

percentage, or percentages, and effective the same date, or dates, as other annuity amounts of the same type are increased pursuant to the provisions of section 3(g) of the Railroad Retirement Act of 1974 [section 231b(g) of this title].

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though the provisions of law under which the election was made had continued to be operative unless such election had been revoked prior to the time the annuity of such individual began to accrue.”

§ 231a. Annuity eligibility requirements

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

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

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

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

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

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

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

(2) For the purposes of paragraph (iv) of subdivision (1), the Board, with the cooperation of employers and employees, shall secure the establishment of standards determining the physical and mental conditions which permanently disqualify employees for work in the several occupations in the railroad industry, and the Board, employers, and employees shall cooperate in the promotion of the greatest practicable degree of uniformity in the standards applied by the several employers. An individual's condition shall be deemed to be disabling for work in his regular occupation if he will have been disqualified by his employer for service in his regular occupation in accordance with the applicable standards so established; if the employee will

not have been so disqualified by his employer, the Board shall determine whether his condition is disabling for work in his regular occupation in accordance with the standards generally established; and, if the employee's regular occupation is not one with respect to which standards will have been established, the standards relating to a reasonably comparable occupation shall be used. If there is no such comparable occupation, the Board shall determine whether the employee's condition is disabling for work in his regular occupation by determining whether under the practices generally prevailing in industries in which such occupation exists such condition is a permanent disqualification for work in such occupation. For purposes of this subdivision and paragraph (iv) of subdivision (1), an employee's "regular occupation" shall be deemed to be the occupation in which he will have been engaged in more calendar months than the calendar months in which he will have been engaged in any other occupation during the last preceding five calendar years, whether or not consecutive, in each of which years he will have earned wages or salary, except that, if an employee establishes that during the last fifteen consecutive calendar years he will have been engaged in another occupation in one-half or more of all the months in which he will have earned wages or salary, he may claim such other occupation as his regular occupation.

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

(4) An individual who is entitled to an annuity under paragraph (v) of subdivision (1), but who does not have at least ten years of service, shall, prior to the month in which the individual attains age 62, be entitled only to an annuity amount computed under section 231b(a) of this title (without regard to section 231b(a)(2) of this title) or section 231b(f)(3) of this title. Upon attainment of age 62, such an individual may also be entitled to an annuity amount computed under section 231b(b) of this title, but such annuity amount shall be reduced for early retirement in the same manner as if the individual were entitled to an annuity under subsection (a)(1)(iii) of this section.

(b) Individuals eligible for supplemental annuities

An individual who—

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

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

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

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

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

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

(c) Spouses eligible for annuities

(1) The spouse of an individual, if—

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

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

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

(2) A spouse who would be entitled to an annuity under subdivision (1) or a divorced wife who would be entitled to an annuity under subdivision (4) if he or she had attained retirement age (as defined in section 216(l) of the Social Security Act [42 U.S.C. 416(l)]) may elect upon or after attaining the age of 62 to receive such annuity, but the annuity in any such case shall be reduced by $\frac{1}{444}$ for each of the first 36 months that the spouse or divorced wife is under retirement age (as defined in section 216(l) of the Social Security Act) when the annuity begins to accrue and by $\frac{1}{240}$ for each additional month that the spouse or divorced wife is under retirement age (as defined in section 216(l) of the Social Security Act) when the annuity begins to accrue, except that the annuity of a divorced wife who was previously entitled to a spouse annuity which was reduced under this subdivision shall be reduced by the same percentage as was applicable to the spouse annuity.

(3) For the purposes of this subchapter, the term "spouse" shall mean the wife or husband of an annuitant under subsection (a)(1) of this section who (i) was married to such annuitant for a period of not less than one year immediately preceding the day on which the application for a

spouse's annuity is filed, or in the month prior to his or her marriage to such annuitant was eligible for an annuity under paragraph (i) or (iv) of subsection (d)(1) of this section or, on the basis of disability, under paragraph (iii) thereof, or is the parent of such annuitant's son or daughter; and (ii) in the case of a husband, was receiving at least one-half of his support from his wife at the time his wife's annuity under subsection (a)(1) of this section began.

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

(i) such individual has attained the age 62;

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

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

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

(d) Survivors eligible for annuities

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

(i) a widow (as defined in section 216(c) and (k) of the Social Security Act [42 U.S.C. 416(c), (k)]) or widower (as defined in section 216(g) and (k) of the Social Security Act) of such a deceased employee who has not remarried and who (A) will have attained the age of sixty or (B) will have attained the age of fifty but will not have attained age sixty and is under a disability which began before the end of the period prescribed in subdivision (2), and who, in the case of a widower, was receiving at least one-half of his support from the deceased employee at the time of her death or at the time her annuity under subsection (a)(1) of this section began;

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

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

than an annuity payable to a child who has attained age 18 and is not under a disability);

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

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

(v) The³ widow (as defined in section 216(c) of the Social Security Act [42 U.S.C. 416(c)]), who is married, or has been married after the death of the employee, the surviving divorced wife (as defined in section 216(d) of the Social Security Act), and a surviving divorced mother (as defined in section 216(d) of the Social Security Act) if such widow, surviving divorced wife, or surviving divorced mother would have been entitled to a benefit under section 202(e) or 202(g) of the Social Security Act [42 U.S.C. 402(e), (g)] as the widow, surviving divorced wife, or surviving divorced mother of the employee if all of his service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act. For the purpose of this paragraph, the reference in sections 202(e)(3)⁴ and 202(g)(3) of the Social Security Act to an individual entitled under section 202(f) of that Act shall include an individual entitled to an annuity under paragraph (i) and an individual entitled to an annuity under paragraph (ii), and the ref-

erence in section 202(e)(3)⁴ and section 202(g)(3) of the Social Security Act to an individual entitled under section 202(d) or section 202(h) of that Act shall include an individual entitled to an annuity under paragraph (iii) or paragraph (iv), and the references in section 202(g)(3) of the Social Security Act to an individual entitled under section 202(a) or section 223(a) of that Act [42 U.S.C. 402(a), 423(a)] shall include an individual entitled to an annuity under subsection (a)(1) of this section.

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

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

(4) In determining for purposes of this subsection and subdivision (3) of subsection (c) of this section whether an applicant is the wife, husband, widow, widower, child, or parent of a deceased employee as claimed, the rules set forth in section 216(h) of the Social Security Act [42 U.S.C. 416(h)] shall be applied deeming, for this purpose, individuals entitled to an annuity under subsection (c) of this section to be entitled to benefits under subsection (b) or (c) of section 202 of the Social Security Act [42 U.S.C. 402] and individuals entitled to an annuity under paragraph (i) or (ii) of subsection (d)(1) of this section to be entitled to a benefit under subsection (e), (f), or (g) of section 202 of the Social Security Act. For purposes of paragraph (iii) of subdivision (1), a child shall be deemed to have been dependent upon his parent employee if the conditions set forth in section 202(d)(3), (4), or (9) of the Social Security Act are fulfilled. The provisions of paragraph (7) of section 202(d) of the Social Security Act (defining the terms "full-time elementary or secondary school student" and "elementary or secondary school") shall be applied by the Board in the administration of this subsection as if the references therein to the Secretary were references to the Board. A child who attains age nineteen at a time when he is a full-time elementary or secondary school student (as defined in subparagraph (A) of paragraph (7) of section 202(d) of the Social Security Act and without the application of subparagraph (B) of such paragraph) but has not (at such time) completed the requirements for, or received, a diploma or equivalent certificate from a second-

² So in original. Probably should be "employee's".

³ So in original. Probably should not be capitalized.

⁴ See References in Text note below.

ary school (as defined in section 202(d)(7)(c)(i)⁵ of the Social Security Act) shall be deemed (for purposes of determining his continuing or initial entitlement to an annuity under this subsection) not to have attained such age until the first day of the first month following the end of the quarter or semester in which he is enrolled at such time (or, if the elementary or secondary school in which he is enrolled is not operated on a quarter or semester system, until the first day of the first month following the completion of the course in which he is enrolled or until the first day of the third month beginning after such time, whichever first occurs).

(e) Compensated service; rights to return

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

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

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

(4) No annuity under paragraph (iv) or (v) of subsection (a)(1) of this section shall be paid to an individual with respect to any month in which the individual is under retirement age (as defined in section 216(l) of the Social Security Act [42 U.S.C. 416(l)]) and is paid more than the monthly allowable earnings as defined in the section (after deduction of disability related work expenses) from employment or self-employment of any form: *Provided, however,* That for purposes of this subdivision, if a payment in any one calendar month is for accruals in more than one calendar month, such payment shall be deemed to have been paid in each of the months in which accrued to the extent accrued in such

month. Any such individual under the retirement age (as defined in section 216(l) of the Social Security Act) shall report to the Board any such payment of earnings for such employment or self-employment before receipt and acceptance of an annuity for the second month following the month of such payment. A deduction shall be imposed, with respect to any such individual who fails to make such report, in the annuity or annuities otherwise due the individual, in an amount equal to the amount of the annuity for each month in which he is paid such earnings in such employment or self-employment, except that the first deduction imposed pursuant to this sentence shall in no case exceed an amount equal to the amount of the annuity otherwise due for the first month with respect to which the deduction is imposed. If pursuant to the first sentence of this subdivision an annuity was not paid to an individual with respect to one or more months in any calendar year, and it is subsequently established that the total amount of such individual's earnings during such year as determined in accordance with that sentence (but exclusive of earnings for services described in subdivision (3)) did not exceed the amount of earnings computed by totaling the monthly allowable earnings as determined under this section for each month in the year (after deduction of disability related work expenses), the annuity with respect to such month or months, and any deduction imposed by reason of the failure to report earnings for such month or months under the third sentence of this subdivision, shall then be payable. If the total amount of such individual's earnings during such year (exclusive of earnings for services as described in subdivision (3) and after deduction of disability related work expenses) is in excess of the annual allowable earnings amount, the number of months in such year with respect to which an annuity is not payable by reason of the first and third sentences shall not exceed the number of months derived by dividing the amount by which such annual earnings exceed the annual allowable earnings amount by the monthly allowable earning amount determined under this section. If the computation under the preceding sentence results in a remainder greater than or equal to one-half, the number of months for which an annuity is not payable as determined under the preceding sentence shall be increased by one. The annual allowable earnings amount shall be computed by totaling the amount of monthly allowable earnings as determined under the first sentence of this subdivision for each month in the calendar⁶ year. If the amount of the individual's annuity has changed during the calendar year, any payment of annuities which become payable solely by reason of the limitations in the preceding three sentences shall be made first with respect to the month or months for which the annuity is larger. For purposes of this subdivision, "the monthly allowable earnings" shall be \$700, except that for each year after 2007, "the monthly allowable earnings" amount shall be the larger of the amount for the previous year or the amount calculated by multiplying \$700 by the ratio of the national average

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

⁶ So in original. Probably should be "calendar".

wage index for the year 2 calendar⁶ years before the year for which the amount is being calculated to the national average wage index for the year 2005. The amount so computed will be rounded to the next higher multiple of \$10 where such amount is a multiple of \$5 but not of \$10 and to the nearest multiple of \$10 in any other case.

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

(f) Deductions on account of work

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

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

(3) Deductions shall not be made pursuant to subdivision (1) from that portion of an individ-

ual's annuity as is computed under section 231b(a) of this title for any month in which the annuity of such individual is reduced pursuant to section 231b(m) of this title. This subdivision shall be disregarded in determining the applicability and amount of deductions in a spouse's annuity pursuant to subdivision (2) of this subsection.

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

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

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

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

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

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

(g) Employment compensation of survivors; deductions

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

(2) Deductions, in amounts and at such time or times as the Board shall determine, shall be made from any payments to which a survivor is entitled under subsection (d) of this section

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

(h) Military service; reductions

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

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

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

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

(i) Limitation; service accrued after 1995

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

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

REFERENCES IN TEXT

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

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

AMENDMENTS

2007—Subsec. (e)(4). Pub. L. 109-478, §2(a)(3), substituted "If the total amount of such individual's earnings during such year (exclusive of earnings for services as described in subdivision (3) and after deduction of disability related work expenses) is in excess of the annual allowable earnings amount, the number of months in such year with respect to which an annuity is not payable by reason of the first and third sentences shall not exceed the number of months derived by dividing the amount by which such annual earnings exceed the annual allowable earnings amount by the monthly allowable earning amount determined under this section. If the computation under the preceding sentence results in a remainder greater than or equal to one-half, the number of months for which an annuity is not payable as determined under the preceding sentence shall be increased by one. The annual allowable earnings amount shall be computed by totaling the amount of monthly allowable earnings as determined under the first sentence of this subdivision for each month in the calendar year. If the amount of the individual's annuity has changed during the calendar year, any payment of annuities which become payable solely by reason of the limitations in the preceding three sentences shall be made first with respect to the month or months for which the annuity is larger. For purposes of this subdivision, 'the monthly allowable earnings' shall be \$700, except that for each year after 2007, 'the monthly al-

lowable earnings' amount shall be the larger of the amount for the previous year or the amount calculated by multiplying \$700 by the ratio of the national average wage index for the year 2 calendar years before the year for which the amount is being calculated to the national average wage index for the year 2005. The amount so computed will be rounded to the next higher multiple of \$10 where such amount is a multiple of \$5 but not of \$10 and to the nearest multiple of \$10 in any other case." for "If the total amount of such individual's earnings during such year (exclusive of earnings for services described in subdivision (3)) is in excess of \$4,800 (after deduction of disability related work expenses), the number of months in such year with respect to which an annuity is not payable by reason of such first and third sentences shall not exceed one month for each \$400 of such excess, treating the last \$200 or more of such excess as \$400; and if the amount of the annuity has changed during such year, any payments of annuities which become payable solely by reason of the limitations contained in this sentence shall be made first with respect to the month or months for which the annuity is larger."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

that he or she is under retirement age (as defined in section 216(l) of the Social Security Act) when the annuity begins to accrue" for "reduced by $\frac{1}{180}$ for each calendar month that he or she is under age sixty-five when the annuity begins to accrue".

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

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

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

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

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

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

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

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

Subsec. (d)(4). Pub. L. 98-76, §104(b), substituted "full-time elementary or secondary school student" for "full-time student" and "elementary or secondary school" for "educational institution", in two places, "nineteen" for "twenty-two", and "diploma or equivalent certificate from a secondary school (as defined in section 202(d)(7)(c)(1) of the Social Security Act)" for "degree from a four-year college or university".

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

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

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

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

Subsec. (c)(2), (4). Pub. L. 97-35, §1117(b), substituted “subdivision (1) or a divorced wife who would be entitled to an annuity under subdivision (4) if he or” for “subdivision (1) if he or”, “by $\frac{1}{44}$ for each calendar month that the spouse or divorced wife is” for “by $\frac{1}{80}$ for each calendar month that the spouse is” in subdiv. (2), and added subdiv. (4).

Subsec. (d)(1)(v). Pub. L. 97-35, §1117(c), added par. (v).
Subsec. (e)(5). Pub. L. 97-35, §1117(d), substituted “spouse or divorced wife” for “spouse” in two places.

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

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

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

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

CHANGE OF NAME

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

EFFECTIVE DATE OF 2007 AMENDMENT

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

EFFECTIVE DATE OF 2006 AMENDMENT

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

EFFECTIVE DATE OF 2001 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

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

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

EFFECTIVE DATE OF 1983 AMENDMENT

Section 104(d) of Pub. L. 98-76 provided that: “The amendments made by this section [amending this sec-

tion and section 231d of this title] shall be effective with respect to annuities accruing for months after the month in which this Act is enacted [August, 1983] except in the case of a child who has attained the age of eighteen in or before the month in which this Act is enacted and is entitled to an annuity under section 2(d) of the Railroad Retirement Act of 1974 [subsec. (d) of this section] for the month in which this Act is enacted or, if earlier, for the month of April 1983.”

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

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

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

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

EFFECTIVE DATE OF 1981 AMENDMENT

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

SPECIAL \$50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

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

§ 231b. Computation of annuities

(a) Amount

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

(2) For purposes of this subsection, individuals entitled to an annuity under section 231a(a)(1)(ii) of this title shall, except for the