subsec. (a). Act May 15, 1952, substituted a new table of daily benefit rates.

1946—Subsec. (a). Act July 31, 1946, § 305, changed first and second pars. to include benefits for days of sickness, changed reference to total amount of compensation payable to him in second par. to total compensation, added new benefit rates to table for compensation of $2,000 to $2,499.99 and $2,500 and over, and added last two pars. relating to maternity benefits and to computation of benefits.

Subsec. (c). Act July 31, 1946, § 306, increased maximum days of unemployment to 130 and established same maximum for days of sickness.

Subsec. (f). Act July 31, 1946, § 307, inserted references to sickness.

1940—Subsec. (a). Act Oct. 10, 1940, § 9, designated existing provisions as cl. (i), substituted registration period for half-month as determining factor, added cl. (ii), and increased total compensation amounts set out in Column I and daily benefit amounts set out in Column II.

Subsec. (c). Act Oct. 10, 1940, § 10, substituted provisions relating to maximum number of days of unemployment within a benefit year, for provisions relating to maximum benefits payable to an employee within his benefit year.

Subsec. (d). Act Oct. 10, 1940, § 11, substituted provisions relating to adjustments for erroneous payments and procedure for recovery of such payments, for provisions making applicable section 228i of this title for adjustments and recovery of erroneous payments.

Subsec. (f). Act Oct. 10, 1940, § 12, in cl. (i) substituted provisions relating to registration periods for provisions relating to benefits paid with respect to any period, and in text following cl. (ii) inserted condition relating to benefits which were paid upon the basis of days determined to be days of unemployment and included in the period for which remuneration is payable.

1939—Subsec. (a). Act June 20, 1939, § 7, struck out exception relating to part-time workers.

Subsec. (d). Act June 20, 1939, §§ 8, 9, redesignated subsec. (e) as (d). Former subsec. (d), which authorized Board to prescribe regulations for determining amount of daily benefits and maximum benefits during any benefit year, was struck out.

Subsec. (e). Act June 20, 1939, § 9, redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsecs. (f), (g). Act June 20, 1939, § 9, redesignated subsec (g) as (f) and struck out reference to subsec. (a). Former subsec. (f) redesignated (e).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 6 of Pub. L. 104–251 provided that: ''The amendments made by this Act [amending this section and repealing section 368 of this title] shall take effect on the date of the enactment of this Act [Oct. 9, 1996].''

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 7201(b) of Pub. L. 100–647 provided that:

''(1) Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 10, 1988].

''(2) The amendments made by paragraph (2) of subsection (a) shall apply with respect to registration periods beginning after June 30, 1988.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 412(b) of Pub. L. 98–76 provided that: ''The amendment made by this section [amending this section] shall apply with respect to days of unemployment in registration periods beginning after December 31, 1983.''

EFFECTIVE DATE OF 1975 AMENDMENT; REDUCTION OF BENEFITS IN VIEW OF COVERAGE UNDER NONGOVERNMENTAL PLAN; FILING CLAIMS FOR PAYMENTS TO INSURERS AND EMPLOYERS

Amendment by section 1(c), (d)(1) of Pub. L. 94–92 effective with respect to days of unemployment and days of sickness in registration periods beginning after June 30, 1975, reduction of benefits in view of coverage under nongovernmental plan, and filing of claims for payments to insurers and employers; and amendment by section 1(d)(2), (e) of Pub. L. 94–92 effective with respect to days of unemployment in registration periods beginning after June 30, 1975, see section 2 of Pub. L. 94–92, set out as an Effective Date of 1975 Amendment note under section 351 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 208 of Pub. L. 90–257 provided that: ''The amendments made by sections 201(a)(1), 201(b), 202(a)(1), 202(a)(2), 202(b)(1), 206 and 207 [amending this section and sections 351, 362, and 363 of this title] shall be effective as of July 1, 1968. The amendments made by sections 201(a)(2) and 203 [amending sections 351 and 353 of this title] shall be effective with respect to base years beginning in calendar years after December 31, 1966, except that with respect to the base year in calendar year 1967 the amendments made by section 203 [amending section 353 of this title] shall not be applicable to an employee whose compensation with respect to that base year was not less than $750 but less than $1,000; further, as to such an employee, the amendments made by section 202(a)(3) [amending this section] shall not be

applicable with respect to days of unemployment and days of sickness in registration periods in the benefit year beginning July 1, 1968. The amendments made by section 202(a)(3) [amending this section] shall otherwise be effective with respect to days of unemployment and days of sickness in registration periods beginning on or after July 1, 1968. The amendments made by sections 202(b)(2)(i) through (vi) [amending this section] shall be effective to provide the beginning of extended benefit periods on or after July 1, 1968. The amendments made by section 202(b)(2)(vii) through (ix) [amending this section] shall be effective to provide for the early beginning of a benefit year on or after July 1, 1967. The amendment made by section 204(a) [amending section 354 of this title] shall be effective with respect to calendar days in benefit years beginning after June 30, 1968, and the amendment made by section 204(b) [amending section 354 of this title] shall be effective with respect to voluntary leaving of work (within the meaning of section 4(a–2)(i) of the Railroad Unemployment Insurance Act [section 354(a–2)(i) of this title]) after the enactment date of this Act [Feb. 15, 1968].''

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–28 effective with respect to benefits accruing in general benefit years which begin after the benefit year ending June 30, 1958, and in extended benefit periods which begin after Dec. 31, 1957, see section 309 of Pub. L. 86–28, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1955 AMENDMENT

Section 4 of act Aug. 12, 1955, provided that the amendment made by that section is effective as of the date of its ''original enactment'' [June 25, 1938].

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 31, 1954, effective July 1, 1954, see section 401 of act Aug. 31, 1954, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1952 AMENDMENT

Section 3 of act May 15, 1952, provided that: ''The amendments made by this Act [amending this section and section 353 of this title] shall be effective with respect to benefit years beginning on and after July 1, 1952.''

EFFECTIVE DATE OF 1946 AMENDMENT

Amendment by section 306 of act July 31, 1946, effective July 1, 1946, see section 402 of that Act.

Section 403 of act July 31, 1946, provided that: ''Sections 301, 302, 303, 304, 305 (except for the revision of the table which shall become effective on the date of enactment of this Act [July 31, 1946]), 307, 308, 309, and 310 [amending sections 351 to 354 of this title] shall become effective on July 1, 1947.''

EFFECTIVE DATE OF 1940 AMENDMENT

For effective date of amendment by act Oct. 10, 1940, see section 1 of act Oct. 10, 1940, set out as a note under section 351 of this title.

EXTENDED RAILROAD UNEMPLOYMENT INSURANCE BENEFITS DURING PERIODS OF HIGH NATIONAL UNEMPLOYMENT

Pub. L. 102–164, title V, §501, Nov. 15, 1991, 105 Stat. 1064, as amended by Pub. L. 102–182, §3(a)(6), (7), Dec. 4, 1991, 105 Stat. 1234; Pub. L. 102–244, §5, Feb. 7, 1992, 106 Stat. 5; Pub. L. 102–318, title I, §105, July 3, 1992, 106 Stat. 293; Pub. L. 103–6, §3(a), (b), Mar. 4, 1993, 107 Stat. 33; Pub. L. 103–152, §§8, 9(b), Nov. 24, 1993, 107 Stat. 1519, provided that:

''(a) IN GENERAL.—For purposes of section 2(h) of the Railroad Unemployment Insurance Act (45 U.S.C. 352(h)(2)), a 'period of high unemployment' includes any month during the period November 1991 through February 1994.

''(b) EFFECTIVE DATES.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), no employee shall have an extended benefit period under the second proviso of section 2(c) of the Railroad Unemployment Insurance Act beginning before November 17, 1991, or after February 5, 1994.

''(2) TRANSITION.—If an employee has established an extended benefit period under the second proviso of section 2(c) of the Railroad Unemployment Insurance Act and the last day of such extended benefit period, as established, is after February 5, 1994, such employee shall continue to be entitled to extended unemployment benefits for days of unemployment in registration periods included in such extended benefit period, provided that such employee meets the eligibility requirements of this section and the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.].

''(3) REACHBACK PROVISIONS.—If an employee has exhausted that employee's rights to normal unemployment benefits under section 2(c) of the Railroad Unemployment Insurance Act [45 U.S.C. 352(c)] after February 28, 1991, but before November 17, 1991, such employee shall, for the purposes of the application of this section, be deemed to have exhausted such rights after November 17, 1991.

''(c) LIMITATION ON PAYMENT.—Extended benefits under this section shall be payable for a maximum of 65 days of unemployment, including any extended benefits payable by reason of the application of the reachback provisions.

''(d) ENLARGEMENT OF BENEFITS.—

''(1) GENERALLY.—During the period that begins on the date of the enactment of this subsection [Feb. 7, 1992]—

''(A) subsection (c) of this section shall be applied by substituting '130' for '65';

''(B) section 2(c) of the Railroad Unemployment Insurance Act [45 U.S.C. 352(c)] shall be applied—

''(i) by substituting '13 (but not more than 130 days)' for '7 (but not more than 65 days)' in the table; and

''(ii) by substituting 'but not by more than 130 days' for 'but not by more than sixty-five days' in the second proviso; and

''(C) section 2(h)(1) of the Railroad Unemployment Insurance Act [45 U.S.C. 352(h)(1)] shall be applied by substituting '13' for 'seven'.

''(2) PHASE-OUT.—

''(A) BENEFITS ON OR AFTER JUNE 14, 1992.—Effective on and after June 14, 1992, paragraph (1) of this section shall be applied by substituting '100' for '130' each place it appears, and by substituting '10' for '13' each place it appears.

''(B) REDUCTIONS UNDER EMERGENCY COMPENSATION EXTENSION PROVISIONS.—

''(i) Effective on and after the date on which a reduction in benefits is imposed under section 102(b)(2)(A)(iii) [section 102(b)(2)(A)(iii) of Pub. L. 102–164, 26 U.S.C. 3304 note], subparagraph (A) of this paragraph and subparagraphs (B) and (C) of paragraph (1) shall not apply and subparagraph (A) of paragraph (1) shall be applied by substituting '50' for '130'.

''(ii) Effective after October 2, 1993, subparagraph (A) of this paragraph and subparagraphs (B) and (C) of paragraph (1) shall not apply and subparagraph (A) of paragraph (1) shall be applied by substituting '35' for '130'.

''(C) LIMITATIONS ON REDUCTIONS.—Notwithstanding subparagraphs (A) and (B), in the case of an individual who is receiving extended benefits under section 2(c) of the Railroad Unemployment Insurance Act [45 U.S.C. 352(c)] for persons with 10 or more but less than 15 years of service, or extended benefits by reason of this section, for any day during a week which precedes a period for which a reduction under this paragraph takes effect, such reduction shall not apply for purposes of determining the amount of benefits payable to such individual for any day thereafter for which the individual

meets the eligibility requirements of this section and the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.].

''(e) TERMINATION OF BENEFITS.—In the case of an individual who is receiving extended benefits by reason of this section on February 5, 1994, such benefits shall not continue to be payable to such individual after April 30, 1994.''

[Section 3(c) of Pub. L. 103–6 provided that: ''The amendments made by this section [amending section 501 of Pub. L. 102–164, set out above] shall apply to weeks beginning after March 6, 1993.'']

[Amendments made by Pub. L. 102–182 to section 501 of Pub. L. 102–164, set out above, applicable as if included in the provisions of and the amendments made by Pub. L. 102–164, see section 3(b) of Pub. L. 102–182, set out as a note under section 3304 of Title 26, Internal Revenue Code.]

GAO STUDY OF FRAUD AND PAYMENT ERRORS

Section 7107 of Pub. L. 100–647 provided that: ''The Comptroller General shall study the frequency of fraud and payment errors in the railroad unemployment compensation program. Not later than 1 year after the date of the enactment of this Act [Nov. 10, 1988], the Comptroller General shall report to Congress the results of such study. Such report shall include—

''(1) estimates of rates and amounts of annual losses due to fraud and overpayment;

''(2) comparisons of such rates with the rates of losses in other Federal programs which experience such losses;

''(3) recommendations for legislative measures that could be taken to reduce the losses in the railroad unemployment compensation program arising from fraud and payment errors; and

''(4) such other matters relating to such fraud and payment errors as the Comptroller General determines are appropriate.''

BENEFITS FOR CERTAIN EMPLOYEES WHO EXHAUSTED RIGHTS TO BENEFITS BEFORE APRIL 1, 1959

Section 303(b) of Pub. L. 86–28 provided that: ''An employee who has less than ten years of service as defined in section 1(f) of the Railroad Retirement Act of 1937 [section 228a(f) of this title], and who has after June 30, 1957, and before April 1, 1959, exhausted (within the meaning prescribed by the Railroad Retirement Board by regulation) his rights to unemployment benefits, shall be paid unemployment benefits for days of unemployment, not exceeding sixty-five, which occur in registration periods beginning on or after June 19, 1958, and before July 1, 1959, and which would not be days with respect to which he would be held entitled otherwise to receive unemployment benefits under the Railroad Unemployment Insurance Act [this chapter], except that an employee who has filed, and established, a first claim for benefits under the Temporary Unemployment Compensation Act of 1958 [42 U.S.C. 1400 et seq.] may not thereafter establish a claim under this subsection, and an employee who has registered for, and established a claim for benefits under this subsection may not thereafter establish a claim under the Temporary Unemployment Compensation Act of 1958. Except to the extent inconsistent with this subsection, the provisions of the Railroad Unemployment Insurance Act [this chapter] shall be applicable in the administration of this subsection.''

INTERCHANGE OF INFORMATION BETWEEN SECRETARY OF LABOR AND RAILROAD RETIREMENT BOARD

Section 303(c) of Pub. L. 86–28 provided that: ''The Secretary of Labor, upon request shall furnish the Board information deemed necessary by the Board for the administration of the provisions of subsection (b) hereof [set out above], and the Board, upon request, shall furnish the Secretary of Labor information deemed necessary by the Secretary for the administration of the Temporary Unemployment Compensation Act of 1958 [section 1400 et seq. of Title 42, The Public Health and Welfare].''

§ 353. Qualifying condition

An employee shall be a ''qualified employee'' if the Board finds that his compensation with respect to the base year will have been not less than 2.5 times the monthly compensation base for months in such base year as computed under section 351(i) of this title, and, if such employee has had no compensation prior to such year, that he will have had compensation with respect to each of not less than five months in such year.

(June 25, 1938, ch. 680, § 3, 52 Stat. 1097; June 20, 1939, ch. 227, § 10, 53 Stat. 845; Oct. 10, 1940, ch. 842, § 13, 54 Stat. 1097; July 31, 1946, ch. 709, § 308, 60 Stat. 737; May 15, 1952, ch. 290, § 2, 66 Stat. 73; Aug. 31, 1954, ch. 1164, pt. III, § 303, 68 Stat. 1041; Pub. L. 86–28, pt. III, § 304, May 19, 1959, 73 Stat. 31; Pub. L. 88–133, title III, § 301(a), Oct. 5, 1963, 77 Stat. 222; Pub. L. 90–257, title II, § 203, Feb. 15, 1968, 82 Stat. 24; Pub. L. 94–92, title I, § 1(f), Aug. 9, 1975, 89 Stat. 463; Pub. L. 98–76, title IV, § 411(a)(2), Aug. 12, 1983, 97 Stat. 436; Pub. L. 100–647, title VII, § 7202(a), Nov. 10, 1988, 102 Stat. 3776.)

AMENDMENTS

1988—Pub. L. 100–647 inserted ''with respect to the base year'' after ''his compensation'' and substituted ''2.5 times the monthly compensation base for months in such base year as computed under section 351(i) of this title'' for ''$1,500 with respect to the base year''.

1983—Pub. L. 98–76 substituted ''$1,500'' for ''$1,000''.

1975—Pub. L. 94–92 substituted ''five'' for ''seven'' months.

1968—Pub. L. 90–257 substituted ''$1,000'' for ''$750''.

1963—Pub. L. 88–133 increased from $500 to $750 the amount of compensation in a base year required to qualify for benefits and provided that if employee has had no compensation prior to such year he will have had compensation with respect to each of not less than 7 months in such year.

1959—Pub. L. 86–28 substituted ''$500'' for ''$400''.

1954—Act Aug. 31, 1954, substituted ''$400'' for ''$300''.

1952—Act May 15, 1952, substituted ''$300'' for ''$150'' to conform to the new table of daily benefit rates as set out in section 352 of this title.

1946—Act July 31, 1946, changed section to relate to compensation paid instead of compensation earned during a year.

1940—Act Oct. 10, 1940, reorganized structure by striking out designations for subsecs. ''(a)'' and ''(b)'' and, as so restructured, provisions of former subsec. (a) became entire section and defined ''qualified employee'' and provisions of former subsec. (b), which related to the employee's waiting period, were omitted.

1939—Subsec. (b). Act June 20, 1939, substituted provisions relating to half-months as the waiting period, for provisions relating to fifteen consecutive days of unemployment or two half months.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7202(b) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–76 applicable to compensation paid for services rendered after Dec. 31, 1983, see section 411(b) of Pub. L. 98–76, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–92 effective for services rendered after Dec. 31, 1973, see section 2 of Pub. L. 94–92, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–257 effective with respect to base years beginning in calendar years after December 31, 1966, except that with respect to the base year in calendar year 1967 such amendments not to be applicable to an employee whose compensation with respect to that base year was not less than $750 but was less than $1,000, see section 208 of Pub. L. 90–257, set out as a note under section 352 of this title.

EFFECTIVE DATE OF 1963 AMENDMENT

Section 301(b) of Pub. L. 88–133 provided that: ''The amendment made by subsection (a) [amending this section] shall be fully effective with respect to base years after 1963. With respect to the base year 1963, they shall be applicable only to an employee concerning whom the Railroad Retirement Board finds that his compensation in that portion of the calendar year 1963 preceding the first day of the calendar month next following the month of enactment of this Act [October 1963] will have been less than $500.''

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–28 effective with respect to base years after the base year ending Dec. 31, 1957, see section 309 of Pub. L. 86–28, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 31, 1954, effective July 1, 1954, see section 401 of act Aug. 31, 1954, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act May 15, 1952, effective with respect to benefit years beginning on and after July 1, 1952, see section 3 of act May 15, 1952, set out as a note under section 352 of this title.

EFFECTIVE DATE OF 1946 AMENDMENT

Amendment by act July 31, 1946, effective July 1, 1947, see section 403 of act July 31, 1946, set out as a note under section 352 of this title.

EFFECTIVE DATE OF 1940 AMENDMENT

For effective date of amendment by act Oct. 10, 1940, see section 1 of act Oct. 10, 1940, set out as a note under section 351 of this title.

§ 354. Disqualifying conditions

(a–1) Day of unemployment or day of sickness

There shall not be considered as a day of unemployment, or as a day of sickness, with respect to any employee—

(i) any of the seventy-five days beginning with the first day of any registration period with respect to which the Board finds that he knowingly made or aided in making or caused to be made any false or fraudulent statement or claim for the purpose of causing benefits to be paid;

(ii) any day in any period with respect to which the Board finds that he is receiving or will have received annuity payments under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.], or insurance benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.], or unemployment, maternity, or sickness benefits under an unemployment, maternity, or sickness compensation law other than this chapter, or any other social-insurance payments under any law: *Provided*, That if an employee receives or is held entitled to receive any such payments, other than unemployment, maternity, or sickness payments, with respect to any period which include days of unemployment or sickness in a registration period, after benefits under this chapter for such registration period will have been paid, the amount by which such benefits under this chapter will have been increased by including such days as days of unemployment or as days of sickness shall be recoverable by the Board: *Provided further*, That, if that part of any such payment or payments, other than unemployment, maternity, or sickness payments, which is apportionable to such days of unemployment or days of sickness is less in amount than the benefits under this chapter which, but for this paragraph, would be payable and not recoverable with respect to such days of unemployment or days of sickness, the preceding provisions of this paragraph shall not apply but such benefits under this chapter for such days of unemployment or days of sickness shall be diminished or recoverable in the amount of such part of such other payment or payments;

(iii) if he is paid a separation allowance, any of the days in the period beginning with the day following his separation from service and continuing for that number of consecutive fourteen-day periods which is equal, or most nearly equal, to the amount of the separation allowance divided (i) by ten times his last daily rate of compensation prior to his separation if he normally works five days a week, (ii) by twelve times such rate if he normally works six days a week, and (iii) by fourteen times such rate if he normally works seven days a week;[1]

(a–2) Day of unemployment

(i)(A) subject to the provisions of subdivision (B) hereof, any of the days in the period beginning with the day with respect to which the Board finds that he left work voluntarily, and continuing until he has been paid compensation of not less than $1,500 with respect to time after the beginning of such period and before 1989 or, if any part of such compensation is paid in a calendar year after 1988, not less than an amount that is equal to 2.5 times the monthly compensation base for months in such calendar year, as computed under section 351(i) of this title;

(B) if the Board finds that he left work voluntarily with good cause, the provisions of subdivision (A) shall not apply, with respect to him, to any day in a registration period if such period does not include any day which is in a period for which he could receive benefits under an unemployment compensation law other than this chapter, and he so certifies. Such certification shall, in the absence of evidence to the contrary, be accepted subject to the penalty provisions of section 359(a) of this title;

(ii) any of the thirty days beginning with the day with respect to which the Board finds that

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

he failed, without good cause, to accept suitable work available on such day and offered to him, or to comply with instructions from the Board requiring him to apply for suitable work or to report, in person or by mail as the Board may require, to an employment office;

(iii) subject to the provisions of subsection (b) of this section, any day with respect to which the Board finds that his unemployment was due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which he was last employed, and the Board finds that such strike was commenced in violation of the provisions of the Railway Labor Act [45 U.S.C. 151 et seq.] or in violation of the established rules and practices of a bona fide labor organization of which he was a member.

(b) Participation, interest, or financial assistance in labor dispute

The disqualification provided in subsection (a–2)(iii) of this section shall not apply if the Board finds that—

(i) the employee is not participating in or financing or directly interested in the strike which causes the stoppage of work: *Provided*, That payment of regular union dues shall not be construed to constitute financing a strike or direct interest in a strike within the meaning of this and the following paragraphs; and

(ii) he does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed in the establishment, premises, or enterprise at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute: *Provided*, That if separate types of work are commonly conducted in separate departments of a single enterprise, each such department shall, for the purposes of this subsection, be deemed to be a separate establishment, enterprise, or other premises.

(c) Unsuitable work

No work shall be deemed suitable for the purposes of subsection (a–2)(ii) of this section, and benefits shall not be denied under this chapter to any otherwise qualified employee for refusing to accept work if—

(i) the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(ii) the remuneration, hours, or other conditions of work offered are substantially less favorable to the employee than those prevailing for similar work in the locality, or the rate of remuneration is less than the union wage rate, if any, for similar work in the locality;

(iii) as a condition of being employed he would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(iv) acceptance of the work would require him to engage in activities in violation of law or which, by reason of their being in violation of reasonable requirements of the constitution, bylaws, or similar regulations of a bona fide labor organization of which he is a member, would subject him to expulsion from such labor organization; or

(v) acceptance of the work would subject him to loss of substantial seniority rights under any collective bargaining agreement between a railway labor organization, organized in accordance with the provisions of the Railway Labor Act [45 U.S.C. 151 et seq.], and any other employer.

(d) Factors in determination of suitable work

In determining, within the limitations of subsection (c) of this section, whether or not any work is suitable for an employee for the purposes of subsection (a–2)(ii) of this section, the Board shall consider, in addition to such other factors as it deems relevant, (i) the current practices recognized by management and labor with respect to such work; (ii) the degree of risk involved to such employee's health, safety, and morals; (iii) his physical fitness and prior training; (iv) his experience and prior earnings; (v) his length of unemployment and prospects for securing work in his customary occupation; and (vi) the distance of the available work from his residence and from his most recent work.

(e) Voluntarily leaving unsuitable work

For the purposes of subsection (a–2)(i) of this section, no voluntary leaving of work shall be deemed to have been without good cause if the Board finds that such work would not have been suitable for the purposes of subsection (a–2)(ii) of this section.

(June 25, 1938, ch. 680, § 4, 52 Stat. 1098; June 20, 1939, ch. 227, § 11, 53 Stat. 846; Oct. 10, 1940, ch. 842, §§ 14–18, 54 Stat. 1097, 1098; July 31, 1946, ch. 709, §§ 309, 310, 60 Stat. 737, 738; Oct. 30, 1951, ch. 632, § 27, 65 Stat. 691; Pub. L. 85–927, pt. II, § 202, Sept. 6, 1958, 72 Stat. 1782; Pub. L. 86–28, pt. III, § 305, May 19, 1959, 73 Stat. 31; Pub. L. 88–133, title III, § 302(a), Oct. 5, 1963, 77 Stat. 222; Pub. L. 90–257, title II, § 204, Feb. 15, 1968, 82 Stat. 24; Pub. L. 93–445, title IV, § 402, Oct. 16, 1974, 88 Stat. 1359; Pub. L. 98–76, title IV, § 411(a)(3), Aug. 12, 1983, 97 Stat. 436; Pub. L. 100–647, title VII, § 7101(d), Nov. 10, 1988, 102 Stat. 3758.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1974, referred to in subsec. (a–1)(ii), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of this title. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of this title, section 231t of this title, and Tables.

The Social Security Act, referred to in subsec. (a–1)(ii), 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.

The Railway Labor Act, referred to in subsecs. (a–2)(iii) and (c)(v), 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.

AMENDMENTS

1988—Subsec. (a–2)(i)(A). Pub. L. 100–647 inserted ''and before 1989 or, if any part of such compensation is paid in a calendar year after 1988, not less than an amount that is equal to 2.5 times the monthly compensation base for months in such calendar year, as computed under section 351(i) of this title'' after ''such period''.

1983—Subsec. (a–2)(i)(A). Pub. L. 98–76 substituted ''$1,500'' for ''$1,000''.

1974—Subsec. (a–1)(ii). Pub. L. 93–445 substituted ''annuity payments under the Railroad Retirement Act of 1974'' for ''annuity payments or pensions under the Railroad Retirement Act of 1935 or the Railroad Retirement Act of 1937''.

1968—Subsec. (a–1)(iii). Pub. L. 90–257, § 204(a), added cl. (iii).

Subsec. (a–2)(i)(A). Pub. L. 90–257, § 204(b), substituted ''$1,000'' for ''$750''.

1963—Subsec. (a–2)(i). Pub. L. 88–133 substituted cl. (i) providing in subd. (A) that an employee who voluntarily leaves his work shall not be considered as having days of unemployment for a period beginning with the day he so leaves and continuing until he has been paid compensation of not less than $750 with respect to time after the beginning of such period and subd. (B) that if the Board finds that the employee left work voluntarily with good cause, such disqualification shall not apply, except that in such case the employee would not be considered as having days of unemployment with respect to any day in a registration period if such period includes a day which is in a period for which he could receive benefits under an unemployment law other than this chapter and he so certifies, for former cl. (i) providing that an employee who leaves work voluntarily is not considered as having days of unemployment with respect to any of the first 30 days after he so leaves if the Board finds that he left work voluntarily without good cause.

1959—Subsec. (a–2)(iv). Pub. L. 86–28 struck out cl. (iv) which prevented Sundays and holidays from being considered as days of unemployment unless they were preceded and succeeded by a day of unemployment.

1958—Subsec. (a–1)(ii). Pub. L. 85–927 substituted ''other than this chapter or any other social-insurance payments under any law'' for ''of any State of the United States other than this chapter, or any other social-insurance payments under a law of any State or of the United States''.

1951—Subsec. (a–1). Act Oct. 30, 1951, struck out cls. (iii) and (iv) which excepted from consideration as a day of unemployment or as a day of sickness, any days in any registration period in which the employee had certain specified earnings.

1946—Subsec. (a–1). Act July 31, 1946, § 309(a), (b), designated provisions of former subsec. (a) which apply both to days of unemployment and to days of sickness as subsec. (a–1) and changed cl. (ii) to include sickness and maternity benefits.

Subsec. (a–2). Act July 31, 1946, § 309(c), designated provisions of former subsec. (a) which apply only to days of unemployment as subsec. (a–2).

Subsecs. (b) to (e). Act July 31, 1946, § 310, changed references to subsec. (a) of this section to refer to subsec. (a–2).

1940—Subsec. (a)(ii). Act Oct. 10, 1940, § 14, inserted provisions relating to employee's failure to comply with instructions of the Board.

Subsec. (a)(iv). Act Oct. 10, 1940, § 15, substituted ''registration period'' for ''half-month''.

Subsec. (a)(v). Act Oct. 10, 1940, § 16, struck out applicability to employee having a right to receive compensation or other wages in lieu of notice, and inserted provisions relating to recovery of certain other payments and inapplicability of paragraph under specified conditions.

Subsec. (a)(vi). Act Oct. 10, 1940, § 17, substituted provisions relating to earnings of employees during any day in any registration period, for provisions relating to earnings of employees during any day in any half-month.

Subsec. (a)(vii), (viii). Act Oct. 10, 1940, § 18, added cls. (vii) and (viii).

1939—Subsec. (a). Act June 20, 1939, generally revised criteria for determining what shall not be considered as a day of unemployment with respect to any employee.

Subsec. (b). Act June 20, 1939, substituted provisions setting forth criteria for determining nonapplicability of disqualification provided in subsec. (a)(iii) of this section, for provisions setting forth criteria for determining nonapplicability of disqualification provided in subsec. (a)(v) of this section.

Subsecs. (c) to (e). Act June 20, 1939, substituted references to subsec. (a)(ii) of this section for references to subsec. (a)(iii) or (iv) of this section.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–76 applicable to compensation paid for services rendered after Dec. 31, 1983, see section 411(b) of Pub. L. 98–76, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 204(a) of Pub. L. 90–257 effective with respect to calendar days in benefit years beginning after June 30, 1968, and amendment by section 204(b) of Pub. L. 90–257 effective with respect to voluntary leaving of work (within the meaning of subsec. (a–2)(i) this section) after February 15, 1968, see section 208 of Pub. L. 90–257, set out as a note under section 352 of this title.

EFFECTIVE DATE OF 1963 AMENDMENT

Section 302(b) of Pub. L. 88–133 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective only with respect to an employee who leaves work voluntarily after the date of enactment of this Act [Oct. 5, 1963].''

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–28 effective with respect to benefits accruing in general benefit years which begin after the benefit year ending June 30, 1958, and in extended benefit periods which begin after Dec. 31, 1957, see section 309 of Pub. L. 86–28, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–927 effective with respect to days in benefit years after the benefit year ending on June 30, 1958, see section 207(a) of Pub. L. 85–927, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1951 AMENDMENT

Amendment by act Oct. 30, 1951, effective with respect to registration periods beginning on and after Jan. 1, 1952, see section 28 of act Oct. 30, 1951, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1946 AMENDMENT

Amendment by act July 31, 1946, effective July 1, 1947, see section 403 of act July 31, 1946, set out as a note under section 352 of this title.

EFFECTIVE DATE OF 1940 AMENDMENT

For effective date of amendment by act Oct. 10, 1940, see section 1 of act Oct. 10, 1940, set out as a note under section 351 of this title.

§ 355. Claims for benefits

(a) Publication of Board's regulations

Claims for benefits and appeals from determinations with respect thereto shall be made in accordance with such regulations as the Board shall prescribe. Each employer shall post and maintain, in places readily accessible to employees in his service, such printed statements concerning such regulations as the Board supplies to him for such purpose, and shall keep

available to his employees copies of such printed statements. Such printed statements shall be supplied by the Board to each employer without cost to him.

(b) Findings, hearings, investigations, etc., by Board

The Board is authorized and directed to make findings of fact with respect to any claim for benefits and to make decisions as to the right of any claimant to benefits. The Board is further authorized to hold such hearings, to conduct such investigations and other proceedings, and to establish, by regulations or otherwise, such procedures as it may deem necessary or proper for the determination of a right to benefits. When a claim for benefits is filed with the Board, the Board shall provide notice of such claim to the claimant's base-year employer or employers and afford such employer or employers an opportunity to submit information relevant to the claim before making an initial determination on the claim. When the Board initially determines to pay benefits to a claimant under this chapter, the Board shall provide notice of such determination to the claimant's base-year employer or employers.

(c) Hearing and review of decisions on claims

(1) Each qualified employee whose claim for benefits has been denied in whole or in part upon an initial determination with respect thereto upon a basis other than one which is reviewable pursuant to one of the succeeding paragraphs of this subsection, shall be granted an opportunity for a fair hearing thereon before a referee or such other reviewing body as the Board may establish or assign thereto. In any such case the Board or the person or reviewing body so established or assigned shall, by publication or otherwise, notify all parties properly interested of their right to participate in the hearing and of the time and place of the hearing.

(2) Any claimant whose claim for benefits has been denied in an initial determination with respect thereto upon the basis of his not being a qualified employee, and any claimant who contends that under an initial determination of his claim he has been awarded benefits at less than the proper rate, may appeal to the Board for the review of such determination. Thereupon the Board shall review the determination and for such review may designate one of its officers or employees to receive evidence and to report to the Board thereon together with recommendations. In any such case the Board or the person so designated shall, by publication or otherwise, notify all parties properly interested of their right to participate in the proceeding and, if a hearing is to be held, of the time and place of the hearing. At the request of any party properly interested the Board shall provide for a hearing, and may provide for a hearing on its own motion. The Board shall prescribe regulations governing the appeals provided for in this paragraph and for decisions upon such appeal.

(3) Any base-year employer of a claimant whose claim for benefits has been granted in whole or in part, either in an initial determination with respect thereto or in a determination after a hearing pursuant to paragraph (1), and who contends that the determination is erroneous for a reason or reasons other than a reason that is reviewable under paragraph (4), may appeal to the Board for review of such determination. Despite such an appeal, the benefits awarded shall be paid to such claimant, subject to recovery by the Board if and to the extent found on the appeal to have been erroneously awarded. The Board shall take such action as is appropriate to recover the amount of such benefits including if feasible adjustment in subsequent payments pursuant to the first two paragraphs of section 352(d) of this title. Upon an appeal, the Board shall review the determination appealed from and for such review may designate one of its officers or employees to receive evidence and report to the Board thereof together with recommendations. In any such case the Board or the person so designated shall, by publication or otherwise, notify all parties properly interested of their right to participate in the proceeding and, if a hearing is to be held, of the time and place of the hearing. At the request of any party properly interested the Board shall provide for a hearing, and may provide for a hearing on its own motion. The Board shall prescribe regulations governing the appeals provided for in this paragraph and for decisions upon such appeal.

(4) In any case in which benefits are awarded to a claimant in whole or in part upon the basis of pay earned in the service of a person or company found by the Board to be an employer as defined in this chapter but which denies that it is such an employer, such benefits awarded on such basis shall be paid to such claimant subject to a right of recovery of such benefits. The Board shall thereupon designate one of its officers or employees to receive evidence and to report to the Board on whether such benefits should be repaid. The Board may also designate one of its officers or employees to receive evidence and report to the Board whether or not any person or company is entitled to a refund of contributions or should be required to pay contributions under this chapter, regardless of whether or not any claims for benefits will have been filed upon the basis of service in the employ of such person or company, and shall follow such procedure if contributions are assessed and payment is refused or payment is made and a refund claimed upon the basis that such person or company is or will not have been liable for such contributions. In any such case the Board or the person so designated shall, by publication or otherwise, notify all parties properly interested of their right to participate in the proceeding and, if a hearing is to be held, of the time and place of the hearing. At the request of any party properly interested the Board shall provide for a hearing, and may provide for a hearing on its own motion. The Board shall prescribe regulations governing the proceedings provided for in this paragraph and for decisions upon such proceedings.

(5) Final decision of the Board in the cases provided for in the preceding three paragraphs shall be communicated to the claimant and to the other interested parties within fifteen days after it is made. Any properly interested party notified, as hereinabove provided, of his right to participate in the proceedings may obtain a re-

view of any such decision by which he claims to be aggrieved or the determination of any issue therein in the manner provided in subsection (f) of this section with respect to the review of the Board's decisions upon claims for benefits and subject to all provisions of law applicable to the review of such decisions. Subject only to such review, the decision of the Board upon all issues determined in such decision shall be final and conclusive for all purposes and shall conclusively establish all rights and obligations, arising under this chapter, of every party notified as hereinabove provided of his right to participate in the proceedings.

(6) For purposes of this subsection and subsections (d) and (f) of this section, any base-year employer of the claimant is a properly interested party.

(7) Any issue determinable pursuant to this subsection and subsection (f) of this section shall not be determined in any manner other than pursuant to this subsection and subsection (f) of this section.

(d) Decisions of reviewing bodies; review and finality

The Board shall prescribe regulations governing the filing of cases with and the decision of cases by reviewing bodies, and the review of such decisions. The Board may provide for intermediate reviews of such decisions by such bodies as the Board may establish or assign thereto. The Board may (i) on its own motion review a decision of an intermediate reviewing body on the basis of the evidence previously submitted in such case, and may direct the taking of additional evidence, or (ii) permit such parties as it finds properly interested in the proceedings to take appeals to the Board. Unless a review or an appeal is had pursuant to this subsection, the decision of an intermediate reviewing body shall, subject to such regulations as the Board may prescribe, be deemed to be the final decision of the Board.

(e) Application of rules of evidence in law and equity; notice of findings

In any proceeding other than a court proceeding, the rules of evidence prevailing in courts of law or equity shall not be controlling, but a full and complete record shall be kept of all proceedings and testimony, and the Board's final determination, together with its findings of fact and conclusions of law in connection therewith, shall be communicated to the parties within fifteen days after the date of such final determination.

(f) Review of final decision of Board by Courts of Appeals; costs

Any claimant, or any railway labor organization organized in accordance with the provisions of the Railway Labor Act [45 U.S.C. 151 et seq.], of which claimant is a member, or any base-year employer of the claimant, or any other party aggrieved by a final decision under subsection (c) of this section, may, only after all administrative remedies within the Board will have been availed of and exhausted, obtain a review of any final decision of the Board by filing a petition for review within ninety days after the mailing of notice of such decision to the claimant or other party, or within such further time as the Board may allow, in the United States court of appeals for the circuit in which the claimant or other party resides or will have had his principal place of business or principal executive office, or in the United States Court of Appeals for the Seventh Circuit or in the United States Court of Appeals for the District of Columbia. A copy of such petition, together with initial process, shall forth-with be served upon the Board or any officer designated by it for such purpose. A copy of such petition also shall forthwith be served upon any other properly interested party, and such party shall be a party to the review proceeding. Service may be made upon the Board by registered mail addressed to the Chairman. Within thirty days after receipt of service, or within such additional time as the court may allow, the Board shall file with the court in which such petition has been filed the record upon which the findings and decision complained of are based, as provided in section 2112 of title 28. Upon the filing of such petition the court shall have exclusive jurisdiction of the proceeding and of the question determined therein. It shall have power to enter a decree affirming, modifying, or reversing the decision of the Board, with or without remanding the cause for rehearing. The findings of the Board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive. No additional evidence shall be received by the court but the court may order additional evidence to be taken before the Board, and the Board may, after hearing such additional evidence, modify its findings of fact and conclusions and file such additional or modified findings and conclusions with the court, and the Board shall file with the court the additional record. The judgment and decree of the court shall be final, subject to review as in equity cases.

An applicant for review of a final decision of the Board concerning a claim for benefits shall not be liable for costs, including costs of service, or costs of printing records, except that costs may be assessed by the court against such applicant if the court determines that the proceedings for such review have been instituted or continued without reasonable ground.

(g) Finality of Board decisions

Findings of fact and conclusions of law of the Board in the determination of any claim for benefits or refund, the determination of any other matter pursuant to subsection (c) of this section, and the determination of the Board that the unexpended funds in the account are available for the payment of any claim for benefits or refund under this chapter, shall be, except as provided in subsection (f) of this section, binding and conclusive for all purposes and upon all persons, including the Comptroller General and any other administrative or accounting officer, employee, or agent of the United States, and shall not be subject to review in any manner other than that set forth in subsection (f) of this section.

(h) Benefits payable prior to final decision of Board

Except as may be otherwise prescribed by regulations of the Board, benefits payable with re-

spect to any period prior to the date of a final decision of the Board with respect to a claim therefor, shall be paid only after such final decision.

(i) Fees for presenting claims; penalties

No claimant or other properly interested person claiming benefits shall be charged fees of any kind by the Board, its employees or representatives, with respect to such claim. Any such claimant or other properly interested person may be represented by counsel or other duly authorized agent, in any proceeding before the Board or its representatives or a court, but no such counsel or agent for a claimant shall either charge or receive for such services more than an amount approved by the Board or by the court before whom the proceedings of the Board are reviewed. Any person who violates any provision of this subsection shall be punished by a fine of not more than $10,000 or by imprisonment not exceeding one year.

(June 25, 1938, ch. 680, § 5, 52 Stat. 1099; Oct. 10, 1940, ch. 842, §§ 19, 20, 54 Stat. 1098; July 31, 1946, ch. 709, §§ 311–316, 60 Stat. 738; June 25, 1948, ch. 646, §§ 1, 32(a), 62 Stat. 870, 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Pub. L. 85–791, § 23, Aug. 28, 1958, 72 Stat. 948; Pub. L. 97–35, title XI, § 1128(a), Aug. 13, 1981, 95 Stat. 641; Pub. L. 98–620, title IV, § 402(47), Nov. 8, 1984, 98 Stat. 3360; Pub. L. 100–647, title VII, § 7104(a)–(c), Nov. 10, 1988, 102 Stat. 3771.)

REFERENCES IN TEXT

The Railway Labor Act, referred to in subsec. (f), 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.

CODIFICATION

In subsec. (f), ''Courts of Appeals'', ''United States court of appeals for the circuit'', ''United States Court of Appeals for the Seventh Circuit'' substituted for ''Circuit Courts of Appeals'', ''United States circuit court of appeals for the circuit'', and ''United States Circuit Court of Appeals for the Seventh Circuit'', respectively, on authority of act June 25, 1948, § 32(a), as amended by act May 24, 1949, § 127. ''United States Court of Appeals for the District of Columbia'' substituted for ''Court of Appeals for the District of Columbia'' pursuant to act June 7, 1934, ch. 426, 48 Stat. 926.

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–647, § 7104(a), inserted at end ''When a claim for benefits is filed with the Board, the Board shall provide notice of such claim to the claimant's base-year employer or employers and afford such employer or employers an opportunity to submit information relevant to the claim before making an initial determination on the claim. When the Board initially determines to pay benefits to a claimant under this chapter, the Board shall provide notice of such determination to the claimant's base-year employer or employers.''

Subsec. (c)(1). Pub. L. 100–647, § 7401(b)(1), (2), inserted ''(1)'' after ''(c)'' and inserted at end ''In any such case the Board or the person or reviewing body so established or assigned shall, by publication or otherwise, notify all parties properly interested of their right to participate in the hearing and of the time and place of the hearing.''

Subsec. (c)(2). Pub. L. 100–647, § 7104(b)(3), inserted ''(2)'' before ''Any claimant whose claim''.

Subsec. (c)(3). Pub. L. 100–647, § 7104(b)(4), added par. (3).

Subsec. (c)(4). Pub. L. 100–647, § 7104(b)(5), inserted ''(4)'' before ''In any case in which''.

Subsec. (c)(5). Pub. L. 100–647, § 7104(b)(6), (7), inserted ''(5)'' before ''Final decision of the Board'' and substituted ''preceding three paragraphs'' for ''preceding two paragraphs''.

Subsec. (c)(6). Pub. L. 100–647, § 7104(b)(8), added par. (6).

Subsec. (c)(7). Pub. L. 100–647, § 7104(b)(9), inserted ''(7)'' before ''Any issue determinable''.

Subsec. (f). Pub. L. 100–647, § 7104(c), inserted ''or any base-year employer of the claimant,'' after ''member,'' and inserted after second sentence ''A copy of such petition also shall forthwith be served upon any other properly interested party, and such party shall be a party to the review proceeding.''

1984—Subsec. (f). Pub. L. 98–620 struck out provision requiring court to give precedence in adjudication of petition over all other civil cases not otherwise entitled by law to precedence.

1981—Subsec. (f). Pub. L. 97–35 substituted ''Within thirty days'' for ''Within fifteen days''.

1958—Subsec. (f). Pub. L. 85–791, in fourth sentence, struck out ''certify and'' after ''shall'' and ''a transcript of'' after ''filed'', and inserted ''as provided in section 2112 of title 28''; in fifth sentence, substituted ''the filing of such petition'' for ''such filing''; in sixth sentence, struck out ''upon the pleadings and transcript of the record,'' after ''enter''; and in eighth sentence struck out ''a transcript of'' before ''the additional record''.

1946—Subsec. (c). Act July 31, 1946, § 311, struck out provisions for district boards, placing their functions in referees or such other reviewing bodies as Board may establish; changed third par. to allow Board to determine if a person or company is covered by this chapter regardless of whether or not benefit claims are pending; and added last par.

Subsec. (d). Act July 31, 1946, § 312, changed references to district boards to refer to reviewing bodies.

Subsec. (e). Act July 31, 1946, § 313, struck out provisions restricting subsection to proceedings on a claim for benefits.

Subsec. (f). Act July 31, 1946, § 314, changed first sentence to provide for review by circuit courts of appeals instead of district courts.

Subsec. (g). Act July 31, 1946, § 315, inserted reference to determination of any other matter pursuant to subsec. (c) of this section.

Subsec. (i). Act July 31, 1946, § 316, extended provisions to other properly interested persons besides a claimant.

1940—Subsec. (c). Act Oct. 10, 1940, substituted provisions relating to a fair hearing for each qualified employee for provisions relating to a fair hearing for each claimant, and added paragraphs relating to review for claimants denied benefits on basis of not being a qualified employee or awarded benefits at an improper rate, payment of benefits to employees of noncomplying employers, and final decisions of Board.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7104(f) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and section 362 of this title] shall take effect on January 1, 1990.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1981 AMENDMENT

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

EFFECTIVE DATE OF 1946 AMENDMENT

Amendment by act July 31, 1946, effective July 31, 1946, see section 401 of act July 31, 1946.

EFFECTIVE DATE OF 1940 AMENDMENT

For effective date of amendment by act Oct. 10, 1940, see section 1 of act Oct. 10, 1940, set out as a note under section 351 of this title.

§ 355a. Acceptance of claims for benefits

Whenever there is duly tendered to the Board, by any person, any claim for unemployment compensation pursuant to the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.], such claim shall be accepted by the Board without delay and appropriate administrative action for the allowance or disallowance of such claim shall be taken by the Board at the earliest practicable time.

(June 29, 1956, ch. 477, title V, § 501, 70 Stat. 437.)

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 this chapter. For complete classification of this Act to the Code, see section 367 of this title and Tables.

CODIFICATION

Section was enacted as part of act June 29, 1956, popularly known as the Departments of Labor, and Health, Education, and Welfare, Appropriation Act, 1957, and not as a part of the Railroad Unemployment Insurance Act which comprises this chapter.

PRIOR PROVISIONS

Similar provisions were contained in the following prior appropriation act: Aug. 1, 1955, ch. 437, title V, § 501, 69 Stat. 411.

§ 356. Returns of compensation; conclusiveness; failure to make

Employers shall file with the Board, in such manner and at such times as the Board by regulations may prescribe, returns of compensation of employees, and, if the Board shall so require, shall distribute to employees annual statements of compensation: *Provided*, That no returns shall be required of employers which would duplicate information contained in similar returns required under any other Act of Congress administered by the Board. The Board's record of the compensation so returned shall, for the purpose of determining eligibility for and the amount of benefits, be conclusive as to the amount of compensation paid to an employee during the 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, for the purposes of determining eligibility for and the amount of benefits, be taken as conclusive that no compensation was paid to such employee during that period, unless the error in the amount of compensation in the one case, or failure to make or record return of the compensation in the other case, is called to the attention of the Board within eighteen months after the date on which the last return covering any portion of the calendar year which includes such period is required to have been made.

(June 25, 1938, ch. 680, § 6, 52 Stat. 1101; June 20, 1939, ch. 227, § 12, 53 Stat. 847; Oct. 10, 1940, ch. 842, § 21, 54 Stat. 1099; July 31, 1946, ch. 709, § 317, 60 Stat. 739; Pub. L. 89–700, title II, § 203, Oct. 30, 1966, 80 Stat. 1087.)

AMENDMENTS

1966—Pub. L. 89–700 struck out provisions which required returns of compensation of employees to be under oath.

1946—Act July 31, 1946, changed references to compensation earned by an employee to refer to compensation paid to an employee.

1940—Act Oct. 10, 1940, inserted provisions relating to conclusiveness of returns for purpose of determining eligibility for and amount of benefits, and struck out requirements that returns relate to monthly compensation and that distributed statements of compensation be prepared by Board.

1939—Act June 20, 1939, struck out requirement that return shall be in form required by Board, inserted proviso relating to return containing duplicative information, and substituted provisions relating to conclusiveness of returns not questioned within eighteen months after last return is filed, for provisions relating to conclusiveness of returns not questioned within four years after last date on which return was required to be made.

EFFECTIVE DATE OF 1946 AMENDMENT

Amendment by act July 31, 1946, effective July 31, 1946, see section 401 of act July 31, 1946.

EFFECTIVE DATE OF 1940 AMENDMENT

For effective date of amendment by act Oct. 10, 1940, see section 1 of act Oct. 10, 1940, set out as a note under section 351 of this title.

§ 357. Free transportation

It shall not be unlawful for carriers to furnish free transportation to employees qualified for benefits or serving waiting periods under this chapter.

(June 25, 1938, ch. 680, § 7, 52 Stat. 1102.)

§ 358. Contributions

(a) Employer contribution

(1) In general

(A) General rule

(i) Contribution rate generally

Every employer shall pay a contribution, with respect to having employees in his service, equal to the percentage determined under subparagraph (B), (C), or (D), whichever is applicable, of so much of the compensation paid in any calendar month by such employer to any employee as is not in excess of the monthly compensation base for that month as computed under section 351(i) of this title.

(ii) Multiple employer limitation

If compensation is paid to an employee by more than one employer in any calendar month—

(I) the contributions required by this subsection shall not apply to any amount of the aggregate compensation paid to such employee by all such employers in such calendar month which is in excess of such monthly compensation base; and

(II) each employer (other than a subordinate unit of a national-railway-labor-

organization employer) shall be liable for that portion of the contribution with respect to such compensation paid by all such employers which the compensation paid by him to such employee bears to the total compensation paid in such month by all such employers to such employee.

In the event that the compensation paid by such employers to the employee in such month is less than such monthly compensation base, each subordinate unit of a national-railway-labor-organization employer shall be liable for such portion of any additional contribution as the compensation paid by such employer to such employee in such month bears to the total compensation paid by all such employers to such employee in such month.

(B) Transitional rule

(i) 1st, 2d, and 3d calendar years

Except as provided in clause (vi), with respect to compensation paid in calendar years 1988, 1989, and 1990, the contribution rate shall be 8 percent.

(ii) 4th calendar year

With respect to compensation paid in calendar year 1991, the contribution rate shall be the smaller of—

(I) the maximum contribution limit computed under paragraph (20); or

(II) the percentage computed pursuant to the following formula:

$$R=\frac{2A+B}{3}$$

(iii) 5th calendar year

With respect to compensation paid in calendar year 1992, the contribution rate shall be the smaller of—

(I) the maximum contribution limit computed under paragraph (20); or

(II) the percentage computed pursuant to the following formula:

$$R=\frac{A+2C}{3}$$

(iv) Meaning of symbols

For purposes of the formulas in clauses (ii) and (iii)—

(I) ''R'' is the applicable contribution rate expressed as a percentage for months in the calendar year;

(II) ''A'' is the contribution rate determined under clause (i);

(III) ''B'' is the percentage rate for the employer, as determined under subparagraph (C), for calendar year 1991; and

(IV) ''C'' is the percentage rate for the employer, as determined under subparagraph (C), for calendar year 1992.

(v) Special rule for certain computations

For purposes of computing B and C in such formulas—

(I) the percentage rate computed under subparagraph (C), if more than the maximum contribution limit computed under paragraph (20) shall not be reduced to that limit; and

(II) any computations which under subparagraph (C) are to be made on the basis of a 4-quarter or a 12-quarter period ending on a given June 30 shall be made on the basis of a period beginning on January 1, 1990, and ending on that June 30, and the amount so computed shall be increased to an amount that bears the same ratio to the amount so computed as 4 or 12, as appropriate, bears to the number of calendar quarters in the period on which the computation was based.

(vi) Special transition rule for public commuter railroads

With respect to each of calendar years 1989 and 1990, the contribution of the National Railroad Passenger Corporation and an employer which on November 10, 1988, is a publicly funded and publicly operated carrier providing rail commuter service shall be equal to the amount of benefits attributable to such carrier, plus an amount equal to 0.65 percent of the total compensation paid by that employer in that year on which that employer's contribution would be based under clause (i) if such employer's contribution were determined under that clause.

(C) Experience-rated contributions

With respect to compensation paid in a calendar year that begins after December 31, 1992, the contribution rate for each employer shall be determined as follows:

(i) Step 1

Compute the employer's benefit ratio as of the preceding June 30 to 4 decimal points in accordance with paragraph (2).

(ii) Step 2

Subtract the employer's reserve ratio as of the preceding June 30 as computed to 4 decimal points in accordance with paragraph (4).

(iii) Step 3

Subtract the pooled credit ratio for the calendar year, if any, as computed to 4 decimal points in accordance with paragraph (12).

(iv) Step 4

Multiply by 100 the total arrived at under the steps set forth in clauses (i) through (iii) so as to obtain a percentage rate, which shall be rounded to the nearest 100th of 1 percent. If the total arrived at under such steps is 0 or less than 0, the percentage rate as so computed shall be 0.

(v) Step 5

Add 0.65 to the percentage rate arrived at under clause (iv), representing the portion of the employer's contribution which is to be deposited to the credit of the fund under subsection (i) of this section.

(vi) Step 6

Add the surcharge rate for the calendar year, if any, as computed under paragraph (14).

(vii) Step 7

Add the pooled charge ratio for the calendar year, if any, as computed to 4 decimal points under paragraph (13) and multiplied by 100.

(viii) Step 8

Reduce the precentage[1] rate computed in accordance with the preceding steps to the maximum contribution limit computed under paragraph (20), if such rate is higher than such limit. The rate computed in accordance with the preceding steps, after any reduction under this clause, is the contribution rate.

(D) New-employer contribution rates

Notwithstanding subparagraphs (B) and (C), the contribution rate applicable to a new employer who does not become subject to this chapter until after December 31, 1989, shall be determined as follows:

(i) 1st calendar year

With respect to compensation paid in calendar months before the end of the first full calendar year in which the employer is subject to this chapter, the contribution rate shall be the average contribution rate paid by all employers during the 3 calendar years preceding the calendar year before the calendar year in which the compensation is paid. The average contribution rate shall be determined—

(I) by dividing the aggregate contributions paid by all employers under this subsection in those 3 calendar years by the aggregate compensation with respect to which such contributions were paid; and

(II) by multiplying the resulting ratio as computed to 4 decimal points by 100.

(ii) 2d calendar year

With respect to compensation paid in calendar months in the next calendar year, the contribution rate shall be the smaller of—

(I) the maximum contribution limit computed under paragraph (20); or

(II) the percentage rate computed pursuant to the following formula:

$$R=\left(\frac{2(A2)+B}{3}\right)$$

(iii) 3d calendar year

With respect to compensation paid in calendar months in the third full calendar year in which the employer is subject to the coverage of this chapter, the contribution rate shall be the smaller of—

(I) the maximum contribution limit computed under paragraph (20); or

(II) the percentage rate computed pursuant to the following formula:

$$R=\frac{A3+2C}{3}$$

(iv) Subsequent calendar years

With respect to all calendar months in calendar years subsequent to that calendar year, the contribution rate shall be determined under subparagraph (C).

(v) Meaning of symbols

For purposes of the formulas in clauses (ii) and (iii)—

(I) ''R'' is the applicable contribution rate expressed as a percentage for months in the calendar year;

(II) ''A1'' is the contribution rate determined under clause (i) for such employer's first full calendar year;

(III) ''A2'' is the contribution rate which would have been determined under clause (i) if the employer's second calendar year had been its first full calendar year;

(IV) ''A3'' is the contribution rate which would have been determined under clause (i) if the employer's third calendar year had been such employer's first full calendar year;

(V) ''B'' is the contribution rate for the employer as determined under subparagraph (C) for the employer's second full calendar year; and

(VI) ''C'' is the contribution rate for the employer as determined under subparagraph (C) for the employer's third full calendar year.

(vi) Special rule for certain computations

For purposes of computing B and C in such formulas—

(I) the percentage rate computed under subparagraph (C), shall not be reduced under clause (viii) of that subparagraph; and

(II) any computations which under subparagraph (C) are to be made on the basis of a 4-quarter or 12-quarter period ending on a given June 30 shall be made on the basis of a period commencing with the first day of the first calendar quarter that begins after the date on which the employer first commenced paying compensation subject to this chapter and ending on that June 30, and the amount so computed shall be increased to an amount that bears the same ratio to the amount so computed as 4 or 12, as appropriate, bears to the number of calendar quarters in the period on which the computation was based.

(2) Benefit ratio

An employer's benefit ratio as of any given June 30 shall be determined by dividing all benefits charged to the employer under paragraph (15) during the 12 calendar quarters ending on such June 30 by the employer's 3-year compensation base as of such June 30 as computed under paragraph (3).

(3) 3-year compensation base

An employer's 3-year compensation base as of any given June 30 is the aggregate com-

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

pensation with respect to which contributions were paid by the employer under this subsection in the 12 calendar quarters ending on such June 30.

(4) Reserve ratio

An employer's reserve ratio as of any given June 30 shall be computed by dividing the employer's reserve balance as of such June 30, as computed under paragraph (6), by that employer's 1-year compensation base as of such June 30, as computed under paragraph (5). The employer's reserve ratio may be either a positive or a negative figure, depending upon whether the employer's reserve balance is a positive or negative figure.

(5) 1-year compensation base

An employer's 1-year compensation base as of any given June 30 is the aggregate compensation with respect to which contributions were paid by the employer under this subsection in the 4 calendar quarters ending on such June 30.

(6) Reserve balance

An employer's reserve balance as of any given June 30 shall be determined by subtracting the employer's cumulative benefit balance as of such June 30, computed under paragraph (7), from the employer's net cumulative contribution balance as of such June 30, computed under paragraph (8). An employer's reserve balance may be either positive or negative, depending upon whether or not that employer's net cumulative contribution balance exceeds the employer's cumulative benefit balance.

(7) Cumulative benefit balance

An employer's cumulative benefit balance as of any given June 30 shall be determined by adding—

(A) the net amount of the benefits charged to the employer under paragraph (15) on or after January 1, 1990; and

(B) the cumulative amount of the employer's unallocated charges for the same period, if any, as computed under paragraph (9).

(8) Net cumulative contribution balance

An employer's net cumulative contribution balance as of any given June 30 shall be determined as follows:

(A) Step 1

Compute the sum of

(i) all contributions paid by the employer pursuant to this subsection;

(ii) that portion of the tax imposed under section 3321(a) of title 26 that is attributable to the surtax rate under section 516(b) of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988;[2] and

(iii) any taxes paid by the employer pursuant to section 3321(a) of title 26 (after the outstanding balance of loans made under section 360(d) of this title before October 1, 1985, plus interest, have been paid);

on or after January 1, 1990.

(B) Step 2

Subtract an amount equal to the amount of such contributions deposited to the credit of the fund under subsection (i) of this section.

(C) Step 3

Add an amount equal to the aggregate amount by which such contributions were reduced in prior calendar years as a result of pooled credits, if any, under paragraph (1)(C)(iii).

(9) Unallocated charge

An employer's unallocated charge as of any given June 30 is the amount that as of such June 30 bears the same ratio to the system unallocated charge balance, computed under paragraph (10), as the employer's 1-year compensation base, computed under paragraph (5), bears to the system compensation base computed under paragraph (11).

(10) System unallocated charge balance

The system unallocated charge balance as of any given June 30 shall be determined as follows:

(A) Step 1

Compute the aggregate amount of all interest paid by the account on loans from the Railroad Retirement Account after September 30, 1985, pursuant to section 360(d) of this title, during the 4 calendar quarters ending on that June 30.

(B) Step 2

Add the aggregate amount of any additions to the system unallocated charge balance specified in paragraphs (15) and (16), during that period.

(C) Step 3

Add the aggregate amount of any other expenditures by the account during that period not chargeable to any individual employer under paragraph (15) or to the fund under section 361 of this title.

(D) Step 4

Subtract the aggregate amount of all income to the account, under section 360(a)(iv) of this title or section 360(a)(vii) of this title, during that period.

(E) Step 5

Subtract the aggregate amount of all transfers to the account, pursuant to section 361(d) of this title, during that period.

(F) Step 6

Subtract the aggregate amount of all other income and receipts of the account, during that period, which are not assigned to individual employer balances.

(G) Step 7

Subtract the net cumulative contribution balance of each employer whose balance has been cancelled pursuant to paragraph (16), during that period, calculated as of the date of such cancellation.

(11) System compensation base

The system compensation base as of any given June 30 shall be determined by adding

[2] See References in Text note below.

together the amounts of the 1-year compensation bases of all employers and employee representatives subject to this chapter, computed in accordance with paragraph (5), as of such June 30.

(12) Pooled credit ratio

The pooled credit ratio, if any, for a calendar year shall be determined as follows:

(A) Step 1

Compute the balance to the credit of the account as of the close of business on the preceding June 30, including any amounts in the account attributable to loans made under section 360(d) of this title before October 1, 1985, but disregarding the obligation to repay such loans and interest thereon. In determining such balance as of June 30 of any year, so much of the balance to the credit of the railroad unemployment insurance administration fund as of the close of business on such date as is in excess of $6,000,000 shall be deemed to be part of the balance to the credit of such account. There will be a pooled credit ratio for the calendar year only if that balance is in excess of the greater of $250,000,000 or of the amount that bears the same ratio to $250,000,000 as the system compensation base as of that June 30 bears to the system compensation base as of June 30, 1991, as computed in accordance with paragraph (11).

(B) Step 2

If there is such an excess amount, divide that excess amount by the system compensation base as of the June 30 preceding the calendar year. The result is the pooled credit ratio for the calendar year.

(13) Pooled charge ratio

The pooled charge ratio, if any, for a calendar year shall be determined as follows:

(A) Step 1

With respect to each employer whose contribution rate for that calendar year as computed through step 6 under paragraph (1)(C) was greater than the maximum contribution limit computed under paragraph (20), multiply the employer's 1-year compensation base as of the preceding June 30, as computed in accordance with paragraph (5), by the difference between—

(i) the percentage rate determined under subparagraph (B), (C), or (D) of paragraph (1) before the reduction to the maximum contribution limit; and

(ii) the maximum contribution limit.

(B) Step 2

Add the amounts arrived at under step 1 so as to obtain an aggregate amount for all such employers.

(C) Step 3

For each employer whose contribution rate as computed through step 3 under paragraph (1)(C) was less than 0, the percentage rate by which such employer's rate was raised in order to bring that rate to 0 shall be multiplied by that employer's 1-year compensation base as of the preceding June 30. Subtract the total of the amounts computed under the preceding sentence for all employers from the amount arrived at in step 2.

(D) Step 4

Divide the aggregate amount arrived at under step 3 by the system compensation base as of the preceding June 30 as computed under paragraph (11) minus the one-year compensation base of those employers whose rates computed through step 6 of paragraph (1)(C) exceeded the maximum contribution rate computed under paragraph (20). The result is the pooled charge ratio for the calendar year.

(14) Surcharge rate

The surcharge rate for a calendar year, if any, shall be determined as follows:

(A) Step 1

Compute the balance to the credit of the account as of the close of business on the preceding June 30, including any amounts in the account attributable to loans made under section 360(d) of this title before October 1, 1985, but disregarding the obligation to repay such loans and interest thereon. In determining such balance as of June 30 of any year, so much of the balance to the credit of the railroad unemployment insurance administration fund as of the close of business on such date as is in excess of $6,000,000 shall be deemed to be part of the balance to the credit of such account. There will be a surcharge rate for the calendar year only if that balance is less than the greater of $100,000,000 or of the amount that bears the same ratio to $100,000,000 as the system compensation base as of that June 30 bears to the system compensation base as of June 30, 1991, as computed in accordance with paragraph (11).

(B) Step 2

(i) If the balance to the credit of the account is less than the greater of the amounts referred to in the 2nd sentence of step 1 but is equal to or more than the greater of $50,000,000 or of the amount that bears the same ratio to $50,000,000 as the system compensation base as of that June 30 bears to the system compensation base as of June 30, 1991, then the surcharge rate for the calendar year shall be 1.5 percent.

(ii) If the balance to the credit of the account is less than the greater of the amounts referred to in the clause (i), but greater than or equal to zero, then the surcharge rate for the calendar year shall be 2.5 percent.

(iii) If the balance to the credit of the account is less than zero, the surcharge rate for the calendar year shall be 3.5 percent.

(15) Chargeable benefits

(A) In general

Beginning January 1, 1990, all benefits paid to an employee for days of unemployment or days of sickness shall be charged to that employee's base year employer by adding amounts equal to the amounts of such bene-

fits to the employer's cumulative benefit balance except that benefits paid by reason of strikes or work stoppages growing out of labor disputes shall not be added to the employer's cumulative benefit balance but instead shall be added to the system unallocated charge balance.

(B) Adjustments

A sum equal to each amount realized in recovery for overpayment, erroneous payment, or reimbursement of benefits and credited to the account pursuant to section 360(a)(v) or 360(a)(viii) of this title shall be subtracted from the cumulative benefit balances of the employers of the employees to whom such an amount was paid as a benefit in the proportion to the amount by which each such employer's cumulative benefit balance was increased as a result of the payment of the benefit.

(C) Multiple employers

(i) In general

All benefits paid to an employee who had more than 1 base-year employer shall be charged to the cumulative benefit balances of the employee's base year employers—

(I) in reverse chronological order of the employee's employment with each such employer in the base year if the employer at the time of the claim was the last base year employer, and the amount charged to each employer shall not exceed the compensation paid by that employer to the employee in the base year; and

(II) in all other cases, in the same ratio as the compensation paid to such employee by the employer bears to the total of such compensation paid to such employees by all such employers in the base year.

(ii) Special rule for employer with cancelled balances

All benefits chargeable under this subparagraph to an employer for which the Board has cancelled balances under paragraph (16) shall be added to the system unallocated charge balance.

(16) Defunct employer

Whenever the Board determines, pursuant to such regulations as the Board may prescribe, that an employer has permanently ceased to pay compensation with respect to which contributions are payable pursuant to this subsection, the Board shall, effective on the date of the Board's determination, transfer the employer's net cumulative contribution balance as a subtraction from, and cumulative benefit balance as an addition to, the system unallocated charge balance and cancel all other accumulations of the employer.

(17) Individual employer record

(A) In general

As of January 1, 1990, the Board shall commence maintaining an individual employer record with respect to each employer, and the records necessary to determine pooled charges, pooled credits and unallocated charge balances for the system. Whenever a new employer begins paying compensation with respect to which contributions are payable pursuant to this subsection, the Board shall establish and maintain an individual employer record for such employer.

(B) Definition

As used in this paragraph, the term ''individual employer record'' means a record of an individual employer's benefit ratio, reserve ratio, 1-year compensation base, 3-year compensation base, unallocated charge, reserve balance, net cumulative contribution balance, and cumulative benefit balance.

(18) Joint employer records

Pursuant to regulations prescribed by the Board, the Board may allow 2 or more employers, upon application, to establish and maintain, or to discontinue, a joint individual employer record for such employers as though such joint record constituted a single employer's individual employer record.

(19) Mergers, consolidations, or other changes in employer identity

(A) With other employers

In the event of a merger, consolidation, unification, or reorganization in which an employer combines with another employer and the combination entails no partitioning of the property of the employer, the individual employer records of the 2 employers shall be combined into a joint individual employer record if the parties request such joint treatment pursuant to paragraph (18) or if the Board otherwise determines, pursuant to regulations prescribed by the Board, that such joint treatment is desirable.

(B) With nonemployers

In the event of a merger, consolidation, unification, or reorganization in which an employer combines with another entity that is not an employer, the employer's individual employer record shall attach to the combined entity.

(C) Sale of assets

In the event property of an employer is sold or transferred to another employer or other entity, or is partitioned among 2 or more employers or entities, the cumulative benefit balance, net cumulative contribution balance, 1-year compensation base, and 3-year compensation base of the employer shall be prorated among the employers which receive the property, including any entities which become employers by virtue of such transfer or partition, in such equitable manner as the Board by regulation shall prescribe.

(D) Reincorporation

The cumulative benefit balance, net cumulative contribution balance, 1-year compensation base, and 3-year compensation base of an employer that reincorporates or otherwise alters its corporate identity in a transaction not involving a merger, consolidation, or unification shall attach to the reincorporated or altered entity.

(E) Abandonment

If an employer abandons property or discontinues service but continues to operate as an employer, the employer's individual employer record shall continue to be calculated as provided in this subsection without retroactive adjustment.

(20) Maximum contribution limit

The maximum contribution limit with respect to a calendar year is 12 percent, unless a 3.5 percent surcharge under paragraph (14) is in effect with respect to that calendar year. If such a surcharge is in effect the maximum contribution limit with respect to that calendar year is 12.5 percent.

(21) Special rules for certain computations under paragraph (1)(C)

(A) Any computation that is to be made under paragraph (1)(C) on the basis of a 12-quarter period ending on a given June 30 shall be made on the basis of a period—

(i) beginning on the later of—

(I) January 1, 1990;

(II) the first day of the first calendar quarter that begins after the date on which the employer first began to pay compensation subject to this chapter; or

(III) July 1 of the third calendar year preceding that June 30; and

(ii) ending on that June 30.

(B) The amount computed under subparagraph (A) shall be increased to an amount that bears the same ratio to the amount so computed as 12 bears to the number of calendar quarters on which the computation is based.

(b) Employee representative contribution

Each employee representative shall pay a contribution with respect to so much of the compensation paid to him for services performed as an employee representative as is not in excess of the monthly compensation base computed in accordance with section 351(i) of this title, at a rate which shall be determined under subsection (a) of this section in the same manner and with the same effect as if the employee organization by which such employee representative is employed were an employer as defined in this chapter.

(c) Board proclamation of balance

(1) In general

Not later than October 15, 1990, and October 15 of each year thereafter the Board shall proclaim—

(A) the balance to the credit of the account as of the preceding June 30 for purposes of paragraphs (12) and (14) of subsection (a) of this section;

(B) the balance of any advances to the account under section 360(d) of this title after September 30, 1985, that has not been repaid with interest as provided in such section as of September 30 of that year;

(C) the system compensation base as of that June 30 as computed in accordance with paragraph (11) of that subsection;

(D) the system unallocated charge balance as of that June 30, as computed in accordance with paragraph (10) of that subsection; and

(E) the pooled credit ratio, the pooled charge ratio, and the surcharge rate, if any, as determined under paragraph (12), (13), or (14) of that subsection and applicable in the following calendar year.

(2) Publication of notice

As soon as is practicable after such proclamation, the Board shall publish notice in the Federal Register of the amounts so determined and proclaimed.

(d) Notifications by Board

(1) Not later than the last day of any calendar quarter that begins after March 31, 1990, the Board shall notify each employer and employee representative of its net cumulative contribution balance and cumulative benefit balance as of the end of the preceding calendar quarter, as computed in accordance with paragraphs (7) and (8) of subsection (a) of this section as of the last day of such preceding calendar quarter rather than as of a given June 30 if such last day is not a June 30.

(2) Not later than October 15, 1990, and October 15 of each year thereafter, the Board shall notify each employer and employee representative of its benefit ratio, reserve ratio, 1-year compensation base, 3-year compensation base, unallocated charge, and reserve balance as of the preceding June 30 as computed in accordance with paragraphs (2), (3), (4), (5), (6), and (9) of subsection (a) of this section, and of the contribution rate applicable to the employer or employee representative in the following calendar year as computed under paragraphs (1)(B), (C), or (D) of that subsection.

(e) Information to verify accuracy to be made available

Notwithstanding any other provision of law, upon request by an employer or employee representative, the Board shall make available to such employer or employee representative any information available to the Board which may be necessary to verify the accuracy of a contribution rate determined by the Board to be applicable to such employer or employee representative, or of any component of that contribution rate including the accuracy of the employer's individual employer record, upon payment by such employer or employee representative to the Board of the cost incurred by the Board in making such information available. The amounts so paid to the Board shall be credited to and deposited in the fund.

(f) Fractional parts of a cent

In the payment of any contribution under this chapter, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(g) Adjustments for improper payments

If more or less than the correct amount of the contribution required by this section is paid with respect to any compensation, then, under regulations prescribed under this chapter by the Board, proper adjustments with respect to the contribution shall be made, without interest, in

connection with subsequent contribution payments made under this chapter by the same employer or employee representative.

(h) Refunding overpayment; collecting underpayment

If more or less than the correct amount of the contribution required by this section is paid with respect to any compensation and the overpayment or underpayment of the contribution cannot be adjusted under subsection (d) of this section, the amount of the overpayment shall be refunded from the account, or the amount of the underpayment shall be collected, in such manner and at such times (subject to the statute of limitations properly applicable thereto) as may be prescribed by regulations of the Board.

(i) Collection and deposit of contributions

The contributions required by this chapter shall be collected by the Board and shall be deposited by it with the Secretary of the Treasury of the United States, such part thereof as equals 0.65 per centum of the total compensation on which such contributions are based to be deposited to the credit of the fund and the balance to be deposited to the credit of the account.

(j) Time for payment; failure to pay promptly

The contributions required by this chapter shall be collected and paid quarterly or at such other times and in such manner and under such conditions not inconsistent with this chapter as may be prescribed by regulations of the Board, and shall not be deducted, in whole or in part, from the compensation of employees in the employer's employ. If a contribution required by this chapter is not paid when due, there shall be added to the amount payable (except in the case of adjustments made in accordance with the provisions of this chapter) interest at the rate of 1 per centum per month or fraction of a month from the date the contribution became due until paid. Any interest collected pursuant to this subsection shall be credited to the account.

(k) Application of other laws; authority of Board

All provisions of law, including penalties, applicable with respect to any tax imposed by the provisions of the Railroad Retirement Tax Act [26 U.S.C. 3201 et seq.], insofar as applicable and not inconsistent with the provisions of this chapter, shall be applicable with respect to the contributions required by this chapter: *Provided*, That all authority and functions conferred by or pursuant to such provisions upon any officer or employee of the United States, except the authority to institute and prosecute, and the function of instituting and prosecuting, criminal proceedings, shall, with respect to such contributions, be vested in and exercised by the Board or such officers and employees of the Board as it may designate therefor. The remedies available under the first sentence of this subsection for an employer or employee representative who contests the amount of contributions payable by him shall also apply with respect to a contention that the contribution rate determined by the Board under subsection (a) or (b) of this section to be applicable to such employer or employee representative is inaccurate or otherwise improper.

(June 25, 1938, ch. 680, § 8, 52 Stat. 1102; July 31, 1946, ch. 709, § 318, 60 Stat. 739; June 23, 1948, ch. 608, §§ 4, 5(a), 6, 62 Stat. 577, 578; Aug. 31, 1954, ch. 1164, pt. III, §§ 305, 306, 68 Stat. 1042; Pub. L. 85–927, pt. II, § 203, Sept. 6, 1958, 72 Stat. 1782; Pub. L. 86–28, pt. III, §§ 306, 307, May 19, 1959, 73 Stat. 32; Pub. L. 88–133, title III, §§ 303(a), 304, Oct. 5, 1963, 77 Stat. 222, 223; Pub. L. 89–700, title II, § 204, title III, § 301(i), (ii), Oct. 30, 1966, 80 Stat. 1087, 1088; Pub. L. 94–92, title I, § 1(g), (h), Aug. 9, 1975, 89 Stat. 463; Pub. L. 97–35, title XI, § 1128(b), Aug. 13, 1981, 95 Stat. 641; Pub. L. 98–76, title V, § 503(a), Aug. 12, 1983, 97 Stat. 440; Pub. L. 100–647, title VII, §§ 7102(a)–(d), 7103(a), Nov. 10, 1988, 102 Stat. 3759–3770; Pub. L. 101–322, § 8(a), July 6, 1990, 104 Stat. 297.)

REFERENCES IN TEXT

Section 516(b) of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988, referred to in subsec. (a)(8)(A)(ii), probably means section 7106(b) of Pub. L. 100–647, title VII, Nov. 10, 1988, 102 Stat. 3773, which is set out as a note under section 3321 of Title 26, Internal Revenue Code.

The Railroad Retirement Tax Act, referred to in subsec. (k), 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. For complete classification of this Act to the Code, see section 3233 of Title 26 and Tables.

AMENDMENTS

1990—Subsec. (a)(1)(B)(vi). Pub. L. 101–322 inserted "the National Railroad Passenger Corporation and" after "the contribution of".

1988—Subsec. (a). Pub. L. 100–647, § 7102(a), added subsec. (a) and struck out former subsec. (a) which consisted of two undesignated pars.

Subsec. (b). Pub. L. 100–647, § 7102(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "Each employee representative shall pay a contribution with respect to so much of the compensation paid to him for services performed as an employee representative during any month as is not, for any such calendar month, in excess of $600, at the rate applicable to employers in accordance with subsection (a) of this section. The compensation of an employee representative and the contribution with respect thereto shall be determined in the same manner and with the same effect as if the employee organization by which such employee representative is employed were an employer as defined in this chapter."

Subsecs. (c) to (g). Pub. L. 100–647, § 7102(d), added subsecs. (c) to (e) and redesignated former subsecs. (c) to (g) as (f) to (j), respectively.

Subsec. (h). Pub. L. 100–647, § 7102(d)(1), redesignated former subsec. (e) as (h). Former subsec. (h) redesignated (k).

Pub. L. 100–647, § 7102(c), inserted at end "The remedies available under the first sentence of this subsection for an employer or employee representative who contests the amount of contributions payable by him shall also apply with respect to a contention that the contribution rate determined by the Board under subsection (a) or (b) of this section to be applicable to such employer or employee representative is inaccurate or otherwise improper."

Subsec. (i). Pub. L. 100–647, § 7103(a), substituted "0.65" for "0.5".

Pub. L. 100–647, § 7102(d)(1), redesignated former subsec. (f) as (i).

Subsecs. (j), (k). Pub. L. 100–647, § 7102(d)(1), redesignated former subsecs. (g) and (h) as (j) and (k), respectively.

1983—Subsec. (a). Pub. L. 98–79, § 503(a)(1), amended provisions preceding table generally. Prior to amendment, such provisions read as follows: "Every employer

shall pay a contribution, with respect to having employees in his service, equal to the percentage determined as set forth below of so much of the compensation as is not in excess of $300 for any calendar month paid by him to any employee for services rendered to him after June 30, 1939, and before July 1, 1954, and is not in excess of $350 for any calendar month paid by him to any employee for services rendered to him after June 30, 1954, and before June 1, 1959, and is not in excess of $400 for any calendar month paid by him to any employee for services rendered to him after May 31, 1959: *Provided, however*, That if compensation is paid to an employee by more than one employer with respect to any such calendar month, the contributions required by this subsection shall apply to not more than $300 for any month before July 1, 1954, and to not more than $350 for any month after June 30, 1954, and before June 1, 1959, and to not more than $400 for any month after May 31, 1959, of the aggregate compensation paid to said employee by all said employers with respect to such calendar month, and each employer other than a subordinate unit of a national railway-labor-organization employer shall be liable for that proportion of the contribution with respect to such compensation paid by all such employers which the compensation paid by him after December 31, 1946, to the employee for services during any calendar month after 1946 bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than $300 if such month is before July 1, 1954, or less than $350 if such month is after June 30, 1954, and before June 1, 1959, or less than $400 if such month is after May 31, 1959, each subordinate unit of a national railway-labor-organization employer shall be liable for such proportion of any additional contribution as the compensation paid by such employer after December 31, 1946, to such employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month:

''1. With respect to compensation paid prior to January 1, 1948, the rate shall be 3 per centum;

''2. With respect to compensation paid after the month in which this chapter was amended in 1959, the rate shall be as follows:''.

Subsec. (b). Pub. L. 98–76, §503(a)(2), struck out ''after December 1975'' after ''during any month'', and substituted ''$600'' for ''$400''.

1981—Subsec. (f). Pub. L. 97–35 substituted ''equals 0.5 per centum'' for ''equals 0.25 per centum''.

1975—Subsec. (a). Pub. L. 94–92, §1(g), substituted table reading:

''$300,000,000 or more	0.5
$200,000,000 or more but less than $300,000,000	4.0
$100,000,000 or more but less than $200,000,000	5.5
$50,000,000 or more but less than $100,000,000	7.0
Less than $50,000,000	8.0''

for prior provisions reading:

''$450,000,000 or more	1½
$400,000,000 or more but less than $450,000,000	2
$350,000,000 or more but less than $400,000,000	2½
$300,000,000 or more but less than $350,000,000	3
Less than $300,000,000	4''

Subsec. (b). Pub. L. 94–92, §1(h), substituted ''Each employee representative shall pay a contribution with respect to so much of the compensation paid to him for services performed as an employee representative during any month after December 1975 as is not, for any such calendar month, in excess of $400, at the rate applicable to employers in accordance with subsection (a) of this section.'' for ''Each employee representative shall pay, with respect to his income, a contribution equal to 4 per centum of so much of the compensation of such employee representative as is not in excess of $300 for any calendar month, paid to him for services performed as an employee representative after June 30, 1939, and before July 1, 1954, and as is not in excess of $350 paid to him for services rendered as an employee representative in any calendar month after June 30, 1954, and before June 1, 1959, and as is not in excess of $400 paid to him for services rendered as an employee representative in any calendar month after May 31, 1959.''

1966—Subsec. (a). Pub. L. 89–700, §301(i), (ii), substituted ''before June 1, 1959'' for ''before the calendar month next following the month in which this Act was amended in 1959'', and ''after May 31, 1959'' for ''after the month in which this Act was so amended''.

Subsec. (b). Pub. L. 89–700, §§204(a), 301(i), (ii), increased contribution rate from 3¾ per centum to 4 per centum, and substituted ''before June 1, 1959'' for ''before the calendar month next following the month in which this Act was amended in 1959'', and ''after May 31, 1959'' for ''after the month in which this Act was so amended''.

Subsec. (h). Pub. L. 89–700, §204(b), substituted ''the provisions of the Railroad Retirement Tax Act'' for ''section 1800 or 2700 of title 26, and the provisions of section 3661 of title 26''.

1963—Subsec. (a). Pub. L. 88–133, §303(a), increased contribution rate in table from 3¾ to 4 percent when balance to credit of railroad unemployment insurance account as of close of business on Sept. 30 of any year is less than $300,000,000.

Subsec. (f). Pub. L. 88–133, §304, increased amount of contributions to be deposited to credit of fund from 0.2 per centum to 0.25 per centum of total compensation on which such contributions are based.

1959—Subsec. (a). Pub. L. 86–28, §306, increased earnings base from $350 to $400 per month for months after May 1959 for purposes of unemployment insurance contributions, and contribution rates with respect to compensation paid after May 1959 by 1 percent for each of the categories over $300,000,000, by 1¼ percent when the balance was $250,000,000 or more but less than $300,000,000, and by ¾ of 1 percent where the balance was less than $250,000,000.

Subsec. (b). Pub. L. 86–28, §307, increased contribution rate from 3 to 3¾ per centum and maximum amount of compensation for which contribution is payable from $350 to $400 for services rendered in any calendar month after May 1959.

1958—Subsec. (a). Pub. L. 85–927 inserted provision deeming balance to credit of fund a part of balance to credit of account.

1954—Subsecs. (a), (b). Act Aug. 31, 1954, increased earnings base from $300 to $350 per month after June 30, 1954 for purposes of unemployment insurance contributions.

1948—Subsec. (a). Act June 23, 1948, §§4, 5(a), substituted for flat 3 percent contribution rate a sliding scale under which tax rate is automatically adjusted in accordance with amount of reserves in unemployment insurance account as of close of business on Sept. 30 of each year.

Subsec. (f). Act June 23, 1948, §6, changed rates of credits to account and fund.

1946—Subsec. (a). Act July 31, 1946, §318(a), changed basis of contributions from compensation payable during a month to compensation paid during the month and inserted provisions relating to proration of contributions where one of the employers is a railway labor organization.

Subsec. (h). Act July 31, 1946, §318(b), substituted references to sections of the Internal Revenue Code for references to the sections of the Internal Revenue Acts of 1926 and 1934 from which they were derived.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 8(b) of Pub. L. 101–322 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective as of January 1, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7102(e) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this sec-

tion] shall take effect upon the date of the enactment of this Act [Nov. 10, 1988].''

Section 7103(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and sections 360 and 361 of this title] shall apply with respect to compensation paid in months beginning after September 30, 1988.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–76 applicable to compensation paid for services rendered after Dec. 31, 1983, see section 503(c) of Pub. L. 98–76, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

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

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–92 effective with respect to compensation paid for services rendered after Dec. 31, 1975, see section 2 of Pub. L. 94–92, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1963 AMENDMENT

Section 303(a) of Pub. L. 88–133 provided that the amendment made by that section is effective with respect to compensation paid after Dec. 31, 1963.

Section 304 of Pub. L. 88–133 provided that the amendment made by that section is effective with respect to contributions collected by the Railroad Retirement Board after Dec. 31, 1961.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by sections 306(4), (5) and 307(1) of Pub. L. 86–28 effective first day of calendar month next following May 1959, and applicable only with respect to compensation paid for services rendered in calendar months after May 1959, see section 309 of Pub. L. 86–28, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–927 effective Sept. 6, 1958, except as otherwise indicated, see section 207(c) of Pub. L. 85–927, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 31, 1954, effective July 1, 1954, see section 401 of act Aug. 31, 1954, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1946 AMENDMENT

Amendment by act July 31, 1946, effective Jan. 1, 1947, see section 402 of act July 31, 1946.

ADJUSTMENT OR REFUND OF EXCESSIVE CONTRIBUTIONS

Section 5(b) of act June 23, 1948, provided that: ''Contributions paid under subsection (a) of section 8 of the Railroad Unemployment Insurance Act, as amended [subsec. (a) of this section], prior to the enactment of the foregoing amendment thereof [June 23, 1948] which are in excess of those required by said subsection as so amended shall be subject to adjustment or refund in accordance with the provisions of subsections (d) and (e) of said section 8 [subsecs. (d) and (e) of this section].''

§ 359. Penalties

(a) Failure to make report or furnish information; false or fraudulent statement or claim

Any officer or agent of an employer, or any employee representative, or any employee acting in his own behalf, or any person whether or not of the character hereinbefore defined, who shall willfully fail or refuse to make any report or furnish any information required by the Board in the administration of this chapter, or who shall knowingly make or aid in making or cause to be made any false or fraudulent statement or report when a statement or report is required to be made for the purposes of this chapter, or who shall knowingly make or aid in making or cause to be made any false or fraudulent statement or claim for the purpose of causing benefits or other payment to be made or not to be made under this chapter, shall be punished by a fine of not more than $10,000 or by imprisonment not exceeding one year, or both.

(b) Agreement by employee to bear employer's contribution

Any agreement by an employee to pay all or any portion of the contribution required of his employer under this chapter shall be void, and it shall be unlawful for any employer, or officer or agent of an employer, to make, require, or permit any employee to bear all or any portion of such contribution. Any employer, or officer or agent of an employer, who violates any provision of this subsection shall be punished for each such violation by a fine of not more than $10,000 or by imprisonment not exceeding one year, or both.

(c) Punishments not specifically provided

Any person who violates any provision of this chapter, the punishment for which is not otherwise provided, shall be punished for each such violation by a fine of not more than $1,000 or by imprisonment not exceeding one year, or both.

(d) Payment and disposition of fines or penalties

All fines and penalties imposed by a court pursuant to this chapter 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 account.

(June 25, 1938, ch. 680, § 9, 52 Stat. 1103.)

§ 360. Railroad unemployment insurance account

(a) Funds constituting account; availability for benefits or refunds

The Secretary of the Treasury shall maintain in the unemployment trust fund established pursuant to section 1104 of title 42 an account to be known as the railroad unemployment insurance account. This account shall consist of (i) such part of all contributions collected pursuant to section 358 of this title as is in excess of 0.65 per centum of the total compensation on which such contributions are based, together with all interest collected pursuant to section 358(g)[1] of this title; (ii) all amounts transferred or paid into the account pursuant to section 363 or section 364 of this title; (iii) all additional amounts appropriated to the account in accordance with any provision of this chapter or with any provision of law now or hereafter adopted; (iv) a proportionate part of the earnings of the unemployment trust fund, computed in accordance with the provisions of section 1104(e) of title 42; (v) all amounts realized in recoveries for overpayments or erroneous payments of benefits; (vi) all

[1] See References in Text note below.

amounts transferred thereto pursuant to section 361 of this title; (vii) all fines or penalties collected pursuant to the provisions of this chapter; and (viii) all amounts credited thereto pursuant to section 352(f) or section 362(g) of this title. Notwithstanding any other provision of law, all moneys credited to the account shall be mingled and undivided, and are permanently appropriated to the Board to be continuously available to the Board without further appropriation, for the payment of benefits and refunds under this chapter, and no part thereof shall lapse at any time, or be carried to the surplus fund or any other fund.

(b) Payment of benefits or refunds

All moneys in the account shall be used solely for the payment of the benefits and refunds provided for by this chapter. The Board shall, from time to time, certify to the Secretary of the Treasury the name and address of each person or company entitled to receive benefits or a refund payment under this chapter, the amount of such payment, and the time at which it shall be made. Prior to audit or settlement by the Government Accountability Office, the Secretary of the Treasury, through the Fiscal Service of the Treasury Department, shall make payments from the account directly to such person or company of the amount of benefits or refund so certified by the Board: *Provided, however*, That if the Board shall so request, the Secretary of the Treasury, through the Fiscal Service of the Treasury Department, shall transmit benefits payments to the Board for distribution by it through employment offices or in such other manner as the Board deems proper.

(c) Annual report to Congress

The Board shall include in its annual report to Congress a statement with respect to the status and operation of the account.

(d) Transfer and retransfer of funds; interest

Whenever the Board finds at any time that the balance in the railroad unemployment insurance account will be insufficient to pay the benefits and refunds which it estimates are due, or will become due, under this chapter, it shall request the Secretary of the Treasury to transfer from the Railroad Retirement Account to the credit of the railroad unemployment insurance account such moneys as the Board estimates would be necessary for the payment of such benefits and refunds, and the Secretary shall make such transfer. Whenever the Board finds that the balance in the railroad unemployment insurance account, without regard to the amounts transferred pursuant to the next preceding sentence, is sufficient to pay such benefits and refunds, it shall request the Secretary of the Treasury to retransfer from the railroad unemployment insurance account to the credit of the Railroad Retirement Account such moneys as in its judgment are not needed for the payment of such benefits and refunds, plus interest at a rate for each fiscal year 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. In determining the balance in the railroad unemployment insurance account as of September 30 of any year pursuant to section 358(a) of this title, any moneys transferred from the Railroad Retirement Account to the credit of the railroad unemployment insurance account which have not been retransferred as of such date from the latter account to the credit of the former, plus the interest accrued thereon to that date, shall be disregarded.

(June 25, 1938, ch. 680, §10 (less (e)–(g)), 52 Stat. 1104; June 20, 1939, ch. 227, §13, 53 Stat. 848; 1940 Reorg. Plan No. III, §1(a)(1), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; June 23, 1948, ch. 608, §7, 62 Stat. 578; Pub. L. 86–28, pt. III, §308(a), May 19, 1959, 73 Stat. 32; Pub. L. 88–133, title III, §305, Oct. 5, 1963, 77 Stat. 223; Pub. L. 89–700, title II, §205, Oct. 30, 1966, 80 Stat. 1087; Pub. L. 90–257, title II, §205, Feb. 15, 1968, 82 Stat. 24; Pub. L. 93–445, title IV, §403, Oct. 16, 1974, 88 Stat. 1359; Pub. L. 94–92, title I, §1(i), Aug. 9, 1975, 89 Stat. 464; Pub. L. 98–76, title III, §302, Aug. 12, 1983, 97 Stat. 432; Pub. L. 99–107, §4, Sept. 30, 1985, 99 Stat. 479; Pub. L. 99–155, §2(c), Nov. 14, 1985, 99 Stat. 814; Pub. L. 99–181, §3, Dec. 13, 1985, 99 Stat. 1172; Pub. L. 99–189, §3, Dec. 18, 1985, 99 Stat. 1184; Pub. L. 99–272, title XIII, §13302, Apr. 7, 1986, 100 Stat. 327; Pub. L. 100–647, title VII, §7103(b)(1), Nov. 10, 1988, 102 Stat. 3770; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

Section 358(g) of this title, referred to in subsec. (a), was redesignated section 358(j) of this title by Pub. L. 100–647, title VII, §7102(d)(1), Nov. 10, 1988, 102 Stat. 3769.

CODIFICATION

Section 10(e)–(g) of act June 25, 1938, amended section 1104 of Title 42, The Public Health and Welfare.

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1988—Subsec. (a). Pub. L. 100–647 substituted ''0.65'' for ''0.5''.

1986—Subsec. (d). Pub. L. 99–272 struck out at end ''No transfer shall be made under this subsection from Railroad Retirement Account after December 19, 1985, and no such transfer shall be made on or before December 19, 1985, for purposes of paying benefits and refunds due after such date.''

1985—Subsec. (d). Pub. L. 99–189 substituted ''December 19, 1985'' for ''December 18, 1985'' wherever appearing.

Pub. L. 99–181 substituted ''December 18, 1985'' for ''December 14, 1985'' wherever appearing.

Pub. L. 99–155 substituted ''December 14, 1985'' for ''November 14, 1985'' wherever appearing.

Pub. L. 99–107 substituted ''November 14, 1985'' for ''September 30, 1985'' wherever appearing.

1983—Subsec. (d). Pub. L. 98–76 inserted provisions that no transfer shall be made under this subsection from Railroad Retirement Account after September 30, 1985, and no such transfer shall be made on or before September 30, 1985, for purposes of paying benefits and refunds due after such date.

1975—Subsec. (a)(i). Pub. L. 94–92, §1(i)(1), substituted ''0.5'' for ''0.25''.

Subsec. (a)(ii). Pub. L. 94–92, §1(i)(2), struck out ''and pursuant to subsection (h)[e] of this section''. Congress probably intended to strike out internal reference to subsec. (e) of this section in view of repeal of subsection by section 403 of Pub. L. 93–445 and it being last subsection of section.

1974—Subsec. (e). Pub. L. 93–445 repealed subsec. (e) which was added by Pub. L. 90–257 as subsec. (h) and redesignated (e) for purposes of codification, and which provided for annual adjustment of account and transfer of funds from Railroad Retirement Account.

1968—Subsec. (a)(ii). Pub. L. 90–257 inserted reference to amounts transferred or paid into account pursuant to subsec. (e) of this section.

Subsec. (e). Pub. L. 90–257 added subsec. (e) which was subsec. (h) in original and was redesignated (e) for purposes of codification.

1966—Subsec. (a). Pub. L. 89–700 substituted ''0.25 per centum'' for ''0.2 per centum''.

1963—Subsec. (d). Pub. L. 88–133 substituted ''a rate for each fiscal year 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'' for ''the rate of 3 per centum per annum.''

1959—Subsec. (d). Pub. L. 86–28 substituted provisions authorizing Board to request transfer and retransfer of funds for provisions which directed Secretary of the Treasury to advance not more than $25,000,000 for purpose of paying benefits.

1948—Subsec. (a)(i). Act June 23, 1948, changed computation of insurance account.

1939—Subsec. (a). Act June 20, 1939, substituted ''(f)'' for ''(g)''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable with respect to compensation paid in months beginning after Sept. 30, 1988, see section 7103(c) of Pub. L. 100–647, set out as a note under section 358 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–92 effective with respect to compensation paid for services rendered after Dec. 31, 1975; and effective Aug. 9, 1975, respectively, see section 2 of Pub. L. 94–92, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1963 AMENDMENT

Section 305 of Pub. L. 88–133 provided that the amendment made by that section is effective after June 30, 1964.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 308(b) of Pub. L. 86–28 provided that: ''The amendment made by this section [amending this section] shall take effect on the date of enactment of this Act [May 19, 1959].''

TRANSFER OF FUNCTIONS

''Fiscal Service'' substituted for ''Division of Disbursements'' in two places in subsec. (b) on authority of section 1(a)(1) of Reorg. Plan No. III of 1940, 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.

§ 361. Railroad unemployment insurance administration fund

(a) Maintenance of account; amounts constituting fund

The Secretary of the Treasury shall maintain in the unemployment trust fund established pursuant to section 904 of the Social Security Act [42 U.S.C. 1104] an account to be known as the railroad unemployment insurance administration fund. This unemployment insurance administration fund shall consist of (i) such part of all contributions collected pursuant to section 358 of this title as equals 0.65 per centum of the total compensation on which such contributions are based; (ii) all amounts advanced to the fund by the Secretary of the Treasury pursuant to this section; (iii) all amounts appropriated by subsection (b) of this section; and (iv) such additional amounts as Congress may appropriate for expenses necessary or incidental to administering this chapter. Such additional amounts are authorized to be appropriated.

(b) Authorization of appropriations; advance of sums; repayment

In addition to the other moneys herein provided for expenses necessary or incidental to administering this chapter, there is appropriated to the fund such amount as the Secretary of the Treasury and the Board shall jointly estimate to have been collected or to be collectible with respect to the calendar years 1936, 1937, 1938, and 1939, from employers subject to this chapter, under title IX of the Social Security Act, less such amount as the Secretary of the Treasury and the Board shall jointly estimate will be appropriated or has been appropriated to States or Territories pursuant to the Act of Congress approved August 24, 1937 (Public, Numbered 353, Seventy-fifth Congress), as proceeds of taxes paid by employers pursuant to title IX of the Social Security Act.

Until the amount appropriated by this subsection is credited to the fund, the Secretary of the Treasury is directed to advance to the credit of the fund such sums, but not more than $2,000,000, as the Board requests for the purpose of financing the costs of administering this chapter. Such advance shall be repaid from the fund at such time after the amount appropriated by this subsection is credited to the fund as the Board by agreement with the Secretary of the Treasury may determine, but not later than January 1, 1940.

(c) Availability for administrative expenses

Notwithstanding any other provision of law, all moneys at any time credited to the fund are permanently appropriated to the Board to be continuously available to the Board without further appropriation for any expenses necessary or incidental to administering this chapter, including personal services in the District of Columbia and elsewhere; travel expenses, including expenses of attendance at meetings when authorized by the Board; actual transportation expenses and not to exceed $10 per diem to cover subsistence and other expenses while in attendance at and en route to and from the place to which he is invited, to any person other than an employee of the Federal Government who may, from time to time, be invited to the city of Washington or elsewhere for conference or advisory purposes in furthering the work of the Board; when found by the Board to be in the interest of the Government, not exceeding 3 per centum, in any fiscal year, of the amounts credited during such year to the fund, for engaging persons or organizations, by contract or otherwise, for any special technical or professional

services, determined necessary by the Board, including but not restricted to accounting, actuarial, statistical, and reporting services, without regard to section 5 of title 41 and the provisions of other laws applicable to the employment and compensation of officers and employees of the United States; services; advertising, postage, telephone, telegraph, teletype, and other communication services and tolls; supplies; reproducing, photographing, and all other equipment, office appliances, and laborsaving devices, including devices for internal communication and conveyance; purchase and exchange, operation, maintenance and repair of motor-propelled passenger-carrying vehicles to be used only for official purposes in the District of Columbia and in the field; printing and binding; purchase and exchange of law books, books of reference, and directories; periodicals, newspapers and press clippings, in such amounts as the Board deems necessary, without regard to the provisions of section 192 of the Revised Statutes; manuscripts and special reports; membership fees or dues in organizations which issue publications to members only, or to members at a lower price than to others, payment for which may be made in advance; rentals, including garages, in the District of Columbia or elsewhere; alterations and repairs; if found by the Board to be necessary to expedite the certification to the Board by the Director of the Office of Personnel Management of persons eligible to be employed by the Board, and to the extent that the Board finds such expedition necessary, meeting the expenses of the Director of the Office of Personnel Management in holding examinations for testing the fitness of applicants for admission to the classified service for employment by the Board pursuant to the second paragraph of section 362(*l*) of this title, but not to exceed the additional expenses found by the Board to have been incurred by reason of the holding of such examinations; and miscellaneous items, including those for public instruction and information deemed necessary by the Board: *Provided*, That section 5 of title 41 shall not be construed to apply to any purchase or procurement of supplies or services by the Board from moneys in the fund when the aggregate amount involved does not exceed $300. Determinations of the Board whether the fund or an appropriation for the administration of the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.] is properly chargeable with the authorized expenses, or parts thereof, incurred in the administration of such Act, or of this chapter, shall be binding and conclusive for all purposes and upon all persons, including the Comptroller General and any other administrative or accounting officer, employee, or agent of the United States and shall not be subject to review in any manner.

(d) Transfer of excess to insurance account

So much of the balance in the fund as of September 30 of each year as is in excess of $6,000,000 shall as of such date be transferred from the fund and credited to the account.

(June 25, 1938, ch. 680, §11, 52 Stat. 1105; June 20, 1939, ch. 227, §§14, 15, 53 Stat. 848; Oct. 10, 1940, ch. 842, §22, 54 Stat. 1099; June 23, 1948, ch. 608, §8, 62 Stat. 578; Pub. L. 85–927, pt. II, §205, Sept. 6, 1958, 72 Stat. 1783; Pub. L. 89–700, title II, §205, Oct. 30, 1966, 80 Stat. 1087; Pub. L. 93–445, title IV, §404, Oct. 16, 1974, 88 Stat. 1359; Pub. L. 94–92, title I, §1(j), Aug. 9, 1975, 89 Stat. 464; Pub. L. 94–273, §2(22), Apr. 21, 1976, 90 Stat. 376; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 100–647, title VII, §7103(b)(2), Nov. 10, 1988, 102 Stat. 3770.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title IX of the Social Security Act was formerly classified generally to subchapter IX (§1101 et seq.) of chapter 7 of Title 42, The Public Health and Welfare, and, except for section 1104 of Title 42, was omitted from the Code pursuant to section 4 of act Feb. 10, 1939, ch. 2, 53 Stat. 1. For further details, see Prior Provisions note preceding section 1101 of Title 42. For complete classification of the Social Security Act to the Code, see section 1305 of Title 42 and Tables.

Act of Congress approved August 24, 1937, referred to in subsec. (b), is act Aug. 24, 1937, ch. 755, 50 Stat. 754, which is not classified to the Code.

Section 192 of the Revised Statutes, referred to in subsec. (c), which related to expenditures for newspapers and which was classified to section 102 of former Title 5, was repealed by act Aug. 2, 1946, ch. 744, §17(a), 60 Stat. 811.

The Railroad Retirement Act of 1974, referred to in subsec. (c), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of this title. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of this title, section 231t of this title, and Tables.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647 substituted ''0.65'' for ''0.5''.

1976—Subsec. (d). Pub. L. 94–273 substituted ''September'' for ''June''.

1975—Subsec. (a)(i). Pub. L. 94–92 substituted ''0.5'' for ''0.25''.

1974—Subsec. (c). Pub. L. 93–445 substituted ''Railroad Retirement Act of 1974'' and ''such Act'' for ''Railroad Retirement Act of 1937 and the Railroad Retirement Act of 1935'' and ''such Acts'', respectively.

1966—Subsec. (a). Pub. L. 89–700 substituted ''0.25 per centum'' for ''0.2 per centum''.

1958—Subsec. (a). Pub. L. 85–927 substituted provisions directing Secretary of the Treasury to maintain in unemployment trust fund established pursuant to section 1104 of title 42 an account to be known as the railroad unemployment insurance administration fund, for provisions which established railroad unemployment insurance administration fund in Treasury of United States.

1948—Subsec. (a)(i). Act June 23, 1948, changed computation of administration funds.

1940—Subsec. (d). Act Oct. 10, 1940, substituted provisions relating to transfer of balance remaining in fund in excess of $6,000,000, for provisions relating to lapsing of fund, carryovers to surplus or other fund, and transfers from fund.

1939—Subsec. (b). Act June 20, 1939, §14, substituted ''. Such advance shall be repaid from the fund at'' for '', including personal services in the District of''.

Subsec. (c). Act June 20, 1939, §15, substituted '', including personal services in the District of'' for ''. Such advance shall be repaid from the fund at''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable with respect to compensation paid in months beginning after Sept. 30, 1988, see section 7103(c) of Pub. L. 100–647, set out as a note under section 358 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–92 effective with respect to compensation paid for services rendered after Dec. 31, 1975, see section 2 of Pub. L. 94–92, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–927 effective Sept. 6, 1958, except as otherwise indicated, see section 207(c) of Pub. L. 85–927, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1940 AMENDMENT

For effective date of amendment by act Oct. 10, 1940, see section 1 of act Oct. 10, 1940, see note set out under section 351 of this title.

TRANSFER OF FUNCTIONS

''Director of the Office of Personnel Management'' substituted for ''Civil Service Commission'' in subsec. (c), pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 362. Duties and powers of Board

(a) Witnesses; subpenas, service, fees, etc.

For the purpose of any investigation or other proceeding relative to the determination of any right to benefits, or relative to any other matter within its jurisdiction under this chapter, the Board shall have the power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence, documentary or otherwise, that relates to any matter under investigation or in question, before the Board or any member, employee, or representative thereof. Any member of the Board or any of its employees or representatives designated by it may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and production of evidence may be required from any place in the United States or any Territory or possession thereof at any designated place of hearing. All subpenas may be served and returned by anyone authorized by the Board in the same manner as is now provided by law for the service and return by United States marshals of subpenas in suits in equity. Such service may also be made by registered mail or by certified mail and in such case the return post-office receipt shall be proof of service. Witnesses summoned in accordance with this subsection shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

(b) Enforcement of subpenas by courts; contempts; service of orders, writs, or processes

In case of contumacy by, or refusal to obey a subpena lawfully issued to, any person, the Board may invoke the aid of the district court of the United States or the United States courts of any Territory or possession, where such person is found or resides or is otherwise subject to service of process, or the United States District Court for the District of Columbia if the investigation or proceeding is being carried on in the District of Columbia, or the United States District Court for the Northern District of Illinois, if the investigation or proceeding is being carried on in the Northern District of Illinois, in requiring the attendance and testimony of witnesses and the production of evidence. Any such court shall issue an order requiring such person to appear before the Board or its specified employee or representative at the place specified in the subpena of the Board, whether within or without the judicial district of the court, there to produce evidence, if so ordered, or there to give testimony concerning the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof. All orders, writs, and processes in any such proceeding may be served in the judicial district of the district court issuing such order, writ, or process, except that the orders, writs, and processes of the United States District Court for the District of Columbia or of the United States District Court for the Northern District of Illinois in such proceedings may run and be served anywhere in the United States.

(c) Repealed. Pub. L. 91–452, title II, § 239, Oct. 15, 1970, 84 Stat. 930

(d) Information as confidential

Information obtained by the Board in connection with the administration of this chapter shall not be revealed or open to inspection nor be published in any manner revealing an employee's identity: *Provided, however*, That (i) the Board may arrange for the exchange of any information with governmental agencies engaged in functions related to the administration of this chapter; (ii) the Board may disclose such information in cases in which the Board finds that such disclosure is clearly in furtherance of the interest of the employee or his estate; (iii) any claimant of benefits under this chapter shall, upon his request, be supplied with information from the Board's records pertaining to his claim; and (iv) the Board shall disclose to any base-year employer of a claimant for benefits any information, including information as to the claimant's identity, that is necessary or appropriate to notify such employer of the claim for benefits or to full and fair participation by such employer in an appeal, hearing, or other proceeding relative to the claim pursuant to section 355 of this title. Subject to the provisions of this section, the Board may furnish such information to any person or organization upon payment by such person or organization to the Board of the cost incurred by the Board by reason thereof; and the amounts so paid to the Board shall be credited to the railroad unemployment insurance administration fund established pursuant to section 361(a) of this title;

(e) Certification of claims; authorization of employee to make payments; bond

The Board shall provide for the certification of claims for benefits and refunds and may arrange

total or partial settlements at such times and in such manner as may appear to the Board to be expedient. The Board shall designate and authorize one or more of its employees to sign vouchers for the payment of benefits and refunds under this chapter. Each such employee shall give bond, in form and amount fixed by the Board, conditioned upon the faithful performance of his duties. The premiums due on such bonds shall be paid from the fund and deemed to be a part of the expenses of administering this chapter.

(f) Cooperation with other agencies administering unemployment or sickness compensation laws; agreements

The Board may cooperate with or enter into agreement with the appropriate agencies charged with the administration of State, Territorial, Federal, or foreign unemployment-compensation or sickness laws or employment offices, with respect to investigations, the exchange of information and services, the establishment, maintenance, and use of free employment service facilities, and such other matters as the Board deems expedient in connection with the administration of this chapter, and may compensate any such agency for services or facilities supplied to the Board in connection with the administration of this chapter. The Board may enter also into agreements with any such agency, pursuant to which any unemployment or sickness benefits provided for by this chapter or any other unemployment-compensation or sickness law, may be paid through a single agency to persons who have, during the period on the basis of which eligibility for and duration of benefits is determined under the law administered by such agency or under this chapter, or both, performed services covered by one or more of such laws, or performed services which constitute employment as defined in this chapter: *Provided*, That the Board finds that any such agreement is fair and reasonable as to all affected interests.

(g) Benefits also subject to a State law; mutual reimbursement

In determining whether an employee has qualified for benefits in accordance with section 353 of this title, and in determining the amount of benefits to be paid to such employee in accordance with section 352(a) and (c) of this title, the Board is authorized to consider as employment (and compensation therefor) services for hire other than employment (and remuneration therefor) if such services for hire are subject to an unemployment or sickness compensation law of any State, provided that such State has agreed to reimburse the United States such portion of the benefits to be paid upon such basis to such employee as the Board deems equitable. Any amounts collected pursuant to this paragraph shall be credited to the account.

If a State, in determining whether an employee is eligible for unemployment or sickness benefits under an unemployment or sickness compensation law of such State, and in determining the amount of unemployment or sickness benefits to be paid to such employee pursuant to such unemployment or sickness compensation law, considers as services for hire (and remuneration therefor) included within the provisions of such unemployment or sickness compensation law, employment (and compensation therefor), the Board is authorized to reimburse such State such portion of such unemployment or sickness benefits as the Board deems equitable; such reimbursements shall be paid from the account, and are included within the meaning of the word ''benefits'' as used in this chapter.

(h) Assistance from employers and labor organizations; compensation

The Board may enter into agreements or arrangements with employers, organizations of employers, and railway-labor organizations which are duly organized in accordance with the provisions of the Railway Labor Act [45 U.S.C. 151 et seq.], for securing the performance of services or the use of facilities in connection with the administration of this chapter, and may compensate any such employer or organization therefor upon such reasonable basis as the Board shall prescribe, but not to exceed the additional expense incurred by such employer or organization by reason of the performance of such services or making available the use of such facilities pursuant to such agreements or arrangements. Such employers and organizations, and persons employed by either of them, shall not be subject to section 209 of title 18.

(i) Free employment offices; registration of unemployed; statements of sickness; reemployment

The Board may establish, maintain, and operate free employment offices, and may designate as free employment offices facilities maintained by (i) a railway labor organization which is duly authorized and designated to represent employees in accordance with the Railway Labor Act [45 U.S.C. 151 et seq.], or (ii) any other labor organization which has been or may be organized in accordance with the provisions of the Railway Labor Act, or (iii) one or more employers, or (iv) an organization of employers, or (v) a group of such employers and labor organizations, or (vi) a State, Territorial, foreign, or the Federal Government. The Board may also enter into agreements or arrangements with one or more employers or railway labor organizations organized in accordance with the provisions of the Railway Labor Act, pursuant to which notice of the availability of work and the rights of employees with respect to such work under agreements between such employers and railway labor organizations may be filed with employment offices and pursuant to which employees registered with employment offices may be referred to such work.

The Board shall prescribe a procedure for registration of unemployed employees at employment offices. Such procedure for registration shall be prescribed with a view to such registration affording substantial evidence of the days of unemployment of the employees who register. The Board may, when such registration is made personally by an employee, accept such registration as initial proof of unemployment sufficient to certify for payment a claim for benefits.

The Board shall provide a form or forms for statements of sickness and a procedure for the

execution and filing thereof. Such forms and procedure shall be designated with a view to having such statements provide substantial evidence of the days of sickness of the employee. Such statements may be executed by any doctor (authorized to practice in the State or foreign jurisdiction in which he practices his profession) or any officer or supervisory employee of a hospital, clinic, group health association, or other similar organization, who is qualified under such regulations as the Board may prescribe to execute such statements. The Board shall issue regulations for the qualification of such persons to execute such statements. When so executed by any such person, or, in the discretion of the Board, by others designated by the Board individually or by groups, they may be accepted as initial proof of days of sickness sufficient to certify for payment a claim for benefits.

The regulations of the Board concerning registration at employment offices by unemployed persons may provide for group registration and reporting, through employers, and need not be uniform with respect to different classes of employees.

The operation of any employment facility operated by the Board shall be directed primarily toward the reemployment of employees who have theretofore been substantially employed by employers.

(j) Advisory councils; members' remuneration

The Board may appoint national or local advisory councils composed of equal numbers of representatives of employers, representatives of employees, and persons representing the general public, for the purpose of discussing problems in connection with the administration of this chapter and aiding the Board in formulating policies. The members of such councils shall serve without remuneration, but shall be reimbursed for any necessary traveling and subsistence expenses or on a per diem basis in lieu of subsistence expenses.

(k) Reduction of unemployment; training and reemployment of unemployed employees, etc.

The Board, with the advice and aid of any advisory council appointed by it, shall take appropriate steps to reduce and prevent unemployment and loss of earnings; to encourage and assist in the adoption of practical methods of vocational training, retraining, and vocational guidance; to promote the reemployment of unemployed employees; and to these ends to carry on and publish the results of investigations and research studies.

(*l*) Necessary and incidental powers; employees of Board, employment, remuneration, civil-service laws, registration of unemployed, and detail

In addition to the powers and duties expressly provided, the Board shall have and exercise all the powers and duties necessary to administer or incidental to administering this chapter, and in connection therewith shall have such of the powers, duties, and remedies provided in subdivisions (5), (6), and (9) of section 7(b) of the Railroad Retirement Act of 1974 [45 U.S.C. 231f(b)] with respect to the administration of the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.], as are not inconsistent with the express provisions of this chapter. A person in the employ of the Board under section 205 of the Act of Congress approved June 24, 1937 (50 Stat. 307), shall acquire a competitive classified civil-service status if, after recommendation by the Board to the Director of the Office of Personnel Management, he shall pass such noncompetitive tests of fitness as the Director of the Office of Personnel Management may prescribe. A person in the employ of the Board on June 30, 1939, and on June 30, 1940, and who has had experience in railroad service, shall acquire a competitive classified civil-service status if, after recommendation by the Board to the Director of the Office of Personnel Management, he shall pass such noncompetitive tests of fitness for the position for which the Board recommends him as the Director of the Office of Personnel Management may prescribe.

The Board may employ such persons and provide for their remuneration and expenses, as may be necessary for the proper administration of this chapter. Such persons shall be employed and their remuneration prescribed in accordance with the civil-service laws and chapter 51 and subchapter III of chapter 53 of title 5: *Provided*, That all positions to which such persons 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: *Provided*, That in the employment of such persons the Board shall give preference, as between applicants attaining the same grades, to persons who have had experience in railroad service, and notwithstanding any other provisions of law, rules, or regulations, no other preference shall be given or recognized: *And provided further*, That certification by the Director of the Office of Personnel Management of persons for appointment to any positions at minimum salaries of $4,600 per annum, or less, shall, if the Board so requests, be upon the basis of competitive examinations, written, oral, or both, as the Board may request: *And provided further*, That, for the purpose of registering unemployed employees who reside in areas in which no employer facilities are located, or in which no employer will make facilities available for the registration of such employees, the Board may, without regard to civil-service laws and chapter 51 and subchapter III of chapter 53 of title 5, appoint persons to accept, in such areas, registration of such employees and perform services incidental thereto and may compensate such persons on a piece-rate basis to be determined by the Board. Notwithstanding any other provision of law, the Board may detail employees from stations outside the District of Columbia to other stations outside the District of Columbia or to service in the District of Columbia, and may detail employees in the District of Columbia to service outside the District of Columbia: *Provided*, That all details hereunder shall be made by specific order and in no case for a period of time exceeding one hundred and twenty days. Details so made may, on expiration, be renewed from time to time by order of the Board, in each particular case, for periods not exceeding one hundred and twenty days.

(m) Delegation of powers

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 chapter, excluding only the power to prescribe rules and regulations.

(n) Sickness benefits; examinations; information and reports; contracts and expenses for examinations

Any employee claiming, entitled to, or receiving sickness benefits under this chapter may be required to take such examination, physical, medical, mental, or otherwise, in such manner and at such times and by such qualified individuals, including medical officers or employees of the United States or a State, as the Board may prescribe. The place or places of examination shall be reasonably convenient for the employee. No sickness benefits shall be payable under this chapter with respect to any period during which the employee unreasonably refuses to take or willfully obstructs an examination as prescribed by the Board.

Any doctor who renders any attendance, treatment, attention, or care, or performs any examination with respect to a sickness of an employee, upon which a claim or right to benefits under this chapter is based, shall furnish the Board, in such manner and form and at such times as the Board by regulations may prescribe, information and reports relative thereto and to the condition of the employee. An application for sickness benefits under this chapter shall contain a waiver of any doctor-patient privilege that the employee may have with respect to any sickness period upon which such application is based: *Provided*, That such information shall not be disclosed by the Board except in a proceeding relating to any claim for benefits by the employee under this chapter.

The Board may enter into agreements or arrangements with doctors, hospitals, clinics, or other persons for securing the examination, physical, medical, mental, or otherwise, of employees claiming, entitled to, or receiving sickness benefits under this chapter and the performance of services or the use of facilities in connection with the execution of statements of sickness. The Board may compensate any such doctors, hospitals, clinics, or other persons upon such reasonable basis as the Board shall prescribe. Such doctors, hospitals, clinics, or other persons and persons employed by any of them shall not be subject to section 209 of title 18. In the event that the Board pays for the physical or mental examination of an employee or for the execution of a statement of sickness and such employee's claim for benefits is based upon such examination or statement, the Board shall deduct from any sickness benefits payable to the employee pursuant to such claim such amount as, in the judgment of the Board, is a fair and reasonable charge for such examination or execution of such statement.

(*o*) Liability of third party for sickness; reimbursement of Board

Benefits payable to an employee with respect to days of sickness shall be payable regardless of the liability of any person to pay damages for such infirmity. The Board shall be entitled to reimbursement from any sum or damages paid or payable to such employee or other person through suit, compromise, settlement, judgment, or otherwise on account of any liability (other than a liability under a health, sickness, accident, or similar insurance policy) based upon such infirmity, to the extent that it will have paid or will pay benefits for days of sickness resulting from such infirmity. Upon notice to the person against whom such right or claim exists or is asserted, the Board shall have a lien upon such right or claim, any judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way of reimbursement.

(p) Disqualification to execute statements of sickness or receive fees

The Board may, after hearing, disqualify any person from executing statements of sickness who, the Board finds, (i) will have solicited, or will have employed another to solicit, for himself or for another the execution of any such statement, or (ii) will have made false or misleading statements to the Board, to any employer, or to any employee, in connection with the awarding of any benefits under this chapter, or (iii) will have failed to submit medical reports and records required by the Board under this chapter, or will have failed to submit any other reports, records, or information required by the Board in connection with the administration of this chapter or any other Act heretofore or hereafter administered by the Board, or (iv) will have engaged in any malpractice or other professional misconduct. No fees or charges of any kind shall accrue to any such person from the Board after his disqualification.

(q) Investigations and research with respect to accidents and disabilities

The Board shall engage in and conduct research projects, investigations, and studies with respect to the cause, care, and prevention of, and benefits for, accidents and disabilities and other subjects deemed by the Board to be related thereto, and shall recommend legislation deemed advisable in the light of such research projects, investigations, and studies.

(r) Duty of Board to make certain computations

(1) Compensation base

On or before December 1, 1988, and on or before December 1 of each year thereafter, the Board shall compute—

(A) in accordance with section 351(i) of this title, the monthly compensation base which shall be applicable with respect to months in the next succeeding calendar year; and

(B) the amounts described in section 351(k) of this title, section 352(c) of this title, section 353 of this title, and section 354(a–2)(i)(A) of this title that are related to changes in the monthly compensation base.

(2) Maximum daily benefit rate

On or before June 1, 1989, and on or before June 1 of each year thereafter, the Board shall compute in accordance with section 352(a)(3) of this title the maximum daily benefit rate

which shall be applicable with respect to days of unemployment and days of sickness in registration periods beginning after June 30 of that year.

(3) Notice in Federal Register and to employers

Not later than 10 days after each computation made under this subsection, the Board shall publish notice in the Federal Register and shall notify each employer and employee representative of the amount so computed.

(June 25, 1938, ch. 680, § 12, 52 Stat. 1107; June 20, 1939, ch. 227, § 16, 53 Stat. 848; Oct. 10, 1940, ch. 842, §§ 23, 24, 54 Stat. 1099; July 31, 1946, ch. 709, §§ 319–323, 60 Stat. 739, 740; June 25, 1948, ch. 646, §§ 1, 32(b), 62 Stat. 878, 895, 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 28, 1949, ch. 782, title II, § 202(29), title XI, § 1106(a), 63 Stat. 956, 972; Aug. 12, 1955, ch. 869, § 6, 69 Stat. 716; Pub. L. 85–927, pt. II, § 206, Sept. 6, 1958, 72 Stat. 1783; Pub. L. 86–507, § 1(37), June 11, 1960, 74 Stat. 202; Pub. L. 89–700, title II, § 206, Oct. 30, 1966, 80 Stat. 1087; Pub. L. 90–257, title II, § 206, Feb. 15, 1968, 82 Stat. 25; Pub. L. 91–452, title II, § 239, Oct. 15, 1970, 84 Stat. 930; Pub. L. 93–445, title IV, § 405, Oct. 16, 1974, 88 Stat. 1359; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 100–647, title VII, §§ 7101(e), 7104(d), (e), Nov. 10, 1988, 102 Stat. 3758, 3772.)

REFERENCES IN TEXT

The Railway Labor Act, referred to in subsecs. (h) and (i), 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.

The Railroad Retirement Act of 1974, referred to in subsec. (*l*), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of this title. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of this title, section 231t of this title, and Tables.

Section 205 of the Act of Congress approved June 24, 1937 (50 Stat. 307), referred to in subsec. (*l*), is section 205 of act June 24, 1937, ch. 382, 50 Stat. 307, which is not classified to the Code.

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

CODIFICATION

In subsecs. (h) and (n), ''section 209 of title 18'' substituted for reference to the Act of March 3, 1917, 39 Stat. 1106 (5 U.S.C. 66) on authority of (1) act June 25, 1948, ch. 645, 62 Stat. 683, section 1 of which enacted Title 18, Crimes and Criminal Procedure, and which enacted in section 1914 of Title 18 the provisions formerly classified to section 66 of former Title 5; and (2) section 2 of Pub. L. 87–849, Oct. 23, 1962, 76 Stat. 1126, which repealed section 1914 of Title 18 and supplanted it with section 209, and which provided that exemptions from section 1914 shall be deemed exemptions from section 209. For further details, see Exemptions note set out under section 203 of Title 18.

In subsec. (*l*), ''chapter 51 and subchapter III of chapter 53 of title 5'' substituted for ''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.

In penultimate sentence of subsec. (*l*), following the first word ''Notwithstanding'', the words ''the provisions of the Act of June 22, 1906 (34 Stat. 449), or'' have been omitted as obsolete. The provisions were enacted as section 3342 of Title 5, Government Organization and Employees, by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 425. Section 3342 of Title 5 was repealed by Pub. L. 89–762, § 1(a), Nov. 5, 1966, 80 Stat. 1312.

AMENDMENTS

1988—Subsec. (d). Pub. L. 100–647, § 7104(d), added cl. (iv).

Subsec. (n). Pub. L. 100–647, § 7104(e), struck out ''court'' before ''proceeding'' in proviso of second par.

Subsec. (r). Pub. L. 100–647, § 7101(e), added subsec. (r).

1974—Subsec. (*l*). Pub. L. 93–445 substituted ''subdivisions (5), (6), and (9) of section 7(b) of the Railroad Retirement Act of 1974'' for ''section 10(b)(4) of the Railroad Retirement Act of 1937''.

1970—Subsec. (c). Pub. L. 91–452 struck out subsec. (c) which related to immunity from prosecution of any person compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

1968—Subsec. (f). Pub. L. 90–257, § 206(a), struck out references to maternity benefits and laws and made changes in punctuation and grammar necessitated thereby.

Subsec. (g). Pub. L. 90–257, § 206(b), struck out references to maternity benefits and maternity compensation laws and made changes in punctuation and grammar necessitated thereby.

Subsec. (i). Pub. L. 90–257, § 206(c), struck out provisions making reference to maternity sickness and to expected and actual date of birth of the child required to be included in report of maternity sickness.

Subsec. (n). Pub. L. 90–257, § 206(d), struck out references to maternity benefits and to services of a doctor as to expected date of birth of a female employee's child, or the birth of such a child.

1966—Subsec. (d). Pub. L. 89–700 authorized Board to furnish such information to any person or organization upon payment of the cost incurred by reason thereof, and requiring amounts so paid to Board to be credited to railroad unemployment insurance administration fund.

Subsec. (g). Pub. L. 89–700 substituted ''section 353 of this title'' for ''section 353(a) of this title''.

1960—Subsec. (a). Pub. L. 86–507 inserted ''or by certified mail'' after ''registered mail''.

1958—Subsec. (*l*). Pub. L. 85–927 struck out ''except that the Board may fix the salary of a director of unemployment insurance at $10,000 per annum'' before first proviso in second paragraph, and substituted ''Classification Act of 1949'' for ''Classification Act of 1923'', immediately preceding such first proviso, which substitution had already been executed in accordance with act Oct. 28, 1949.

1955—Subsec. (*l*). Act Aug. 12, 1955, specifically provided for employees of Railroad Retirement Board to be in and under competitive civil service.

1949—Subsec. (*l*). Act Oct. 28, 1949, substituted ''Classification Act of 1949'' for ''Classification Act of 1923'' in two places.

1946—Subsec. (b). Act July 31, 1946, § 319, inserted provisions relating to the District Court of the United States for the Northern District of Illinois.

Subsec. (f). Act July 31, 1946, § 320, inserted references to sickness or maternity laws and benefits.

Subsec. (g). Act July 31, 1946, § 321, inserted references to sickness or maternity laws and benefits and struck out phrase limiting second paragraph to eligibility with respect to unemployment after June 30, 1939.

Subsec. (i). Act July 31, 1946, § 322, added third par., providing for form, execution and filing of statements of sickness.

Subsecs. (n) to (q). Act July 31, 1946, § 323, added subsecs. (n) to (q).

1940—Subsec. (*l*). Act Oct. 10, 1940, § 22, inserted provisions relating to acquisition of competitive classified civil-service status by a person in the employ of Board on June 30, 1939, and June 30, 1940.

Act Oct. 10, 1940, §23, inserted provisos relating to personnel for registering unemployed employees.

1939—Subsec. (g). Act June 20, 1939, inserted ", with respect to unemployment after June 30, 1939" after "employee is eligible" and struck out "June 30, 1939" after "therefor) after".

CHANGE OF NAME

Subsec. (b) of this section was amended by act June 25, 1948, §32(b), eff. Sept. 1, 1948, as amended by act May 24, 1949, which substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia".

"United States District Court for the Northern District of Illinois" substituted for "District Court of the United States for the Northern District of Illinois" in view of act June 25, 1948, 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 that "Illinois is divided into three judicial districts to be known as the Northern, Southern, and Eastern Districts of Illinois." See sections 88 and 132 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 7104(d), (e) of Pub. L. 100–647, effective Jan. 1, 1990, see section 7104(f) of Pub. L. 100–647, set out as a note under section 355 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–452 effective on sixtieth day following Oct. 15, 1970, and not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provisions note under section 6001 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–257 effective July 1, 1968, see section 208 of Pub. L. 90–257, set out as a note under section 352 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–927 effective Sept. 6, 1958, except as otherwise indicated, see section 207(c) of Pub. L. 85–927, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1946 AMENDMENT

Amendment by act July 31, 1946, effective July 31, 1946, see section 401 of act July 31, 1946.

EFFECTIVE DATE OF 1940 AMENDMENT

For effective date of amendment by act Oct. 10, 1940, see section 1 of act Oct. 10, 1940, set out as a note under section 351 of this title.

REPEALS

Act Oct. 28, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89–554, Sept. 6, 1966, §8, 80 Stat. 632, 655.

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" substituted for "Civil Service Commission" in subsec. (*l*), pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

TERMINATION OF ADVISORY COUNCILS

Advisory councils in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. Advisory councils 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 council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (*l*) of this section delegated to Chairman of the Railroad Retirement Board by Memorandum of President of the United States, Feb. 9, 2005, 70 F.R. 7631, set out as a note under section 231f of this title.

RAILROAD UNEMPLOYMENT COMPENSATION COMMITTEE

Pub. L. 98–76, title V, §504, Aug. 12, 1983, 97 Stat. 441, provided that:

"(a) Representatives of railroad labor and railroad management shall jointly establish (and jointly appoint the members of) a committee to be known as the 'Railroad Unemployment Compensation Committee' (hereinafter in this section referred to as the 'Committee').

"(b) The Committee shall consist of five members—

"(1) two of whom shall be representatives of railroad labor,

"(2) two of whom shall be representatives of railroad management, and

"(3) one of whom shall be an individual who shall not be in the employment of or pecuniarily or otherwise interested in any employer (as defined in section 1 of the Railroad Retirement Act of 1974 [45 U.S.C. 231]) or any organization of employees (as defined in section 1 of such Act).

"(c) The Committee shall review all aspects of the unemployment and sickness insurance systems provided by the Railroad Unemployment Insurance Act [this chapter] including (but not limited to) a review of—

"(1) benefit levels,

"(2) experience rating,

"(3) debt repayment and interest on debt,

"(4) waiting period for unemployment benefits and qualifying requirements, and

"(5) alternatives to the railroad unemployment insurance system such as covering railroad employees under the Federal-State unemployment compensation system.

"(d) Not later than April 1, 1984, the Committee shall submit a report to the Congress containing recommendations—

"(1) with respect to the review conducted under subsection (c), and

"(2) with respect to the repayment of funds which the railroad unemployment insurance system has borrowed from the Railroad Retirement Account.

Any recommendation submitted under paragraph (2) shall contain adjustments in contributions and benefits which will enable the railroad unemployment com-

pensation system to repay all loans from the Railroad Retirement Account before December 31, 2000.

''(e) The Railroad Retirement Board (and any other department, agency, or instrumentality of the Federal Government) is authorized to cooperate with, and assist, the Committee (at its request) in carrying out its duties by furnishing services, information, data, or other material which the Committee determines will be helpful in carrying out its duties.''

§ 363. Exclusiveness of provisions; transfers from State unemployment compensation accounts to railroad unemployment insurance account

(a) Omitted

(b) Effect on State unemployment compensation laws

By enactment of this chapter the Congress makes exclusive provision for the payment of unemployment benefits for unemployment occurring after June 30, 1939, and for the payment of sickness benefits for sickness periods after June 30, 1947, based upon employment (as defined in this chapter). No employee shall have or assert any right to unemployment benefits under an unemployment compensation law of any State with respect to unemployment occurring after June 30, 1939, or to sickness benefits under a sickness law of any State with respect to sickness periods occurring after June 30, 1947, based upon employment (as defined in this chapter). The Congress finds and declares that by virtue of the enactment of this chapter, the application of State unemployment compensation laws after June 30, 1939 or of State sickness laws after June 30, 1947, to such employment, except pursuant to section 362(g) of this title, would constitute an undue burden upon, and an undue interference with the effective regulation of, interstate commerce. In furtherance of such determination, after June 30, 1939, the term ''person'' as used in section 1106 of title 42 shall not be construed to include any employer (as defined in this chapter) or any person in its employ: *Provided*, That no provision of this chapter shall be construed to affect the payment of unemployment benefits with respect to any period prior to July 1, 1939, under an unemployment compensation law of any State based upon employment performed prior to July 1, 1939, and prior to such date employment as defined in this chapter shall not constitute ''Service with respect to which unemployment compensation is payable under an [or ''service under any''] unemployment compensation system [or ''plan''] established by an Act of Congress'' [or ''a law of the United States''] or ''employment in interstate commerce, of an individual who is covered by an unemployment compensation system established directly by an Act of Congress,'' or any term of similar import, used in any unemployment compensation law of any State.

(c) Determination of "preliminary amount" for States

The Social Security Board is directed to determine for each State, after agreement with the Railroad Retirement Board, and after consultation with such State; the total (hereinafter referred to as the ''preliminary amount'') of (i) the amount remaining as the balances of reserve accounts of employers as of June 30, 1939, if the unemployment compensation law of such State provides for a type of fund known as ''Reserve Accounts,'' plus (ii) if the unemployment compensation law of such State provides for a type of fund known as ''Pooled Fund'' or ''Pooled Account,'' that proportion of the balance of such fund or account of such State as of June 30, 1939, as the amount of taxes or contributions collected from employers and their employees prior to July 1, 1939, pursuant to its unemployment compensation law and credited to such fund or account bears to all such taxes or contributions theretofore collected from all persons subject to its unemployment compensation law and credited to such fund or account; and the additional amounts (hereinafter referred to as the ''liquidating amount'') of taxes or contributions collected from employers and their employees from July 1, 1939 to December 31, 1939, pursuant to its unemployment compensation law.

(d) Withholding amounts from certification to States; transfers to railroad unemployment compensation account

The Social Security Board shall withhold from certification to the Secretary of the Treasury for payment the amounts determined by it pursuant to section 502(a) of title 42 to be necessary for the proper administration of each State's unemployment-compensation law, until an amount equal to its ''preliminary amount'' plus interest from July 1, 1939, at 2½ per centum per annum on such portion thereof as has not been used as the measure for withholding certification for payment, has been so withheld from certification pursuant to this paragraph: *Provided, however*, That if a State shall, prior to whichever is the later of (i) thirty days after the close of the first regular session of its legislature which begins after the approval of this chapter, and (ii) July 1, 1939, authorize and direct the Secretary of the Treasury to transfer from its account in the unemployment trust fund to the railroad unemployment insurance account in the unemployment trust fund an amount equal to its ''preliminary amount'', no amount shall be withheld from certification for payment to such State pursuant to this paragraph.

The Social Security Board shall withhold from certification to the Secretary of the Treasury for payment the amounts determined by it pursuant to section 502(a) of title 42 to be necessary for the proper administration of each State's unemployment compensation law, until an amount equal to its ''liquidating amount'' plus interest from January 1, 1940, at 2½ per centum per annum on such portion thereof as has not been used as the measure for withholding certification for payment has been so withheld from certification pursuant to this paragraph: *Provided, however*, That if a State shall, prior to whichever is the later of (i) thirty days after the close of the first regular session of its legislature which begins after the approval of this chapter, and (ii) January 1, 1940, authorize and direct the Secretary of the Treasury to transfer from its account in the unemployment trust fund to the railroad unemployment insurance account in the unemployment trust fund an amount equal to its ''liquidating amount'', no amount shall be withheld from certification for

payment to such State pursuant to this paragraph.

The withholdings from certification directed in each of the foregoing paragraphs of this subsection shall begin with respect to each State when the Social Security Board finds that such State is unable to avail itself of the condition set forth in the proviso contained in such paragraph: *Provided*, *however*, That if the Social Security Board finds with respect to any State that such State (1) is unable to avail itself of such conditions solely by reason of prohibitions contained in the constitution of such State, as determined by a decision of the highest court of such State declaring invalid in whole or in part the action of the legislature of the State purporting to provide for transfers from the State's account in the Unemployment Trust Fund to the railroad unemployment insurance account, and (2) for similar reasons is unable to use amounts withdrawn from its account in the Unemployment Trust Fund for the payment of expenses incurred in the administration of its State unemployment compensation law, the Social Security Board shall not begin to withhold from certification to the Secretary of the Treasury for payment to such State the amounts determined by it pursuant to section 502 of title 42 and to certify to the Secretary of the Treasury for payment into the railroad unemployment insurance account the amount so withheld from such State until July 1, 1944, or until a date one hundred and eighty days after the adjournment of the first session of the legislature of such State beginning after July 1, 1942, whichever date is the earlier, and then only if the Social Security Board finds that such State had not prior thereto effectively authorized and directed the Secretary of the Treasury to transfer from such State's account in the Unemployment Trust Fund to the railroad unemployment insurance account amounts equal to such State's ''preliminary amount'' and ''liquidating amount'' less such parts thereof, if any, as the State may have, within the periods set forth in the provisos contained in the first two paragraphs of this subsection, effectively authorized and directed the Secretary of the Treasury so to transfer, plus interest on such difference, if any, with respect to each amount, at 2½ per centum per annum from the date the State's ''preliminary amount'' or ''liquidating amount'', as the case may be, is determined by the Social Security Board; and with respect to any such State the amount withheld shall equal the State's ''preliminary amount'' and ''liquidating amount'' less such parts thereof, if any, as the State may have, within the periods set forth in the provisos contained in the first two paragraphs of this subsection effectively authorized and directed the Secretary of the Treasury to transfer, plus interest from July 1, 1939, at 2½ per centum per annum on so much of the ''preliminary amount'' and ''liquidating amount'', as the case may be, as has not been so transferred or has not been used as the measure for withholding. An enactment of any State legislature providing for the transfer (from the State's account in the Unemployment Trust Fund to the railroad unemployment insurance account) of all interest earned upon contributions which are collected with respect to employment occurring after such enactment by such State pursuant to its unemployment compensation law and credited to its account in the Unemployment Trust Fund (until the total of such transfers equals the amounts which otherwise would be required to be withheld from certification under this subsection), shall be deemed an effective authorization and direction to the Secretary of the Treasury as required by this subsection; and for purposes of computing the interest to be so transferred, amounts withdrawn by such State from its account in the Unemployment Trust Fund after the date of such State enactment shall be considered to be first charged against the amounts credited to such State's account prior to the date of such State enactment: *Provided*, *however*, That if at any time after such enactment the provision for transfer therein contained for any reason fails to be operative to effect the transfers of interest as therein prescribed, and such State has not otherwise made an effective authorization and direction to the Secretary of the Treasury as required by this subsection, the Social Security Board shall immediately after such failure or, on the date otherwise provided in this subsection for the beginning of withholdings from certification, whichever is later, begin to make the withholdings from certification provided for in this subsection in the same manner and to the same extent as if such enactment by such State had not been enacted, except that the amounts of the certifications withheld shall be reduced by the total amount, if any, which has been transferred from interest pursuant to such enactment.

(e) Transfers and withdrawals, effect upon social security provisions

The transfers described in the provisos contained in the several paragraphs of subsection (d) of this section shall not be deemed to constitute a breach of the conditions set forth in sections 503(a)(5) and 1103(a)(4) of title 42; nor shall the withdrawal by a State from its account in the unemployment trust fund of amounts, but not to exceed the total amount the Social Security Board shall have withheld from certification with respect to such State pursuant to subsection (d) of this section, be deemed to constitute a breach of the conditions set forth in sections 503(a)(5) and 1103(a)(4) of title 42, provided the moneys so withdrawn are expended solely for expenses which the Social Security Board determines to be necessary for the proper administration of such State's unemployment compensation law.

(f) Payments to railroad unemployment insurance account; transfers from unemployment trust fund of States

The Social Security Board is authorized and directed to certify to the Secretary of the Treasury for payment, and the Secretary shall pay, into the railroad unemployment insurance account, such amounts as the Social Security Board withholds from certification pursuant to subsection (d) of this section and the appropriations authorized in section 501 of title 42 shall be available for payments authorized by this subsection. The Secretary shall transfer from the

account of a State in the unemployment trust fund to the railroad unemployment insurance account in the unemployment trust fund such amounts as the State authorizes and directs him so to transfer pursuant to subsection (d) of this section.

(June 25, 1938, ch. 680, § 13(b)–(f), 52 Stat. 1110; June 20, 1939, ch. 227, § 17, 53 Stat. 848; July 2, 1940, ch. 530, 54 Stat. 741; June 30, 1942, ch. 463, 56 Stat. 465; July 31, 1946, ch. 709, § 324, 60 Stat. 741; Pub. L. 90–257, title II, § 207, Feb. 15, 1968, 82 Stat. 25.)

REFERENCES IN TEXT

Sections 1106 and 1103(a)(4) of title 42, referred to in subsecs. (b) and (e), respectively, which were in the original references to sections 906 and 903(a)(4), respectively, of the Social Security Act, as in existence prior to February 10, 1939, were omitted from the Code pursuant to section 4 of act Feb. 10, 1939, ch. 2, 53 Stat. 1, which provided that all laws and parts of laws codified into the Internal Revenue Code of 1939, to the extent that they related exclusively to internal revenue laws, were repealed. For further details, see Prior Provisions note preceding section 1101 of Title 42, The Public Health and Welfare. For provisions similar to sections 1106 and 1103(a)(4), see sections 3305 and 3304, respectively, of Title 26, Internal Revenue Code.

CODIFICATION

Section 13(a) of act June 25, 1938, amended former section 1107 of Title 42, The Public Health and Welfare. Section 13(g) of act June 25, 1938, amended section 503 of Title 42.

AMENDMENTS

1968—Subsec. (b). Pub. L. 90–257 struck out all references to maternity benefits.

1946—Subsec. (b). Act July 31, 1946, inserted phrases extending provisions of that subsection to State sickness and maternity laws and benefits after June 30, 1947.

1942—Subsec. (d). Act June 30, 1942, affected provisos in third par.

1940—Subsec. (d). Act July 2, 1940, affected provisos in third par.

1939—Subsec. (e). Act June 20, 1939, substituted references to unemployment insurance account for references to unemployment compensation account wherever appearing.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–257 effective as of July 1, 1968, see section 208 of Pub. L. 90–257, set out as a note under section 352 of this title.

EFFECTIVE DATE OF 1946 AMENDMENT

Amendment by act July 31, 1946, effective July 31, 1946, see section 401 of act July 31, 1946.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Labor and functions of all agencies and employees of Department, with exception of functions vested by Administrative Procedure Act (sections 551 et seq. and 701 et seq. of Title 5, Government Organization and Employees) in hearing examiners employed by Department, transferred to Secretary of Labor, with power vested in him to authorize their performance or performance of any of his functions by any officers, agencies, and employees of Department of Labor, by Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5.

Functions of Federal Security Administrator with respect to unemployment compensation transferred to Secretary of Labor by Reorg. Plan No. 2 of 1949, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065, set out in the Appendix to Title 5. Section 1 of Reorg. Plan No. 2 of 1949, also provided that functions transferred by this section shall be performed by Secretary of Labor, or subject to his direction and control, by officers, agencies, and employees of Department of Labor as he shall designate.

Social Security Board abolished and its functions and those of its chairman transferred to Federal Security Administrator to be performed by him or under his direction and control by such officers and employees of Federal Security Agency as designated, by Reorg. Plan No. 2 of 1946, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, set out in the Appendix to Title 5. For transfer of personnel, property, records, and funds, see section 12 of the Reorganization Plan.

EFFECT OF SOCIAL SECURITY ACT AMENDMENTS

Act Aug. 10, 1939, ch. 666, title IX, § 901, 53 Stat. 1399, provided as follows: ''Except as provided in section 906, no provision of this act shall be construed as amending or altering the effect of section 13(b), (c), (d), (e), or (f) of the Railroad Unemployment Insurance Act [this section].''

Section 906 of act Aug. 10, 1939, provided as follows: ''If the Social Security Board finds with respect to any State that the first regular session of such State's legislature which began after June 25, 1938, and adjourned prior to thirty days after the enactment of this act [Aug. 10, 1939] (1) had not made provision to authorize and direct the Secretary of the Treasury, prior to thirty days after the close of such session or July 1, 1939, whichever date is later, to transfer from its account in the Unemployment Trust Fund to the railroad unemployment insurance account in the Unemployment Trust Fund an amount equal to such State's 'preliminary amount,' or to authorize and direct the Secretary of the Treasury, prior to thirty days after the close of such session or January 1, 1940, whichever date is later, to transfer from its account in the Unemployment Trust Fund to the railroad unemployment insurance account in the Unemployment Trust Fund an amount equal to such State's 'liquidating amount,' or both; and (2) had not made provision for financing the administration of its unemployment-compensation law during the period with respect to which grants therefor under section 302 of the Social Security Act [section 502 of Title 42, The Public Health and Welfare] are required under section 13 of the Railroad Unemployment Insurance Act [this section] to be withheld by the Social Security Board, notwithstanding the provisions of section 13(d) of the Railroad Unemployment Insurance Act, the Social Security Board shall not begin to withhold from certification to the Secretary of the Treasury for payment to such State the amounts determined by it pursuant to section 302 of the Social Security Act [section 502 of Title 42] and to certify to the Secretary of the Treasury for payment into the railroad unemployment-insurance account the amount so withheld from such State, as provided in section 13 of the Railroad Unemployment Insurance Act [this section], until after the thirtieth day after the close of such State's first regular or special session of its legislature which begins after the date of enactment of this act and after the Social Security Board finds that such State had not, by the thirtieth day after the close of such legislative session, authorized and directed the Secretary of the Treasury to transfer from such State's account in the Unemployment Trust Fund to the railroad unemployment insurance account in the Unemployment Trust Fund such State's 'preliminary amount' plus interest thereon at 2½ per centum per annum from the date the amount thereof is determined by the Social Security Board, and such State's 'liquidating amount' plus interest thereon at 2½ per centum per annum from the date the amount thereof is determined by the Social Security Board. Notwithstanding the provisions of section 13(e) of the Railroad Unemployment Insurance Act [this section], any withdrawal by such State from its account in the Unemployment Trust Fund for purposes

other than the payment of compensation of the whole or any part of amounts so withheld from certification with respect to such State pursuant to this act shall be deemed to constitute a breach of the conditions set forth in sections 303(a)(5) of the Social Security Act [section 503 of Title 42] and 1603(a)(4) of the Internal Revenue Code [section 1603 of former Title 26, Internal Revenue Code of 1939]. The terms 'preliminary amount' and 'liquidating amount', as used herein, shall have the meanings defined in section 13 of the Railroad Unemployment Insurance Act [this section].''

KENTUCKY

Act Oct. 26, 1945, ch. 434, 59 Stat. 550, as amended by Reorg. Plan No. 2 of 1946, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, provided that $1,260,000 should constitute the total amount withheld by the Federal Security Administrator under subsec. (d) of this section for payment for the administration of Kentucky's Unemployment Compensation Law, KRS 341.010–341.990.

§ 363a. Refunds of State unemployment contributions by employees; amount; application period; definitions

(a) Notwithstanding any other provision of law, in any case where an employee amount (as hereinafter defined) was paid from a State unemployment fund to the Unemployment Trust Fund, an aggregate amount equal thereto shall be paid from the Unemployment Trust Fund, as refunds, to employees who paid into the State fund the contributions upon which such payment into the Unemployment Trust Fund was based, except that in case any such employee is deceased, payment shall be made to his estate; and the payment so made in the case of any employee shall be in proportion to the contributions paid by such employee into the State fund: *Provided*, That payment in any such case shall be made only if application therefor is made to the Railroad Retirement Board within two years after August 2, 1946.

(b) As used in this section—

(1) The term ''employee amount'' means any amount paid from a State unemployment fund to the Unemployment Trust Fund which would not have been required to be paid, under the provisions of section 363(c) of this title, if said section had not required payment of amounts based on contributions collected from employees.

(2) The term ''Unemployment Trust Fund'' means the fund established by section 1104 of title 42.

(3) The term ''employees'' has the same meaning as in the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.].

(Aug. 2, 1946, ch. 743, 60 Stat. 806; Aug. 6, 1947, ch. 509, 61 Stat. 793.)

REFERENCES IN TEXT

The Railroad Unemployment Insurance Act, referred to in subsec. (b)(3), is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 367 of this title and Tables.

CODIFICATION

Section was not enacted as a part of the Railroad Unemployment Insurance Act which comprises this chapter.

AMENDMENTS

1947—Subsec. (a). Act Aug. 6, 1947, extended time for application for refund from twelve months to two years after Aug. 2, 1946.

§ 364. District of Columbia account, transfer of funds to railroad unemployment insurance account

The Secretary of the Treasury is authorized and directed to transfer from the account of the District of Columbia in the unemployment trust fund to the railroad unemployment insurance account in the unemployment trust fund, an amount equal to the ''preliminary amount'' and an amount equal to the ''liquidating amount'', whenever such amounts, respectively, have been determined, with respect to the District of Columbia, pursuant to section 363 of this title.

(June 25, 1938, ch. 680, § 14(b), 52 Stat. 1113.)

§ 365. Omitted

CODIFICATION

Section, acts June 25, 1938, ch. 680, § 15, 52 Stat. 1113; June 20, 1939, ch. 227, § 19, 53 Stat. 844, related to transitional provisions occurring before July 1, 1939.

§ 366. Separability

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

(June 25, 1938, ch. 680, § 16, 52 Stat. 1113.)

§ 366a. Effect of Internal Revenue Code

The provisions of the Railroad Unemployment Insurance Act, as herein amended, shall be in full force and effect notwithstanding the enactment of the Internal Revenue Code.

(June 20, 1939, ch. 227, § 22, 53 Stat. 848.)

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 this chapter. For complete classification of this Act to the Code, see section 367 of this title and Tables.

The Internal Revenue Code, referred to in text, probably means the Internal Revenue Code of 1939, which was classified to former Title 26, Internal Revenue Code, and was generally repealed by section 7851 of the Internal Revenue Code of 1986, Title 26.

CODIFICATION

Section was not enacted as a part of the Railroad Unemployment Insurance Act which comprises this chapter.

§ 367. Short title

This chapter may be cited as the ''Railroad Unemployment Insurance Act''.

(June 25, 1938, ch. 680, § 17, 52 Stat. 1113.)

CODIFICATION

Another section 17 of Act June 25, 1938, was classified to section 368 of this title prior to repeal by Pub. L. 104–251, § 5(c), Oct. 9, 1996, 110 Stat. 3165.

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–251, § 1, Oct. 9, 1996, 110 Stat. 3161, provided that: ''This Act [amending section 352 of this title, repealing section 368 of this title, and enacting provisions set out as a note under section 352 of this title] may be cited as the 'Railroad Unemployment Insurance Amendments Act of 1996'.''

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–647, title VII, § 7001, Nov. 10, 1988, 102 Stat. 3757, provided that: ''This title [enacting section 369 of this title, amending sections 231, 231a, 231e, 351 to 355, 358, 360, 361, and 362 of this title and sections 3321, 3322, 6157, 6201, 6317, 6513, and 6601 of Title 26, Internal Revenue Code, omitting section 3323 of Title 26, enacting provisions set out as notes under sections 231, 231a, 351 to 353, 355, and 358 of this title and section 3321 of Title 26, and amending provisions set out as notes under section 231n of this title] may be cited as the 'Railroad Unemployment Insurance and Retirement Improvement Act of 1988'.''

§ 368. Repealed. Pub. L. 104–251, § 5(c), Oct. 9, 1996, 110 Stat. 3165

Section, act June 25, 1938, ch. 680, § 17, as added Mar. 24, 1983, Pub. L. 98–8, title I, § 102(a), 97 Stat. 32; amended Nov. 30, 1983, Pub. L. 98–181, title II, § 2005(a), 97 Stat. 1298, related to payment of supplemental employment benefits.

Another section 17 of act June 25, 1938, is classified to section 367 of this title.

§ 369. Annual report

On or before July 1 of 1989, and of each calendar year thereafter, the Railroad Retirement Board shall submit to the Congress a report on the financial status of the railroad unemployment insurance system under various economic and employment assumptions. Such report shall include any recommendation for financing changes which might be advisable, including any adjustment the Railroad Retirement Board recommends regarding the rates of employer contributions.

(Pub. L. 100–647, title VII, § 7105, Nov. 10, 1988, 102 Stat. 3772.)

CODIFICATION

Section was enacted as part of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 and also as part of the Technical and Miscellaneous Revenue Act of 1988, and not as part of the Railroad Unemployment Insurance Act which comprises this chapter.

CHAPTER 12—TEMPORARY RAILROAD UNEMPLOYMENT INSURANCE PROGRAM

Sec.
401. Payment of compensation; eligibility; duration; maximum aggregate amount payable; duplication of benefits; application of railroad unemployment insurance provisions.
402. Exchange of information between Secretary of Labor and Railroad Retirement Board.
403. Appropriation to railroad unemployment insurance account; transfer and repayment of funds; interest.
404. Temporary increase in employers' contribution rate.

§ 401. Payment of compensation; eligibility; duration; maximum aggregate amount payable; duplication of benefits; application of railroad unemployment insurance provisions

An employee as defined in the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.] who has, after June 30, 1960, and before April 1, 1962, exhausted (within the meaning prescribed by the Railroad Retirement Board by regulation) his right to unemployment benefits under the Railroad Unemployment Insurance Act, shall be paid unemployment benefits in accordance otherwise with the provisions of such Act for days of unemployment, not exceeding sixty-five, and not exceeding in the aggregate, an amount equal to 50 per centum of the total amount of unemployment benefits which were payable to him in the benefit year in which he last exhausted his rights before making his first claim under this chapter, which occur in registration periods, as defined in the Railroad Unemployment Insurance Act, beginning on or after the fifteenth day after the date of enactment of the Temporary Extended Unemployment Compensation Act of 1961 [March 24, 1961], and before April 1, 1962, and which would not be days with respect to which he would be held entitled otherwise to receive unemployment benefits under the Railroad Unemployment Insurance Act: *Provided*, That an employee entitled under this section to benefits for a day before April 1, 1962, may receive such benefits for days in registration periods which begin before July 1, 1962: *Provided further*, That payment of benefits otherwise provided for in this chapter shall not be made with respect to any individual for any day of unemployment to the extent that such payment, when added to the sum of the benefits under the Railroad Unemployment Insurance Act and under this chapter paid such individual with respect to prior days in the benefit year, would exceed one hundred and ninety-five times such individual's daily benefit rate for such benefit year. An employee who has filed, and established, a first claim for benefits under the provisions of the Temporary Extended Unemployment Compensation Act of 1961, may not thereafter establish a claim under this section, and an employee who has registered for, and established, a claim under this section may not thereafter establish a claim under the provisions of the Temporary Extended Unemployment Compensation Act of 1961. Except to the extent inconsistent with this section, the provisions of the Railroad Unemployment Insurance Act shall be applicable in the administration of this section.

(Pub. L. 87–7, § 2, Mar. 24, 1961, 75 Stat. 16.)

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.

The Temporary Extended Unemployment Compensation Act of 1961, referred to in text, is Pub. L. 87–6, Mar. 24, 1961, 75 Stat. 8, which enacted sections 1105 and 1400*l* to 1400v of Title 42, The Public Health and Welfare, amended sections 3301 and 3302 of Title 26, Internal Revenue Code, and enacted provisions set out as notes under sections 1101 and 1400*l* of Title 42. For complete classification of this Act to the Code, see Tables.

SHORT TITLE

Section 1 of Pub. L. 87–7 provided: ''That this Act [enacting this chapter] may be cited as the 'Temporary Extended Railroad Unemployment Insurance Benefits Act of 1961'.''