Public Law 107–90
107th Congress

An Act

Dec. 21, 2001
[H.R. 10]

To modernize the financing of the railroad retirement system and to provide enhanced benefits to employees and beneficiaries.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Railroad Retirement and Survivors' Improvement Act of 2001.
45 USC 231t note.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Railroad Retirement and Survivors' Improvement Act of 2001".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—AMENDMENTS TO RAILROAD RETIREMENT ACT OF 1974

Sec. 101. Expansion of widow's and widower's benefits.
Sec. 102. Retirement age restoration.
Sec. 103. Vesting requirement.
Sec. 104. Repeal of railroad retirement maximum.
Sec. 105. Investment of railroad retirement assets.
Sec. 106. Elimination of supplemental annuity account.
Sec. 107. Transfer authority revisions.
Sec. 108. Annual ratio projections and certifications by the Railroad Retirement Board.

TITLE II—AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986

Sec. 201. Amendments to the Internal Revenue Code of 1986.
Sec. 202. Exemption from tax for National Railroad Retirement Investment Trust.
Sec. 203. Repeal of supplemental annuity tax.
Sec. 204. Employer, employee representative, and employee tier 2 tax rate adjustments.

TITLE I—AMENDMENTS TO RAILROAD RETIREMENT ACT OF 1974

SEC. 101. EXPANSION OF WIDOW'S AND WIDOWER'S BENEFITS.

(a) IN GENERAL.—Section 4(g) of the Railroad Retirement Act of 1974 (45 U.S.C. 231c(g)) is amended by adding at the end the following new subdivision:

"(10)(i) If for any month the unreduced annuity provided under this section for a widow or widower is less than the widow's or widower's initial minimum amount computed pursuant to paragraph (ii) of this subdivision, the unreduced annuity shall be increased to that initial minimum amount. For the purposes of this subdivision, the unreduced annuity is the annuity without regard to any deduction on account of work, without regard to any reduction for entitlement to an annuity under section 2(a)(1) of this Act, without regard to any reduction for entitlement to

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a benefit under title II of the Social Security Act, and without regard to any reduction for entitlement to a public service pension pursuant to section 202(e)(7), 202(f)(2), or 202(g)(4) of the Social Security Act.

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

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

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

"(iii) If a widow or widower who was previously entitled to a widow's or widower's annuity under section 2(d)(1)(ii) of this Act becomes entitled to a widow's or widower's annuity under section 2(d)(1)(i) of this Act, a new initial minimum amount shall be computed at the time of award of the widow's or widower's annuity under section 2(d)(1)(i) of this Act.".

(b) EFFECTIVE DATE.—

45 USC 231c note. Applicability.

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

(A) on or after that date; and

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

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

SEC. 102. RETIREMENT AGE RESTORATION.

(a) EMPLOYEE ANNUITIES.—Section 3(a)(2) of the Railroad Retirement Act of 1974 (45 U.S.C. 231b(a)(2)) is amended by inserting after "(2)" the following new sentence: "For purposes of this subsection, individuals entitled to an annuity under section 2(a)(1)(ii) of this Act shall, except for the purposes of recomputations in accordance with section 215(f) of the Social Security Act, be deemed to have attained retirement age (as defined by section 216(l) of the Social Security Act).".

(b) SPOUSE AND SURVIVOR ANNUITIES.—Section 4(a)(2) of the Railroad Retirement Act of 1974 (45 U.S.C. 231c(a)(2)) is amended by striking "if an" and all that follows through "section 2(c)(1) of this Act" and inserting "a spouse entitled to an annuity under section 2(c)(1)(ii)(B) of this Act".

(c) CONFORMING REPEALS.—Sections 3(a)(3), 4(a)(3), and 4(a)(4) of the Railroad Retirement Act of 1974 (45 U.S.C. 231b(a)(3), 231c(a)(3), and 231c(a)(4)) are repealed.

(d) EFFECTIVE DATES.—

45 USC 231c note.

Applicability.

(1) GENERALLY.—Except as provided in paragraph (2), the amendments made by this section shall apply to annuities that begin to accrue on or after January 1, 2002.

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

SEC. 103. VESTING REQUIREMENT.

(a) CERTAIN ANNUITIES FOR INDIVIDUALS.—Section 2(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231a(a)) is amended—

(1) by inserting in subdivision (1) "(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"; and

(2) by adding at the end the following new subdivision:

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

(b) COMPUTATION RULE FOR INDIVIDUALS' ANNUITIES.—Section 3(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231b(a)), as amended by section 102 of this Act, is further amended by adding at the end the following new subdivision:

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

(c) SURVIVORS' ANNUITIES.—Section 2(d)(1) of the Railroad Retirement Act of 1974 (45 U.S.C. 231a(d)(1)) is amended by inserting "(or five years of service, all of which accrues after December 31, 1995)" after "ten years of service".

(d) LIMITATION ON ANNUITY AMOUNTS.—Section 2 of the Railroad Retirement Act of 1974 (45 U.S.C. 231a) is amended by adding at the end the following new subsection:

"(i) 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 3(a), section 4(a), or section 4(f) of this Act 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 on the basis of the individual's employment record under both this Act and title II of the Social Security Act.".

(e) COMPUTATION RULE FOR SPOUSES' ANNUITIES.—Section 4(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231c(a)), as amended by section 102 of this Act, is further amended by adding at the end the following new subdivision:

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

(f) APPLICATION DEEMING PROVISION.—Section 5(b) of the Railroad Retirement Act of 1974 (45 U.S.C. 231d(b)) is amended by striking the second sentence and inserting the following new sentence: "An application filed with the Board for an employee annuity, spouse annuity, or divorced spouse annuity on the basis of the employment record of an employee who will have completed less than ten years of service shall be deemed to be an application for any benefit to which such applicant may be entitled under this Act or section 202(a), section 202(b), or section 202(c) of the Social Security Act. An application filed with the Board for an annuity on the basis of the employment record of an employee who will have completed ten years of service shall, unless the applicant specified otherwise, be deemed to be an application for any benefit to which such applicant may be entitled under this Act or title II of the Social Security Act.".

(g) CREDITING SERVICE UNDER THE SOCIAL SECURITY ACT.—Section 18(2) of the Railroad Retirement Act of 1974 (45 U.S.C. 231q(2)) is amended—

(1) by inserting "(or less than five years of service, all of which accrues after December 31, 1995)" after "ten years of service" every place it appears; and

(2) by inserting "(or five or more years of service, all of which accrues after December 31, 1995)" after "ten or more years of service".

(h) AUTOMATIC BENEFIT ELIGIBILITY ADJUSTMENTS.—Section 19 of the Railroad Retirement Act of 1974 (45 U.S.C. 231r) is amended—

(1) by inserting "(or five or more years of service, all of which accrues after December 31, 1995)" after "ten years of service" in subsection (c); and

(2) by inserting "(or five or more years of service, all of which accrues after December 31, 1995)" after "ten years of service" in subsection (d)(2).

(i) CONFORMING AMENDMENTS.—

(1) Section 6(e)(1) of the Railroad Retirement Act of 1974 (45 U.S.C. 231e(1)) is amended by inserting "(or five or more years of service, all of which accrues after December 31, 1995)" after "ten years of service".

(2) Section 7(b)(2)(A) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(2)(A)) is amended by inserting "(or five or more years of service, all of which accrues after December 31, 1995)" after "ten years of service".

(3) Section 205(i) of the Social Security Act (42 U.S.C. 405(i)) is amended by inserting "(or five or more years of service, all of which accrues after December 31, 1995)" after "ten years of service".

(4) Section 6(b)(2) of the Railroad Retirement Act of 1974 (45 U.S.C. 231e(b)(2)) is amended by inserting "(or five or more years of service, all of which accrues after December 31, 1995)" after "ten years of service" the second place it appears.

42 USC 405 note.

(j) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2002.

SEC. 104. REPEAL OF RAILROAD RETIREMENT MAXIMUM.

(a) EMPLOYEE ANNUITIES.—

(1) IN GENERAL.—Section 3(f) of the Railroad Retirement Act of 1974 (45 U.S.C. 231b(f)) is amended—

(A) by striking subdivision (1); and

(B) by redesignating subdivisions (2) and (3) as subdivisions (1) and (2), respectively.

(2) CONFORMING AMENDMENTS.—

(A) The first sentence of section 3(f)(1) of the Railroad Retirement Act of 1974 (45 U.S.C. 231b(f)(1)), as redesignated by paragraph (1)(B), is amended by striking ", without regard to the provisions of subdivision (1) of this subsection,".

(B) Paragraphs (i) and (ii) of section 7(d)(2) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(d)(2)) are each amended by striking "section 3(f)(3)" and inserting "section 3(f)(2)".

(b) SPOUSE AND SURVIVOR ANNUITIES.—Section 4 of the Railroad Retirement Act of 1974 (45 U.S.C. 231c) is amended by striking subsection (c).

Applicability. 45 USC 231b note.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2002, and shall apply to annuity amounts accruing for months after December 2001.

SEC. 105. INVESTMENT OF RAILROAD RETIREMENT ASSETS.

(a) ESTABLISHMENT OF NATIONAL RAILROAD RETIREMENT INVESTMENT TRUST.—Section 15 of the Railroad Retirement Act of 1974 (45 U.S.C. 231n) is amended by inserting after subsection (i) the following new subsection:

"(j) NATIONAL RAILROAD RETIREMENT INVESTMENT TRUST.—

"(1) ESTABLISHMENT.—The National Railroad Retirement Investment Trust (hereinafter in this subsection referred to as the 'Trust') is hereby established as a trust domiciled in the District of Columbia and shall, to the extent not inconsistent with this Act, be subject to the laws of the District of Columbia applicable to such trusts. The Trust shall manage and invest its assets in the manner set forth in this subsection.

"(2) NOT A FEDERAL AGENCY OR INSTRUMENTALITY.—The Trust is not a department, agency, or instrumentality of the Government of the United States and shall not be subject to title 31, United States Code.

"(3) BOARD OF TRUSTEES.—

"(A) GENERALLY.—

"(i) MEMBERSHIP.—The Trust shall have a Board of Trustees, consisting of 7 members. Three shall represent the interests of labor, 3 shall represent the interests of management, and 1 shall be an independent Trustee. The members of the Board of Trustees shall not be considered officers or employees of the Government of the United States.

"(ii) SELECTION.—

"(I) The 3 members representing the interests of labor shall be selected by the joint recommendation of labor organizations, national in scope, organized in accordance with section 2 of the Railway Labor Act, and representing at least ⅔ of all active employees, represented by such national labor organizations, covered under this Act.

"(II) The 3 members representing the interests of management shall be selected by the joint recommendation of carriers as defined in section 1 of the Railway Labor Act employing at least ⅔ of all active employees covered under this Act.

"(III) The independent member shall be selected by a majority of the other 6 members of the Board of Trustees.

A member of the Board of Trustees may be removed in the same manner and by the same constituency that selected that member.

"(iii) DISPUTE RESOLUTION.—In the event that the parties specified in subclause (I), (II), or (III) of the previous clause cannot agree on the selection of Trustees within 60 days of the date of enactment or 60 days from any subsequent date that a position of the Board of Trustees becomes vacant, an impartial umpire to decide such dispute shall, on the petition of a party to the dispute, be appointed by the District Court of the United States for the District of Columbia.

"(B) QUALIFICATIONS.—Members of the Board of Trustees shall be appointed only from among persons who have experience and expertise in the management of financial investments and pension plans. No member of the Railroad Retirement Board shall be eligible to be a member of the Board of Trustees.

"(C) TERMS.—Except as provided in this subparagraph, each member shall be appointed for a 3-year term. The initial members appointed under this paragraph shall be

divided into equal groups so nearly as may be, of which one group will be appointed for a 1-year term, one for a 2-year term, and one for a 3-year term. The Trustee initially selected pursuant to clause (ii)(III) shall be appointed to a 3-year term. A vacancy in the Board of Trustees shall not affect the powers of the Board of Trustees and shall be filled in the same manner as the selection of the member whose departure caused the vacancy. Upon the expiration of a term of a member of the Board of Trustees, that member shall continue to serve until a successor is appointed.

"(4) POWERS OF THE BOARD OF TRUSTEES.—The Board of Trustees shall—

"(A) retain independent advisers to assist it in the formulation and adoption of its investment guidelines;

"(B) retain independent investment managers to invest the assets of the Trust in a manner consistent with such investment guidelines;

"(C) invest assets in the Trust, pursuant to the policies adopted in subparagraph (A);

"(D) pay administrative expenses of the Trust from the assets in the Trust; and

"(E) transfer money to the disbursing agent or as otherwise provided in section 7(b)(4), to pay benefits payable under this Act from the assets of the Trust.

"(5) REPORTING REQUIREMENTS AND FIDUCIARY STANDARDS.—The following reporting requirements and fiduciary standards shall apply with respect to the Trust:

"(A) DUTIES OF THE BOARD OF TRUSTEES.—The Trust and each member of the Board of Trustees shall discharge their duties (including the voting of proxies) with respect to the assets of the Trust solely in the interest of the Railroad Retirement Board and through it, the participants and beneficiaries of the programs funded under this Act—

"(i) for the exclusive purpose of—

"(I) providing benefits to participants and their beneficiaries; and

"(II) defraying reasonable expenses of administering the functions of the Trust;

"(ii) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

"(iii) by diversifying investments so as to minimize the risk of large losses and to avoid disproportionate influence over a particular industry or firm, unless under the circumstances it is clearly prudent not to do so; and

"(iv) in accordance with Trust governing documents and instruments insofar as such documents and instruments are consistent with this Act.

"(B) PROHIBITIONS WITH RESPECT TO MEMBERS OF THE BOARD OF TRUSTEES.—No member of the Board of Trustees shall—

"(i) deal with the assets of the Trust in the trustee's own interest or for the trustee's own account;

"(ii) in an individual or in any other capacity act in any transaction involving the assets of the Trust on behalf of a party (or represent a party) whose interests are adverse to the interests of the Trust, the Railroad Retirement Board, or the interests of participants or beneficiaries; or

"(iii) receive any consideration for the trustee's own personal account from any party dealing with the assets of the Trust.

"(C) EXCULPATORY PROVISIONS AND INSURANCE.—Any provision in an agreement or instrument that purports to relieve a trustee from responsibility or liability for any responsibility, obligation, or duty under this Act shall be void: *Provided, however*, That nothing shall preclude—

"(i) the Trust from purchasing insurance for its trustees or for itself to cover liability or losses occurring by reason of the act or omission of a trustee, if such insurance permits recourse by the insurer against the trustee in the case of a breach of a fiduciary obligation by such trustee;

"(ii) a trustee from purchasing insurance to cover liability under this section from and for his own account; or

"(iii) an employer or an employee organization from purchasing insurance to cover potential liability of one or more trustees with respect to their fiduciary responsibilities, obligations, and duties under this section.

"(D) BONDING.—Every trustee and every person who handles funds or other property of the Trust (hereafter in this subsection referred to as 'Trust official') shall be bonded. Such bond shall provide protection to the Trust against loss by reason of acts of fraud or dishonesty on the part of any Trust official, directly or through the connivance of others, and shall be in accordance with the following:

"(i) The amount of such bond shall be fixed at the beginning of each fiscal year of the Trust by the Railroad Retirement Board. Such amount shall not be less than 10 percent of the amount of the funds handled. In no case shall such bond be less than $1,000 nor more than $500,000, except that the Railroad Retirement Board, after consideration of the record, may prescribe an amount in excess of $500,000, subject to the 10 per centum limitation of the preceding sentence.

"(ii) It shall be unlawful for any Trust official to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of the Trust without being bonded as required by this subsection and it shall be unlawful for any Trust official, or any other person having authority to direct the performance of such functions, to permit such functions, or any of them, to be performed by any Trust official, with respect to whom the requirements of this subsection have not been met.

"(iii) It shall be unlawful for any person to procure any bond required by this subsection from any surety

or other company or through any agent or broker in whose business operations such person has any control or significant financial interest, direct or indirect.

"(E) AUDIT AND REPORT.—

"(i) The Trust shall annually engage an independent qualified public accountant to audit the financial statements of the Trust.

Deadline.

"(ii) The Trust shall submit an annual management report to the Congress not later than 180 days after the end of the Trust's fiscal year. A management report under this subsection shall include—

"(I) a statement of financial position;

"(II) a statement of operations;

"(III) a statement of cash flows;

"(IV) a statement on internal accounting and administrative control systems;

"(V) the report resulting from an audit of the financial statements of the Trust conducted under clause (i); and

"(VI) any other comments and information necessary to inform the Congress about the operations and financial condition of the Trust.

"(iii) The Trust shall provide the President, the Railroad Retirement Board, and the Director of the Office of Management and Budget a copy of the management report when it is submitted to Congress.

"(F) ENFORCEMENT.—The Railroad Retirement Board may bring a civil action—

"(i) to enjoin any act or practice by the Trust, its Board of Trustees, or its employees or agents that violates any provision of this Act; or

"(ii) to obtain other appropriate relief to redress such violations, or to enforce any provisions of this Act.

"(6) RULES AND ADMINISTRATIVE POWERS.—The Board of Trustees shall have the authority to make rules to govern its operations, employ professional staff, and contract with outside advisers, including the Railroad Retirement Board, to provide legal, accounting, investment advisory, or other services necessary for the proper administration of this subsection. In the case of contracts with investment advisory services, compensation for such services may be on a fixed contract fee basis or on such other terms and conditions as are customary for such services.

"(7) QUORUM.—Five members of the Board of Trustees constitute a quorum to do business. Investment guidelines must be adopted by a unanimous vote of the entire Board of Trustees. All other decisions of the Board of Trustees shall be decided by a majority vote of the quorum present. All decisions of the Board of Trustees shall be entered upon the records of the Board of Trustees.

"(8) FUNDING.—The expenses of the Trust and the Board of Trustees incurred under this subsection shall be paid from the Trust.".

(b) CONFORMING AND TECHNICAL AMENDMENTS GOVERNING INVESTMENTS.—Section 15(e) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(e)) is amended—

(1) in the first sentence, by striking ", the Dual Benefits Payments Account" and all that follows through "may be made only" in the second sentence and inserting "and the Dual Benefits Payments Account as are not transferred to the National Railroad Retirement Investment Trust as the Board may determine";

(2) by striking "the Second Liberty Bond Act, as amended" and inserting "chapter 31 of title 31"; and

(3) by striking "the foregoing requirements" and inserting "the requirements of this subsection".

(c) MEANS OF FINANCING.—For all purposes of the Congressional Budget Act of 1974, the Balanced Budget and Emergency Deficit Control Act of 1985, and chapter 11 of title 31, United States Code, and notwithstanding section 20 of the Office of Management and Budget Circular No. A–11, the purchase or sale of non-Federal assets (other than gains or losses from such transactions) by the National Railroad Retirement Investment Trust shall be treated as a means of financing. 45 USC 231n note.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the month that begins more than 30 days after enactment. 45 USC 231n note.

SEC. 106. ELIMINATION OF SUPPLEMENTAL ANNUITY ACCOUNT.

(a) SOURCE OF PAYMENTS.—Section 7(c)(1) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(c)(1)) is amended by striking "payments of supplemental annuities under section 2(b) of this Act shall be made from the Railroad Retirement Supplemental Account, and".

(b) ELIMINATION OF ACCOUNT.—Section 15(c) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(c)) is repealed.

(c) AMENDMENT TO RAILROAD RETIREMENT ACCOUNT.—Section 15(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(a)) is amended by striking ", except those portions of the amounts covered into the Treasury under sections 3211(b)," and all that follows through the end of the subsection and inserting a period.

(d) TRANSFER.— 45 USC 231n note.

(1) DETERMINATION.—As soon as possible after December 31, 2001, the Railroad Retirement Board shall—

(A) determine the amount of funds in the Railroad Retirement Supplemental Account under section 15(c) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(c)) as of the date of such determination; and

(B) direct the Secretary of the Treasury to transfer such funds to the National Railroad Retirement Investment Trust under section 15(j) of such Act (as added by section 105).

(2) TRANSFER BY THE SECRETARY OF THE TREASURY.—The Secretary of the Treasury shall make the transfer described in paragraph (1).

(e) EFFECTIVE DATE.— 45 USC 231n note.

(1) IN GENERAL.—Subject to paragraph (2), the amendments made by subsections (a), (b), and (c) shall take effect January 1, 2002.

(2) ACCOUNT IN EXISTENCE UNTIL TRANSFER MADE.—The Railroad Retirement Supplemental Account under section 15(c) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(c))

shall continue to exist until the date that the Secretary of the Treasury makes the transfer described in subsection (d)(2).

SEC. 107. TRANSFER AUTHORITY REVISIONS.

(a) RAILROAD RETIREMENT ACCOUNT.—Section 15 of the Railroad Retirement Act of 1974 (45 U.S.C. 231n) is amended by adding after subsection (j) the following new subsection:

"(k) TRANSFERS TO THE TRUST.—The Board shall, upon establishment of the National Railroad Retirement Investment Trust and from time to time thereafter, direct the Secretary of the Treasury to transfer, in such manner as will maximize the investment returns to the Railroad Retirement system, that portion of the Railroad Retirement Account that is not needed to pay current administrative expenses of the Board to the National Railroad Retirement Investment Trust. The Secretary shall make that transfer.".

(b) TRANSFERS FROM THE NATIONAL RAILROAD RETIREMENT INVESTMENT TRUST.—Section 15 of the Railroad Retirement Act of 1974 (45 U.S.C. 231n), as amended by subsection (a), is further amended by adding after subsection (k) the following new subsection:

"(l) NATIONAL RAILROAD RETIREMENT INVESTMENT TRUST.—The National Railroad Retirement Investment Trust shall from time to time transfer to the disbursing agent described in section 7(b)(4) or as otherwise directed by the Railroad Retirement Board pursuant to section 7(b)(4), such amounts as may be necessary to pay benefits under this Act (other than benefits paid from the Social Security Equivalent Benefit Account or the Dual Benefit Payments Account).".

(c) SOCIAL SECURITY EQUIVALENT BENEFIT ACCOUNT.—

(1) TRANSFERS TO TRUST.—Section 15A(d)(2) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n–1(d)(2)) is amended to read as follows:

"(2) Upon establishment of the National Railroad Retirement Investment Trust and from time to time thereafter, the Board shall direct the Secretary of the Treasury to transfer, in such manner as will maximize the investment returns to the Railroad Retirement system, the balance of the Social Security Equivalent Benefit Account not needed to pay current benefits and administrative expenses required to be paid from that Account to the National Railroad Retirement Investment Trust, and the Secretary shall make that transfer. Any balance transferred under this paragraph shall be used by the National Railroad Retirement Investment Trust only to pay benefits under this Act or to purchase obligations of the United States that are backed by the full faith and credit of the United States pursuant to chapter 31 of title 31, United States Code. The proceeds of sales of, and the interest income from, such obligations shall be used by the Trust only to pay benefits under this Act.".

(2) TRANSFERS TO DISBURSING AGENT.—Section 15A(c)(1) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n–1(c)(1)) is amended by adding at the end the following new sentence: "The Secretary shall from time to time transfer to the disbursing agent under section 7(b)(4) amounts necessary to pay those benefits.".

(3) CONFORMING AMENDMENT.—Section 15A(d)(1) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n–1(d)(1)) is amended by striking the second and third sentences.

(d) DUAL BENEFITS PAYMENTS ACCOUNT.—Section 15(d)(1) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(d)(1)) is amended by adding at the end the following new sentence: "The Secretary of the Treasury shall from time to time transfer from the Dual Benefits Payments Account to the disbursing agent under section 7(b)(4) amounts necessary to pay benefits payable from that Account.".

(e) CERTIFICATION BY THE BOARD AND PAYMENT.—Paragraph (4) of section 7(b) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(4)) is amended to read as follows:

"(4)(A) The Railroad Retirement Board, after consultation with the Board of Trustees of the National Railroad Retirement Investment Trust and the Secretary of the Treasury, shall enter into an arrangement with a nongovernmental financial institution to serve as disbursing agent for benefits payable under this Act who shall disburse consolidated benefits under this Act to each recipient. Pending the taking effect of that arrangement, benefits shall be paid as under the law in effect prior to the enactment of the Railroad Retirement and Survivors' Improvement Act of 2001.

"(B) The Board shall from time to time certify— Certification.

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

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

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

(f) BENEFIT PAYMENTS.—Section 7(c)(1) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(c)(1)) is amended—

(1) by striking "from the Railroad Retirement Account" and inserting "by the disbursing agent under subsection (b)(4) from money transferred to it from the National Railroad Retirement Investment Trust or the Social Security Equivalent Benefit Account, as the case may be"; and

(2) by inserting "by the disbursing agent under subsection (b)(4) from money transferred to it" after "Public Law 93–445 shall be made".

(g) TRANSITIONAL RULE FOR EXISTING OBLIGATION.—In making transfers under sections 15(k) and 15A(d)(2) of the Railroad Retirement Act of 1974, as amended by subsections (a) and (c), respectively, the Railroad Retirement Board shall consult with the Secretary of the Treasury to design an appropriate method to transfer obligations held as of the date of enactment of this Act or to convert such obligations to cash at the discretion of the Railroad Retirement Board prior to transfer. The National Railroad Retirement Investment Trust may hold to maturity any obligations so 45 USC 231n note.

received or may redeem them prior to maturity, as the Trust deems appropriate.

SEC. 108. ANNUAL RATIO PROJECTIONS AND CERTIFICATIONS BY THE RAILROAD RETIREMENT BOARD.

(a) PROJECTIONS.—Section 22(a)(1) of the Railroad Retirement Act of 1974 (45 U.S.C. 231u(a)(1)) is amended—

(1) by inserting after the first sentence the following new sentence: "On or before May 1 of each year beginning in 2003, the Railroad Retirement Board shall compute its projection of the account benefits ratio and the average account benefits ratio (as defined by section 3241(c) of the Internal Revenue Code of 1986) for each of the next succeeding five fiscal years."; and

(2) by striking "the projection prepared pursuant to the preceding sentence" and inserting "the projections prepared pursuant to the preceding two sentences".

(b) CERTIFICATIONS.—The Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.) is amended by adding at the end the following new section:

"COMPUTATION AND CERTIFICATION OF ACCOUNT BENEFIT RATIOS

45 USC 231v.

"SEC. 23. (a) INITIAL COMPUTATION AND CERTIFICATION.—On or before November 1, 2003, the Railroad Retirement Board shall—

"(1) compute the account benefits ratios for each of the most recent 10 preceding fiscal years, and

"(2) certify the account benefits ratios for each such fiscal year to the Secretary of the Treasury.

"(b) COMPUTATIONS AND CERTIFICATIONS AFTER 2003.—On or before November 1 of each year after 2003, the Railroad Retirement Board shall—

"(1) compute the account benefits ratio for the fiscal year ending in such year, and

"(2) certify the account benefits ratio for such fiscal year to the Secretary of the Treasury.

"(c) DEFINITION.—As used in this section, the term 'account benefits ratio' has the meaning given that term in section 3241(c) of the Internal Revenue Code of 1986.".

TITLE II—AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986

SEC. 201. AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.

Except as otherwise provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 202. EXEMPTION FROM TAX FOR NATIONAL RAILROAD RETIREMENT INVESTMENT TRUST.

26 USC 501.

Subsection (c) of section 501 is amended by adding at the end the following new paragraph:

"(28) The National Railroad Retirement Investment Trust established under section 15(j) of the Railroad Retirement Act of 1974.".

SEC. 203. REPEAL OF SUPPLEMENTAL ANNUITY TAX.

(a) REPEAL OF TAX ON EMPLOYEE REPRESENTATIVES.—Section 3211 is amended by striking subsection (b). 26 USC 3211.

(b) REPEAL OF TAX ON EMPLOYERS.—Section 3221 is amended by striking subsections (c) and (d) and by redesignating subsection (e) as subsection (c). 26 USC 3221.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after December 31, 2001. Applicability. 26 USC 3211 note.

SEC. 204. EMPLOYER, EMPLOYEE REPRESENTATIVE, AND EMPLOYEE TIER 2 TAX RATE ADJUSTMENTS.

(a) RATE OF TAX ON EMPLOYERS.—Subsection (b) of section 3221 is amended to read as follows:

"(b) TIER 2 TAX.—

"(1) IN GENERAL.—In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the applicable percentage of the compensation paid during any calendar year by such employer for services rendered to such employer.

"(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term 'applicable percentage' means—

"(A) 15.6 percent in the case of compensation paid during 2002,

"(B) 14.2 percent in the case of compensation paid during 2003, and

"(C) in the case of compensation paid during any calendar year after 2003, the percentage determined under section 3241 for such calendar year.".

(b) RATE OF TAX ON EMPLOYEE REPRESENTATIVES.—Section 3211, as amended by section 203, is amended by striking subsection (a) and inserting the following new subsections:

"(a) TIER 1 TAX.—In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to the applicable percentage of the compensation received during any calendar year by such employee representative for services rendered by such employee representative. For purposes of the preceding sentence, the term 'applicable percentage' means the percentage equal to the sum of the rates of tax in effect under subsections (a) and (b) of section 3101 and subsections (a) and (b) of section 3111 for the calendar year.

"(b) TIER 2 TAX.—

"(1) IN GENERAL.—In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to the applicable percentage of the compensation received during any calendar year by such employee representatives for services rendered by such employee representative.

"(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term 'applicable percentage' means—

"(A) 14.75 percent in the case of compensation received during 2002,

"(B) 14.20 percent in the case of compensation received during 2003, and

"(C) in the case of compensation received during any calendar year after 2003, the percentage determined under section 3241 for such calendar year.

"(c) CROSS REFERENCE.—

"For application of different contribution bases with respect to the taxes imposed by subsections (a) and (b), see section 3231(e)(2).".

(c) RATE OF TAX ON EMPLOYEES.—Subsection (b) of section 3201 is amended to read as follows:

26 USC 3201.

"(b) TIER 2 TAX.—

"(1) IN GENERAL.—In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to the applicable percentage of the compensation received during any calendar year by such employee for services rendered by such employee.

"(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term 'applicable percentage' means—

"(A) 4.90 percent in the case of compensation received during 2002 or 2003, and

"(B) in the case of compensation received during any calendar year after 2003, the percentage determined under section 3241 for such calendar year.".

26 USC 3241.

(d) DETERMINATION OF RATE.—Chapter 22 is amended by adding at the end the following new subchapter:

"Subchapter E—Tier 2 Tax Rate Determination

"Sec. 3241. Determination of tier 2 tax rate based on average account benefits ratio.

"SEC. 3241. DETERMINATION OF TIER 2 TAX RATE BASED ON AVERAGE ACCOUNT BENEFITS RATIO.

"(a) IN GENERAL.—For purposes of sections 3201(b), 3211(b), and 3221(b), the applicable percentage for any calendar year is the percentage determined in accordance with the table in subsection (b).

"(b) TAX RATE SCHEDULE.—

"Average account benefits ratio		Applicable percentage for sections 3211(b) and 3221(b)	Applicable percentage for section 3201(b)
At least	But less than		
	2.5	22.1	4.9
2.5	3.0	18.1	4.9
3.0	3.5	15.1	4.9
3.5	4.0	14.1	4.9
4.0	6.1	13.1	4.9
6.1	6.5	12.6	4.4
6.5	7.0	12.1	3.9
7.0	7.5	11.6	3.4
7.5	8.0	11.1	2.9
8.0	8.5	10.1	1.9
8.5	9.0	9.1	0.9
9.0		8.2	0

"(c) DEFINITIONS RELATED TO DETERMINATION OF RATES OF TAX.—

"(1) AVERAGE ACCOUNT BENEFITS RATIO.—For purposes of this section, the term 'average account benefits ratio' means, with respect to any calendar year, the average determined by the Secretary of the account benefits ratios for the 10 most recent fiscal years ending before such calendar year. If the

amount determined under the preceding sentence is not a multiple of 0.1, such amount shall be increased to the next highest multiple of 0.1.

"(2) ACCOUNT BENEFITS RATIO.—For purposes of this section, the term 'account benefits ratio' means, with respect to any fiscal year, the amount determined by the Railroad Retirement Board by dividing the fair market value of the assets in the Railroad Retirement Account and of the National Railroad Retirement Investment Trust (and for years before 2002, the Social Security Equivalent Benefits Account) as of the close of such fiscal year by the total benefits and administrative expenses paid from the Railroad Retirement Account and the National Railroad Retirement Investment Trust during such fiscal year.

"(d) NOTICE.—No later than December 1 of each calendar year, the Secretary shall publish a notice in the Federal Register of the rates of tax determined under this section which are applicable for the following calendar year.". Deadline. Federal Register, publication.

(e) CONFORMING AMENDMENTS.—

(1) Section 24(d)(3)(A)(iii) is amended by striking "section 3211(a)(1)" and inserting "section 3211(a)". 26 USC 24.

(2) Section 72(r)(2)(B)(i) is amended by striking "3211(a)(2)" and inserting "3211(b)". 26 USC 72.

(3) Paragraphs (2)(A)(iii)(II) and (4)(A) of section 3231(e) are amended by striking "3211(a)(1)" and inserting "3211(a)". 26 USC 3231.

(4) Section 3231(e)(2)(B)(ii)(I) is amended by striking "3211(a)(2)" and inserting "3211(b)".

(5) The table of subchapters for chapter 22 is amended by adding at the end the following new item:

"Subchapter E. Tier 2 tax rate determination.".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after December 31, 2001. Applicability. 26 USC 24 note.

Approved December 21, 2001.

LEGISLATIVE HISTORY—H.R. 10:

HOUSE REPORTS: No. 107-51, Pt. 1 (Comm. on Ways and Means) and Pt. 2 (Comm. on Education and the Workforce).

CONGRESSIONAL RECORD, Vol. 147 (2001):

May 2, considered and passed House.

Nov. 29, Dec. 3-5, considered and passed Senate, amended.

Dec. 11, House concurred in Senate amendments.