

## RAILROAD RETIREMENT ACT OF 1974

[Chapter 812 of the 74th Congress, Approved August 29, 1935, 49 Stat. 967]

[As Amended Through P.L. 110–458, Enacted December 23, 2008]

【Currency: This publication is a compilation of the text of Chapter 812 of the 74th Congress. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>】

【Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).】

AN ACT To amend an Act entitled “An Act to establish a retirement system for employees of carriers subject to the Interstate Commerce Act, and for other purposes,” approved August 29, 1935.

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

### DEFINITIONS

SECTION 1. For the purposes of this Act—

(a)(1) The term “employer” shall include—

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

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

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

(iv) any railroad association, traffic association, tariff bureau, demurrage bureau, weighing and inspection bureau, collection agency, and any other association, bureau, agency, or organization which is controlled and maintained wholly or

principally by two or more employers as defined in paragraph (i), (ii), or (iii) of this subdivision and which is engaged in the performance of services in connection with or incidental to railroad transportation; and

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

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

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

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

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

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

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

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

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

(ii) he renders such service for compensation, or a method of computing the monthly compensation for such service is provided in section 3(j).

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

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

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

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

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

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

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

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

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

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

(2) Notwithstanding the provisions of subdivision (1) of this subsection, an individual shall not be deemed to have been in the employment relation to an employer on August 29, 1935, if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937, or if during the last payroll period before August 29, 1935, in which he rendered service to an employer he was not in the service of an employer, in accordance with subsection (d), with respect to any service in such payroll period, or if he could have been in the employment relation to an employer

<sup>1</sup> So in law. Probably should be "seniority".

only by reason of his having been, either before or after August 29, 1935, in the service of a local lodge or division defined as an employer in subsection (a).

(f)(1) The term “years of service” shall mean the number of years an individual as an employee shall have rendered service to one or more employers for compensation or received remuneration for time lost and shall be computed in accordance with the provisions of section 3(i). Twelve calendar months consecutive or otherwise in each of which an employee has rendered such service or received such wages for time lost shall constitute a year of service. Ultimate fractions shall be taken at their actual value.

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

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

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

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

(g)(1) For purposes of section 3(i)(2) of this Act, an individual shall be deemed to have been in “military service” when commissioned or enrolled in the active service of the land or naval forces of the United States and until resignation or discharge therefrom; and the service of any individual in any reserve component of the land or naval forces of the United States, while serving in the land or naval forces of the United States for any period, even though less than thirty days, shall be deemed to have been active service in such force during such period.

(2) For purposes of section 3(i)(2) of this Act, a “war service period” shall mean (A) any war period, or (B) with respect to any particular individual, any period during which such individual (i) having been in military service at the end of a war period, was required to continue in military service, or (ii) was required by call of the President, or by any Act of Congress or regulation, order, or proclamation pursuant thereto, to enter and continue in military service, or (C) any period after September 7, 1939, with respect to which a state of national emergency was duly declared to exist which requires a strengthening of the national defense. For purposes of section 3(i)(2) of this Act, the period beginning on June 15, 1948, and ending on December 15, 1950, shall be deemed to be a war service period with respect to any individual who without intervening employment not covered by this Act rendered service as an employee to an employer under this Act in the year such individual was released from active military service or in the year immediately following such year.

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

(4) For purposes of section 3(i)(2) of this Act, a “war period” shall be deemed to have ended on the date on which hostilities ceased.

(h)(1) The term “compensation” means any form of money remuneration paid to an individual for services rendered as an employee to one or more employers, or as an employee representative, including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost. A payment made by an employer to an individual through the employer’s payroll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. Compensation earned in any calendar month before 1947 shall be deemed paid in such month regardless of whether or when payment will have been in fact made, and compensation earned in any calendar year after 1946 but paid after the end of such calendar year shall be deemed to be compensation paid in the calendar year in which it will have been earned if it is so reported by the employer before February 1 of the next succeeding calendar year or if the employee establishes, subject to the provisions of section 9, the period during which such compensation will have earned.

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

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

(4) Tips included as compensation by reason of the provisions of subdivision (3) shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursu-

ant to section 6053(a) of the Internal Revenue Code of 1954 or, if no statement including such tips is so furnished, at the time received. Tips so deemed to be paid in any month shall be deemed paid for services rendered in such month.

(5) In determining compensation, there shall be attributable as compensation paid to an employee in calendar months in which he is in military service creditable under section 3(i)(2), in addition to any other compensation paid to him with respect to such months—

- (i) for each such calendar month prior to 1968, \$160;
- (ii) for each such calendar month after 1967 and prior to 1975, \$260; and
- (iii) for each such calendar month after 1974, the amount which is creditable as such individual's "wages" under section 209(d) of the Social Security Act.

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

- (i) tips, except as is provided under subdivision (3) of this subsection;
- (ii) remuneration for service which is performed by a non-resident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be;
- (iii) remuneration earned in the service of a local lodge or division of a railway-labor-organization employer with respect to any calendar month in which the amount of such remuneration is less than \$25;
- (iv) remuneration for service as a delegate to a national or international convention of a railway-labor-organization employer if the individual rendering such service has not previously rendered service, other than as such a delegate, which may be included in his "years of service";
- (v) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of sickness or accident disability or medical or hospitalization expenses in connection with sickness or accident disability; and
- (vi) an amount paid specifically—either as an advance, as reimbursement or allowance—for traveling or other bona fide and necessary expense incurred or reasonably expected to be incurred in the business of the employer provided any such payment is identified by the employer either by a separate payment or by specifically indicating the separate amounts where

both wages and expense reimbursement or allowance are combined in a single payment.

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

(8) Notwithstanding any other provision of this Act, for the purposes of sections 3(a)(1), 4(a)(1), and 4(f)(1), the term "compensation" includes any payment from any source to an employee or employee representative if such payment is subject to tax under section 3201 or 3211 of the Internal Revenue Code of 1954.

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

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

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

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

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

(n) The term "Social Security Act" means the Social Security Act as amended from time to time.

(o) An individual shall be deemed to have a "current connection with the railroad industry" at the time an annuity begins to accrue to him and at death if, in any thirty consecutive calendar months before the month in which an annuity under this Act begins to accrue to him or the month in which he dies if that first occurs, he will have been in service as an employee in not less than twelve calendar months and, if such thirty calendar months do not immediately precede such month, he will not have been engaged in any regular employment other than employment for an employer or employment with the Department of Transportation, the Interstate Commerce Commission, the Surface Transportation Board, the National Mediation Board, the National Transportation Safety Board, the State-owned railroad (as defined in the Alaska Railroad Transfer Act of 1982), so long as it is an instrumentality of the State of Alaska, or the Railroad Retirement Board in the period before such month and after the end of such thirty months. For purposes of section 2(b) and section 2(d) only, an individual shall be deemed also to have a "current connection with the railroad industry" if, after having completed twenty-five years of service, such individual involuntarily and without fault ceased rendering service as an employee under this Act and did not thereafter decline an offer of employment in the same class or craft as the individual's most recent employee service. For purposes of section 2(d) only, an individual shall be deemed to have a "current connection with the railroad industry" if a pension will have been payable to that individual under the Railroad Retirement Act of 1937 or a retirement annuity

based on service of not less than 10 years (as computed in awarding the annuity) will have begun to accrue to that individual prior to 1948 under the Railroad Retirement Act of 1937. For the purposes of section 2(d) only, an individual shall be deemed also to have a “current connection with the railroad industry” if he will have completed ten years of service and (A) he would be neither fully nor currently insured under the Social Security Act if his service as an employee after December 31, 1936, were included in the term “employment” as defined in that Act, or (B) he has no quarters of coverage under the Social Security Act.

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

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

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

【45 U.S.C. 231】

#### ANNUITY ELIGIBILITY REQUIREMENTS

SEC. 2. (a)(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), be entitled to annuities in the amounts provided under section 3 of this Act—

(i) individuals who have attained retirement age (as defined in section 216(l) of the Social Security Act);

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

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

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

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

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

(3) Such satisfactory proof shall be made from time to time as prescribed by the Board, of the disability provided for in paragraph (iv) or (v) of subdivision (1) and of the continuance of such disability (according to the standards applied in the establishment of such disability) until the employee attains retirement age (as defined in section 216(l) of the Social Security Act). 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 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) 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);

(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), be entitled to a supplemental annuity in the amount provided under section 3 of this Act: *Provided, however,* That in cases where an individual's annuity under subsection (a)(1) 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).

(c)(1) The spouse of an individual, if—

(i) such individual (A) is entitled to an annuity under subsection (a)(1) 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), 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) (without regard to the provisions of clause (B) of such paragraph), shall, subject to the conditions set forth in subsections (e), (f), and (h), be entitled to a spouse's annuity, if he or she has filed application therefor, in the amount provided under section 4 of this Act.

(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) 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  $\frac{1}{144}$  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, 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 Act, the term “spouse” shall mean the wife or husband of an annuitant under subsection (a)(1) 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) 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) began.

(4) The “divorced wife” (as defined in section 216(d) of the Social Security Act) 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<sup>2</sup> 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 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;
- shall, subject to the conditions set forth in subsections (e), (f), and (h), be entitled to a divorced wife’s annuity, if she has filed an application therefor, in the amount provided under section 4 of this Act.

(d)(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), be entitled to annuities, if they have filed application therefor, in the amounts provided under section 4 of this Act—

- (i) a widow (as defined in section 216 (c) and (k) of the Social Security Act) 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) began;
- (ii) a widow (as defined in section 216 (c) and (k) of the Social Security Act) 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

<sup>2</sup> So in law. Probably should be followed by a closing parenthesis.

such deceased employee, which child is entitled to an annuity under paragraph (iii) (other than an annuity payable to a child who has attained age 18 and is not under a disability);

(iii) a child (as defined in section 216 (e) and (k) of the Social Security Act) 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) 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 employee's 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 if the service as an employee of the individual, with respect to which such parent would be eligible to receive an annuity under this Act except for this proviso and those clauses, were included in "employment" as defined in the Social Security Act; and

(v) The<sup>3</sup> widow (as defined in section 216(c) of the Social Security Act), 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 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) 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 section 2(d)(1)(i) of this Act and an individual entitled to an annuity under section 2(d)(1)(ii) of this Act, and the reference in section 202(e)(3) and section 202(g)(3) of the Social Security Act to an individual entitled under section 202(d) or section 202(h) of

<sup>3</sup> So in law. Probably should not be capitalized.

that Act shall include an individual entitled to an annuity under section 2(d)(1)(iii) or section 2(d)(1)(iv) of this Act, 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 shall include an individual entitled to an annuity under section 2(a)(1) of this Act.

(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 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) 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 shall be applied deeming, for this purpose, individuals entitled to an annuity under subsection (c) to be entitled to benefits under subsection (b) or (c) of section 202 of the Social Security Act and individuals entitled to an annuity under paragraph (i) or (ii) of subsection (d)(1) 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 sections 202(d) (3), (4), and (9) of the Social Security Act are fulfilled. The provisions of paragraph (7) of section 202(d) of the Social Security Act (defining the terms "full-time elementary or secondary school student" and "elementary or secondary school") shall be applied by the Board in the administration of this subsection as if the references therein to the Secretary were references to the Board. A child who attains age nineteen at a time when he is a full-time elementary or secondary school student (as defined in subparagraph (A) of paragraph (7) of section 202(d) of the Social Security Act and without the application of subparagraph (B) of such paragraph), but has not (at such time) completed the requirements for, or received, a diploma or equivalent certificate from a secondary school (as defined in section 202(d)(7)(c)(i)<sup>4</sup> 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

<sup>4</sup> So in law. Probably should be "202(d)(7)(C)(i)".

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

(2) An annuity under subsection (a)(1) 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) prior to attaining retirement age (as defined in section 216(l) of the Social Security Act): *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) or supplemental annuity under subsection (b)(1) 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) shall report to the Board immediately all such compensated service.

(4) No annuity under paragraph (iv) or (v) of subsection (a)(1) 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) 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 the 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 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 allowable earnings" amount shall be the larger of the amount for the previous year or the amount calculated by multiplying \$700 by the ratio of the national average wage index for the year 2 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.

(5) The annuity of a spouse or divorced wife under subsection (c) 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) shall not be payable for any month if the individual's annuity under subsection (a)(1) is not payable for such month by reason of the provisions of this subsection.

(f)(1) That portion of the individual's annuity as is computed under section 3(a) of this Act 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 and that portion of

the individual's annuity as is computed under section 3(h) of this Act shall be subject to deductions on account of work pursuant to the provisions of section 203 of the Social Security Act 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) which is derived from the portion of the individual's annuity subject to deductions under subdivision (1) and that portion of the spouse's annuity as is computed under section 4(e) of this Act shall be subject to deductions on account of work pursuant to the provisions of section 203 of the Social Security Act in the same manner as if such portion of such spouse'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.

(3) Deductions shall not be made pursuant to subdivision (1) from that portion of an individual's annuity as is computed under section 3(a) of this Act for any month in which the annuity of such individual is reduced pursuant to section 3(m) of this Act. 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 4(a) of this Act 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.

(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 3(b) and as adjusted under section 3(g), plus any supplemental amount for such month under section 3(e), and that portion of the annuity for any month of a spouse as is computed under section 4(b) and as adjusted under section 4(d), 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) began to accrue; and

(ii) that portion of the annuity for any month of a spouse as is computed under section 4(b) and as adjusted under section 4(d) 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) 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)(1) No annuity shall be paid to a survivor under subsection (d) 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) 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) 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 or, having engaged in any activity outside the United States, would be charged under such section 203(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, Education, and Welfare 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 such Act: *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) shall report to the Board the receipt of excess earnings described in this subdivision.

(h)(2) The supplemental annuity provided an individual by subsection (b) 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) or a survivor entitled to an annuity under subsection (d) for any month is also entitled to an annuity under subsection (a)(1) for such month, the annuity under subsection (c) or (d) shall

be reduced, but not below zero, by an amount equal to the annuity under subsection (a)(1): *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) 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) 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) 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.

[45 U.S.C. 231a]

#### COMPUTATION OF EMPLOYEE ANNUITIES

SEC. 3. (a)(1) The annuity of an individual under section 2(a)(1) of this Act 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 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 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). For purposes of this subsection, individuals entitled to an annuity under paragraph (iv) or (v) of such section 2(a)(1) shall be deemed to be entitled to a disability insurance benefit under section 223 of the Social Security Act.

(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.

(b)(1) The amount of the annuity of an individual provided under subsection (a) shall be increased by an amount equal to seven-tenths of 1 per centum of the product which is obtained by multiplying such individual's "years of service" by such individual's "average monthly compensation" as determined under this subsection. The annuity amount payable to the individual under this subsection shall be reduced by 25 per centum of the annuity amount computed for such individual under subsection (h)(1) or (h)(2), and subsection (h)(5), of this section without regard to section 7(c)(1) of this Act. An individual's "average monthly compensation" for purposes of this subsection shall be the quotient obtained by dividing by 60 such individual's total compensation for the 60 months, consecutive or otherwise, during which such individual received that individual's highest monthly compensation, except that no part of any month's compensation in excess of the maximum amount creditable for any individual for such month under subsection (j) of this section shall be recognized. In determining the months of compensation to be used for purposes of this subsection, the total compensation reported for the individual under section 9 of this Act or credited to such individual under subsection (j) of this section for a year divided by the number of months of service credited to such individual under subsection (i) of this section with respect to such year shall be considered the monthly compensation of the individual for each month of service in any year for which records of the Board do not show the amount of compensation paid to the individual on a monthly basis. If the "average monthly compensation" computed under this subsection is not a multiple of \$1, it shall be rounded to the next lower multiple of \$1.

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

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

(ii) the quotient obtained by dividing—

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

(II) the average of total wages (as determined under section 215(b)(3)(A)(ii)(II) of the Social Security Act) for the

calendar year during which such month occurred, unless such month occurred prior to calendar year 1951, in which case, the average of total wages so determined for 1951. In no event shall "average monthly compensation" determined for an individual under this subdivision exceed the maximum "average monthly compensation" which can be determined under subdivision (1) of this subsection for any person retiring January 1 of the year in which such individual's annuity began to accrue.

【Subections (c) and (d) repealed by Pub. L. 97-35 (95 Stat. 631).】

(e) The supplemental annuity of an individual under section 2(b) of this Act shall be \$23 plus an additional amount of \$4 for each year of service that the individual has in excess of 25 years, but in no case shall the supplemental annuity exceed \$43.

(f)(1) If, in the case of an individual whose annuity under section 2(a)(1) of this Act began to accrue prior to January 1, 1983, the annuity (before any reduction due to such individual's entitlement to a monthly insurance benefit under the Social Security Act and disregarding any amount provided by subsection (h) of this section) plus the supplemental annuity to which such individual is entitled for any month under this Act, together with the annuity, if any, of the spouse of such individual (before any reduction due to such spouse's entitlement to a wife's or husband's insurance benefit under the Social Security Act and disregarding any amount provided by section 4(e) of this Act, before any reductions under the provisions of section 2(f) of this Act, is less than the total amount which would have been payable to such individual and his spouse for such month, on the basis of the individual's compensation and years of service, under the provisions of the Railroad Retirement Act of 1937 as in effect on December 31, 1974, disregarding, for purposes of the computations under such Railroad Retirement Act of 1937, compensation for any month after December 31, 1974, in excess of one-twelfth of the maximum annual taxable "wages" (as defined in section 3121 of the Internal Revenue Code of 1954) for the calendar year 1974, the annuity of such individual and the annuity of such spouse, if any, shall be increased proportionately so as to equal such total amount. For the purpose of computing amounts under this subdivision, the Board shall have the authority to approximate the effect of the reductions prescribed by sections 3(a)(2) and 3(a)(3) of the Railroad Retirement Act of 1937. For purposes of computing amounts payable under the Railroad Retirement Act of 1937, any increases in the amounts determined under the first proviso of section 3(e) of such Act which would have become effective after December 31, 1974, shall be disregarded.

(2) If for any month in which an annuity accrues and is payable under this Act the annuity to which an individual is entitled under this Act (or would have been entitled except for a reduction pursuant to a joint and survivor election), together with the annuity, if any, of the spouse and divorced wife of such individual, is less than the total amount, or the additional amount, which would

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

(g)(1) Effective with the date of any increase after January 31, 1984, in monthly insurance benefits under the Social Security Act which occurs, or which would have occurred had there not been a general benefit increase under that Act, pursuant to the automatic cost-of-living provisions of section 215(i) of Act, that portion of the annuity of an individual which is computed under subsection (b) of this section shall, if such individual's annuity under section 2(a)(1) of this Act began to accrue on or before the effective date of a particular increase under this subdivision, be increased by 32.5 per centum of the percentage increase in the index which is used, or which would have been used had there not been a general benefit increase under the Social Security Act, in increasing benefits under the Social Security Act pursuant to the automatic cost-of-living provisions of section 215(i) of that Act. Any increase under this subsection shall not be deferred and shall be reflected in all payments made to annuitants after such increase under this subsection becomes effective.

(2) The first and, if necessary, the following time or times after January 1, 1983, that monthly insurance benefits under section 202 of the Social Security Act are increased, that portion of the an-

nuity of an individual which is computed under subsection (b) of this section as increased under subdivision (1) of this subsection shall, if such individual's annuity under section 2(a)(1) of this Act began to accrue in or before the year in which such first increase under the Social Security Act became effective, be reduced by the dollar amount by which that portion of the annuity provided such individual's under subsection (a) of this section was increased, after any reduction under subsection (m) of this section, as a result of such increase or increases under the Social Security Act until the total dollar amount of such reduction or reductions equals 5 per centum of the annuity amount provided such individual under subsection (a), as reduced under subsection (m), prior to such first increase. In no case shall the reduction by reason of this paragraph operate to reduce such portion to an amount less than \$10.

(h)(1) The amount of the annuity provided under subsections (a) and (b) of this section of an individual who (A) will have (i) rendered service as an employee to an employer, or as an employee representative, during the calendar year 1974, or (ii) had a current connection with the railroad industry on December 31, 1974, or at the time his annuity under section 2(a)(1) of this Act began to accrue, or (iii) completed twenty-five years of service prior to January 1, 1975, and (B) will have (i) completed ten years of service prior to January 1, 1975, and (ii) been permanently insured under the Social Security Act on December 31, 1974, shall be increased by an amount equal to the amount by which (C) the sum of (i) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, if his service as an employee after December 31, 1936, and prior to January 1, 1975, were included in the term "employment" as defined in that Act and if he had no wages or self-employment income under that Act other than wages derived from such service as an employee, and (ii) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, exceeds (D) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, and on the basis of compensation derived from service as an employee after December 31, 1936, and prior to January 1, 1975, if such service as an employee had been included in the term "employment" as defined in that Act.

(2) The amount of the annuity provided under subsections (a) and (b) of this section to an individual who (A) will not have met the conditions set forth in subclause (i), (ii), or (iii) of clause (A) of subdivision (1) of this subsection, but (B) will have (i) completed ten years of service prior to January 1, 1975, and (ii) been permanently insured under the Social Security Act as of December 31 of

the calendar year prior to 1975 in which he last rendered service as an employee to an employer, or as an employee representative, shall be increased by an amount equal to the amount by which (C) the sum of (i) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, if his service as an employee after December 31, 1936, and prior to January 1, 1975, were included in the term "employment" as defined in that Act and if he had no wages or self-employment income under that Act other than wages derived from such service as an employee, and (ii) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which he last performed service as an employee under this Act, exceeds (D) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which he last performed service as an employee under this Act and on the basis of compensation derived from service as an employee after December 31, 1936, and prior to January 1, 1975, if such service as an employee had been included in the term "employment" as defined in that Act.

(3) The amount of the annuity provided under subsections (a) and (b) of this section of an individual who (A) will have (i) rendered service as an employee to an employer, or as an employee representative, during the calendar year 1974, or (ii) had a current connection with the railroad industry on December 31, 1974, or at the time his annuity under section 2(a)(1) of this Act began to accrue, or (iii) completed twenty-five years of service prior to January 1, 1975, and (B) will have completed ten years of service prior to January 1, 1975, and is the wife, husband, widow, or widower of a person who will have been permanently insured under the Social Security Act on December 31, 1974, shall be increased by an amount equal to the smaller of (C) the wife's, husband's, widow's or widower's insurance benefit to which such individual would have been entitled, upon attaining age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of such person's wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, or (D) the primary insurance amount to which such individual would have been entitled upon attaining age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of such individual's wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, and on the basis of compensation derived from service as an employee after December 31, 1936, and

prior to January 1, 1975, if such service as an employee had been included in the term "employment" as defined in that Act.

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

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

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

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

(2) The "years of service" of an individual shall also include his voluntary or involuntary military service, within or without the United States, during any war service period: *Provided, however,* That such military service shall be included only if, prior to the beginning of his military service and in the same calendar year in which such military service began, or in the next preceding calendar year, the individual rendered service for compensation to an employer or to a person service to which is otherwise creditable

under this Act, or lost time as an employee for which he received remuneration, or was serving as an employee representative: *Provided further*, That such military service shall be included only subject to and in accordance with the provisions of subdivisions (1) and (3) of this subsection in the same manner as through military service were service rendered as an employee: *And provided further*, That such military service rendered after December 1956 shall not be included with respect to any month if (A) any benefits are payable for that month under the Social Security Act on the basis of such individual's wages and self-employment income, (B) such military service was included in the computation of such benefits, and (C) the inclusion of such military service in the computation of such benefits resulted (for that month) in benefits not otherwise payable or in an increase in the benefits otherwise payable: *And provided further*, That an individual who entered military service prior to a war service period shall not be regarded as having been in military service in a war service period with respect to any part of the period for which he entered such military service.

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

(4) Where for any calendar year after 1984 an individual has performed service for compensation in less than twelve months of the calendar year but has received compensation in excess of an amount determined by multiplying the number of months in the year in which such individual performed service for compensation by an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954, the individual shall be deemed to have rendered service for compensation in that number of months in the calendar year, but not to exceed twelve, which is equal to the quotient of the amount of such individual's compensation for the calendar year divided by an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal

Revenue Code of 1954, with any remainder produced by this computation increasing the quotient by one, but an individual shall not be deemed under this subdivision to have rendered service for compensation in any month in which such individual was neither in an employment relation to one or more employers nor an employee representative.

(j) The “average monthly compensation” shall be computed in the manner specified in section 3(b) of this Act, except (1) that with respect to service prior to January 1, 1937, the monthly compensation shall be the average compensation paid to an employee with respect to calendar months included in his years of service in the years 1924–1931, and (2) the amount of compensation paid or attributable as paid to him with respect to each month of service before September 1941 as a station employee whose duties consisted of or included the carrying of passengers’ hand baggage and otherwise assisting passengers at passenger stations and whose remuneration for service to the employer was, in whole or in substantial part, in the forms of tips, shall be the monthly average of the compensation paid to him as a station employee in his months of service in the period September 1940 through August 1941: *Provided, however,* That where service in the period 1924 through 1931 in the one case, or in the period September 1940 through August 1941 in the other case, is, in the judgment of the Board, insufficient to constitute a fair and equitable basis for determining<sup>5</sup> the amount of compensation paid or attributable as paid to him in each month of service before 1937, or September 1941, respectively, the Board shall determine the amount of such compensation for each such month in such manner as in its judgment shall be fair and equitable. In computing the monthly compensation, no part of any month’s compensation in excess of \$300 for any month before July 1, 1954, or in excess of \$350 for any month after June 30, 1954, and before June 1, 1959, or in excess of \$400 for any month after May 31, 1959, and before November 1, 1963, or in excess of \$450 for any month after October 31, 1963, and before October 1, 1965, or in excess of (i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable “wages” as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965, shall be recognized. If for any calendar year after 1984 an employee has received compensation of less than one-twelfth of the current maximum annual taxable “wages” as defined in section 3121 of the Internal Revenue Code of 1954 in one or more months of the calendar year, the total compensation paid such employee in the calendar year (without regard to the limitation on the amount of compensation provided in the preceding sentence) shall be deemed to have been paid in equal proportions with respect to all months in the year in which the employee will have been in the service of one or more employers for compensation or will have performed service for compensation as an employee representative, but this sentence shall not operate to increase the employee’s compensation for any month above an amount equal to one-twelfth of the current maximum annual taxable “wages” as defined in section 3121 of the Internal Revenue

<sup>5</sup> So in law. Probably should be “determining”.

Code of 1954. If the employee earned compensation in service after June 30, 1937, and after the last day of the calendar year in which he attained age sixty-five, such compensation and service shall be disregarded in computing the average monthly compensation if the result of taking such compensation into account in such computation would be to diminish his annuity. Where an employee claims credit for months of service rendered within two years prior to his retirement from the service of an employer, with respect to which the employer's return pursuant to section 9 of this Act has not been entered on the records of the Board before the employee's annuity could otherwise be certified for payment, the Board may, in its discretion (subject to subsequent adjustment at the request of the employee) include such months in the computation of the annuity without further verification and may consider the compensation for such months to be the average of the compensation for months in the last period for which the employer has filed a return of the compensation of such employee and such return has been entered on the records of the Board.

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

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

(2) The reduction required under section 2(a)(1)(iii) or section 2(c)(2) may be applied separately to each of the annuity amounts computed under subsections (a), (b), and (h) of this section and subsections (a), (b), and (e) of section 4. For this purpose, in any case in which an annuity amount was computed for an individual under the provisions of this Act or of Public Law 93-445 prior to October 1, 1981, an annuity amount computed under subsections (a), (b), (c), (d) and (h) of this section, subsection (a), (b), or (e) of section 4, and section 204 or section 206 of Public Law 93-445 shall be reduced by its proportionate share of the reduction on account of age. For purposes of the preceding sentence, annuity amounts computed for an individual under subsections (b), (c), and (d) of section 3 prior to October 1981 shall be considered as one annuity amount.

(m) The annuity of any individual under subsection (a) of this section for any month shall, after any reduction pursuant to paragraph (iii) of section 2(a)(1), be reduced, but not below zero, by the amount of any monthly benefit (before any deductions on account of work) payable to that individual for that month under title II of the Social Security Act.

[45 U.S.C. 231b]

## COMPUTATION OF SPOUSE AND SURVIVOR ANNUITIES

SEC. 4. (a)(1) The annuity of a spouse or divorced wife of an individual under section 2(c) of this Act shall be in an amount equal to the amount (before any reduction on account of age and before any deductions on account of work) of the wife's insurance benefit or the husband's insurance benefit to which such spouse or divorced wife would have been entitled under the Social Security Act if such individual's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act.

(2) For purposes of this subsection, a spouse entitled to an annuity under section 2(c)(1)(ii)(B) of this Act shall be deemed to have attained retirement age (as defined in section 216(l) of the Social Security Act<sup>6</sup>).

(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.

(b) The amount of the annuity of a spouse of an individual provided under subsection (a) of this section shall be increased by an amount equal to 45 per centum of that portion of the individual's annuity as is computed under subsection (b) of section 3 of this Act: *Provided, however,* That if the spouse is entitled to an annuity amount provided by subsection (e)(1) or (e)(2) of this section, the amount of such spouse's annuity provided by the preceding provisions of this subsection shall be reduced by the amount by which the amount computed in accordance with the provisions of clause (C) of subsection (e)(1) or (e)(2) of this section was increased by the Social Security Amendments of 1965, 1967, and 1969, disregarding (A) the amount of any such increase resulting from the Social Security Amendments of 1967 equal to, or less than, the excess of \$5 over 5.8 per centum of the lesser of (i) the amount computed under clause (C) of subsection (e)(1) or (e)(2) of this section before any increases derived from legislation enacted after the Social Security Amendments of 1967 or (ii) the amount of the spouse's annuity to which such spouse would have been entitled under section 2(e) of the Railroad Retirement Act of 1937, without regard to section 3(a)(2) of that Act or to increases derived from legislation enacted after 1968 and before any reduction on account of age, on the basis

<sup>6</sup> So in law. Probably should be followed by a closing parenthesis.

of the individual's compensation and years of service prior to January 1, 1975, and (B) the amount of any such increase resulting from the Social Security Amendments of 1969 equal to, or less than, \$5: *Provided further*, That if the spouse is entitled to an annuity under section 2(a)(1) of this Act, the amount of annuity of such spouse under this subsection shall,<sup>7</sup> be increased by an amount equal to the amount by which the amount of the annuity of such spouse provided under subsection (a) of this section was reduced by reason of the provisions of subsection (i)(2) of this section (disregarding, for this purpose, any increase in such reduction which becomes effective after the later of the date such spouse's annuity under section 2(c) of this Act began to accrue or the date such spouse's annuity under section 2(a)(1) of this Act began to accrue). The Board shall have the authority to approximate the amount of any reduction prescribed by the first proviso of this subsection.

【Subection (c) repealed by Pub. L. 107–107 (115 Stat. 882).】

(d)(1) That portion of the annuity of the spouse of an individual as is determined under subsections (b) and (c) of this section shall be increased by the same percentage, or percentages, as the individual's annuity is, or has been, increased pursuant to the provisions of section 3(g)(1) of this Act.

(2) That portion of the annuity of the spouse of an individual as is determined under subsection (b) of this section prior to any determination under subsection (c) of this subsection<sup>8</sup> shall, if the annuity of such spouse is not subject to reduction under subdivision (3) of this subsection, be reduced by an amount equal to 50 per centum of the dollar amount by which the annuity of the individual was reduced under section 3(g)(2) of this Act. In no case shall the reduction by reason of this paragraph operate to reduce such portion to an amount less than \$10.

(3) The first and, if necessary, the following time or times after January 1, 1983, that monthly insurance benefits under section 202 of the Social Security Act are increased, that portion of the annuity of the spouse of an individual as is determined under subsections (b), (c), and (d)(1) of this section shall, if such spouse's annuity under section 2(c) of this Act began to accrue in or before the year in which such first increase under the Social Security Act became effective, be reduced by the dollar amount by which that portion of the annuity provided such spouse under subsection (a) of this section was increased, after any reduction under subsection (i) of this section, as a result of such increase or increases under the Social Security Act until the total dollar amount of such reduction or reductions equals 5 per centum of the annuity amount provided such spouse under subsection (a), as reduced under subsection (i), prior to such first increase. In no case shall the reduction by reason of this paragraph operate to reduce such portion to an amount less than \$10.

(e)(1) The amount of the annuity of the spouse of an individual determined under subsections (a) and (b) of this section, if (A) such individual will have (i) rendered service as an employee to an em-

<sup>7</sup> So in law. The comma probably should not appear.

<sup>8</sup> So in law. Probably should be "section".

ployer, or as an employee representative, during the calendar year 1974, or (ii) had a current connection with the railroad industry on December 31, 1974, or at the time his annuity under section 2(a)(1) of this Act began to accrue, or (iii) completed twenty-five years of service prior to January 1, 1975, and (B) such individual will have completed ten years of service prior to January 1, 1975, and such spouse will have been permanently insured under the Social Security Act on December 31, 1974, shall be increased by an amount equal to the smaller of (C) the primary insurance amount to which such spouse would have been entitled, upon attaining age 65, under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of her or his wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, or (D) the wife's or husband's insurance benefit to which such spouse would have been entitled, upon attaining age 65, under the provisions of the Social Security Act as in effect on December 31, 1974, if such individual's service as an employee after December 31, 1936, and prior to January 1, 1975, were included in the term "employment" as defined in that Act, if such individual had no wages or self-employment income under the Act other than wages derived from such service as an employee, and if such spouse were entitled to no other benefit under the Act: *Provided, however,* That the increase under the provisions of this subdivision shall not be less than 50 per centum of the portion of the annuity, if any, of such individual determined under the provisions of section 3(h)(1) of this Act prior to any increases under the provisions of section 3(h)(5) of this Act.

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

under the provisions of section 3(h)(2) of this Act prior to any increases under the provisions of section 3(h)(5) of this Act.

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

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

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

(f)(1) The annuity of a survivor of a deceased employee under section 2(d) of this Act shall be in an amount equal to the amount (before any deductions on account of work) of the widow's insurance benefit, widower's insurance benefit, mother's insurance benefits, parent's insurance benefit, or child's insurance benefit, whichever is applicable, to which he or she would have been entitled under the Social Security Act if such deceased employee's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act. In the case of a widow or widower who is entitled to an annuity under section 2(d) of this Act solely on the basis of railroad service which was performed prior to January 1, 1937, the amount provided under this section with respect to any month shall not be less than the first amount appearing in column IV of the table appearing in section 215(a) of the Social Security Act as in effect on December 31, 1974, after reduction in accordance with the provisions of section 202(k) and 202(q) of that Act in the same manner as would be applicable to a widow's insurance benefit or widower's insurance benefit payable under section 202(e) or 202(f) of that Act.

(2) For purposes of this subsection—

(i) a widow or widower or a parent who is entitled to an annuity based on age under section 2(d)(1) of this Act and who has not attained age 62 shall be deemed to be age 62: *Provided, however,* That the provisions of this paragraph shall not apply in the case of a widow or widower who was entitled to an annuity under section 2(d)(1) on the basis of disability for

the month before the month in which he or she attained age 60,

(ii) a widow or widower or a child who is entitled to an annuity under section 2(d)(1) of this Act on the basis of disability shall be deemed to be entitled to a widow's insurance benefit, a widower's insurance benefit, or a child's insurance benefit under the Social Security Act on the basis of disability, and

(iii) The<sup>9</sup> provisions of paragraphs (i) and (ii) of this subdivision shall not apply to the annuity of a widow, surviving divorced wife, or surviving divorced mother who is entitled to such annuity on the basis of the provisions of section 2(d)(1)(v) of this Act.

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

(g)(1) The amount of the annuity provided under subsection (f)(1) (other than the last sentence thereof) for a survivor of a deceased individual shall be increased by an amount equal to the appropriate one of the following percentages of that portion of the annuity computed under section 3(b) of this Act, before any reduction on account of age and without regard to any reduction under section 3(g)(2) of this Act, to which such deceased individual would have been entitled for the month such survivor's annuity under section 2(d) of this Act began to accrue if such individual were living (deeming for this purpose that if such individual died before becoming entitled to an annuity under section 2(a)(1) of this Act, such individual became entitled to an annuity under subdivision (i) of such section 2(a)(1) in the month in which such individual died):

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

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

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

(2) Whenever the total amount of the increases based on the deceased individual's portion of the annuity under section 3(b) of this Act as determined under subdivision (1) of this subsection for all survivors of a deceased employee is—

(i) less than an amount equal to 35 per centum of such portion of the deceased individual's annuity, the total increase shall, before any deductions under section 2(g) of this Act, be increased proportionately until the total increase is equal to 35

<sup>9</sup> So in law. Probably should be "the".

per centum of such portion of the deceased individual's annuity; or

(ii) more than an amount equal to 80 per centum of such portion of the deceased individual's annuity, the total increase shall, before any deductions under section 2(g) of this Act and before any reduction on account of age, be reduced proportionately until the total increase is equal to 80 per centum of such portion of the deceased individual's annuity.

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

(4) If a widow or widower of a deceased employee is entitled to an annuity under section 2(a)(1) of this Act and if either such widow or widower or such deceased employee will have completed 10 years of service prior to January 1, 1975, the amount of the annuity of such widow or widower under subdivisions (1) through (3) of this subsection shall be increased by an amount equal to the amount, if any, by which (A) the widow's or widower's insurance annuity to which such widow or widower would have been entitled, upon attaining age 65, under section 5(a) of the Railroad Retirement Act of 1937 as in effect on December 31, 1974 (without regard to the proviso of that section or the first proviso of section 3(e) of that Act) on the basis of the deceased employee's remuneration and service prior to January 1, 1975, increased by the same percentage, or percentages, as widow's and widower's insurance benefits under section 202 of the Social Security Act are increased during the period from January 1, 1975, to the later of the date on which such widow's or widower's annuity under section 2(a)(1) of this Act began to accrue or the date on which such widow's or widower's annuity under section 2(d)(1) of this Act began to accrue, exceeds (B) the total of the annuity amounts to which such widow or widower was entitled (after any reductions pursuant to subsection (i)(2) of this section but before any deductions on account of work) under the preceding provisions of this subsection, subsection (f) of this section, and the amount determined under subsection (h) of this section before the proviso, as of the later of the date on which such widow's or widower's annuity under section 2(a)(1) of this Act began to accrue or the date on which such widow's or widower's annuity under section 2(d)(1) of this Act began to accrue. If a widow or widower of a deceased employee is not entitled to an annuity under section 2(a)(1) of this Act or to an old-age insurance benefit or a disability insurance benefit under the Social Security Act, the amount of the annuity to which such widow or widower is entitled under this subsection shall not be less than an amount which would cause the total of the annuity amounts to which such widow or widower is entitled (before any deductions on account of work) under this subsection and subsection (f)(1) of this section to equal the total of the annuity amounts to which such widow or widower was entitled (or would have been entitled except for the provisions of sections 2(e) and 2(f) of this Act) as a spouse under subsections (a), (b), and (e) of this section (after any reduction on account of age) in the month preceding the employee's death. If a widow or

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

(5) This subsection shall not apply to the annuity of a widow, surviving divorced wife, or surviving divorced mother who is entitled to such annuity on the basis of the provisions of section 2(d)(1)(v) of this Act.

(6) That portion of the annuity of a survivor of an individual determined under subdivisions (1) and (2) of this subsection shall be increased whenever, and by the same percentage or percentages as, the annuity of the individual would have been increased pursuant to section 3(g)(1) of this Act if such individual were still living.

(7) The first and, if necessary, the following time or times after January 1, 1983, that monthly insurance benefits under section 202 of the Social Security Act are increased, that portion of the annuity of a survivor of a deceased individual as is determined under subdivisions (1) and (2) of this subsection, or under section 4(g) of this Act as in effect before amendment by section 1119(g) of Public Law 97-35, shall, if such survivor's annuity under section 2(d) of the Act began to accrue before the effective date of such first increase under the Social Security Act, be reduced by the dollar amount by which that portion of the annuity provided such survivor under subsection (f) of this section was increased, after any reduction under subsection (i) of this section, as a result of such increase or increases under the Social Security Act until the total dollar amount of such reduction or reductions equals 5 per centum of the annuity amount provided such survivor under subsection (f), as reduced under subsection (i), prior to such first increase. In no case shall the reduction by reason of this paragraph operate to reduce such portion to an amount less than \$10.

(8) That portion of the annuity of a survivor of a deceased individual as is determined under subdivisions (1) and (2) of this subsection shall, if the annuity of such survivor is not subject to reduction under subdivision (7) of this subsection, be reduced by an amount equal to the dollar amount by which the annuity of the deceased individual was reduced under section 3(g)(2) of this Act or would have been reduced under such section 3(g)(2) if such deceased individual had been living at the time such survivor annuity under section 2(d) of this Act began to accrue (deeming for this purpose, if such individual died before becoming entitled to an annuity under section 2(a)(1) of this Act, that such individual became entitled to an annuity under paragraph (i) of such section 2(a)(1) in the month in which such individual died). In a case where the survivor of a deceased individual is not entitled to a monthly insurance benefit under the Social Security Act, the reduction provided by the preceding sentence of this subdivision shall be equal to the dollar amount by which the annuity of the deceased individual would have been reduced under section 3(g)(2) of this Act if the annuity of such deceased individual had not been subject to reduction under section 3(m) of this Act. In no case shall the reduction by reason of this paragraph operate to reduce such portion to an amount less than \$10.

(9) That portion of the annuity of a survivor of a deceased individual as is determined under section 4(g) of this Act as in effect before amendment by section 1119(g) of Public Law 97-35 shall, if the annuity of such survivor is not subject to reduction under subdivision (7) of this subsection, be reduced by an amount equal to the dollar amount by which the annuity of the deceased individual was reduced under section 3(g)(2) of this Act or, if such survivor is not entitled to a monthly insurance benefit under the Social Security Act, would have been reduced under such section 3(g)(2) if the annuity of such deceased individual had not been subject to reduction under section 3(m) of this Act. In no case shall the reduction by reason of this paragraph operate to reduce such portion to an amount less than \$10.

(10)

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

(h)(1) The amount of the annuity of the widow or widower of a deceased employee determined under subsections (f) and (g) of this section, if such deceased employee will have completed ten years of service prior to January 1, 1975, and such widow or widower will have been permanently insured under the Social Security Act of<sup>10</sup> December 31, 1974, shall be increased by an amount equal to the amount, if any, by which (A) the widow’s or widower’s insurance annuity to which such widow or widower would have been entitled, upon attaining age 65, under section 5(a) of the Railroad Retirement Act of 1937 as in effect on December 31, 1974 (without regard to the proviso of that section or the first proviso of section 3(e) of that Act), on the basis of the deceased employee’s remuneration and service prior to January 1, 1975, increased by the same percentage, or percentages, as widow’s and widower’s insurance benefits under section 202 of the Social Security Act are increased during the period from January 1, 1975, to January 1, 1982 or, if earlier, to the later of the date on which such widow’s or widower’s annuity under section 2(d)(1) of this Act began to accrue or the date beginning the first month for which such widow or widower is entitled to an old age insurance benefit or disability insurance benefit under the Social Security Act, exceeds (B) the total of the annuity amounts to which such widow or widower was entitled (after any reductions pursuant to section 202(k) or 202(f) of the Social Security Act and subsection (i)(2) of this section but before any deductions on account of work) under subsections (f) and (g) of this section as to the later of the date on which such widow’s or widower’s annuity under section 2(d)(1) of this Act began to accrue or the date beginning the first month for which such widow or widower is entitled to an old-age insurance benefit or disability insurance benefit under the Social Security Act: *Provided, however,* That, if a widow or widower was entitled (or would have been entitled except for the provisions of section 2(e) or 2(f) of this Act) to an annuity amount under subdivision (1) or (2) of subsection (e) of this section in the month preceding the employee’s death, the amount of the annuity to which such widow or widower is entitled under this subsection shall not be less than an amount which would cause (A) the total of the annuity amounts to which such widow or widower is entitled (after any reductions pursuant to section 202(k) or 202(q) of the Social Security Act but before any deductions on account of work) under subsections (f) and (g) of this section and the preceding provisions of this subsection as of the date such widow’s or widower’s annuity under section 2(d)(1) of this

<sup>10</sup>So in law. Probably should be “on”.

Act began to accrue to equal (B) the total of the annuity amounts to which such widow or widower was entitled (or would have been entitled except for the provisions of section 2(e) or 2(f) of this Act) as a spouse under subsections (a), (b), and (e) of this section (after any reductions on account of age) in the month preceding the employee's death.

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

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

(2) If a spouse or divorced wife entitled to an annuity under section 2(c) of this Act or a survivor entitled to an annuity under section 2(d) of this Act for any month is also entitled to an annuity under section 2(a)(1) of this Act for such month, the annuity amount of such spouse or divorced wife determined under subsection (a) of this section or of such survivor under subsection (f) of this section shall, after any reduction pursuant to subdivision (1) of this subsection, be reduced by the amount of the annuity of such spouse or such survivor determined under section 3(a) of this Act.

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

[45 U.S.C. 231c]

#### ANNUITY BEGINNING AND ENDING DATES

SEC. 5.<sup>11</sup> (a) Subject to the limitations set forth below, an annuity under section 2 of this Act shall begin with the month in which eligibility therefor was otherwise acquired, but—

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

(ii) in the case of an applicant otherwise entitled to an annuity under paragraph (iv) or (v) of section 2(a)(1) or under section 2(d)(1)(i) on the basis of disability, not earlier than the later of (A) the first day of the sixth month following the onset date of disability for which such annuity is awarded or (B) the

<sup>11</sup>The amendment made by section 110(a)(2) of Public Law 110-458 to repeal subsection (d) was executed to reflect the probable intent of Congress. Such amendment did not include "of 1974" in the reference to the amended law.

first day of the twelfth month before the month in which the application therefor was filed;

(iii) in the case of an applicant otherwise entitled to an annuity under section 2(a)(1), 2(c), or 2(d) where paragraph (ii) does not apply, not earlier than the latest of (A) the first day of the sixth month before the month in which the application therefor was filed, (B) the first day of the month in which the application therefor was filed if the effect of beginning such annuity in an earlier month would result in a greater age reduction in the annuity, unless beginning the annuity in the earlier month would enable an annuity under section 2(c) which is not subject to an age reduction to be payable in such earlier month, (C) in the case of an applicant otherwise entitled to an annuity under section 2(a)(1) or 2(c), the date following the last day of compensated service of the applicant, or (D) in the case of an applicant otherwise entitled to an annuity under section 2(a)(1) or 2(c), the first day of the first month throughout which the applicant meets the age requirement for the annuity applied for;

(iv) in the case of an applicant otherwise entitled to an annuity under section 2(c)(4) or 2(d)(1)(v) of this Act, not earlier than the month an annuity would begin to accrue to such individual under such section if section 202(j)(1) and section 202(j)(4) of the Social Security Act were applicable to this Act.<sup>12</sup>

(v) an annuity amount provided by section 3(h)(1) or 3(h)(2) shall not be paid to an individual otherwise eligible therefor for any month before the month such individual would be entitled, upon filing an application therefor, to an old-age insurance benefit or a disability insurance benefit under title II of the Social Security Act and an annuity amount provided by section 3(h)(3) or section 3(h)(4) shall not be paid to an individual otherwise eligible therefor for any month before the month such individual would be entitled, upon filing an application therefore,<sup>13</sup> to an insurance benefit as a wife, husband, widow, or widower under title II of the Social Security Act;

(vi) an annuity amount provided by section 4(e)(1) or 4(e)(2) shall not be paid to a spouse otherwise eligible therefor for any month prior to the month such spouse would be entitled, upon filing an application therefor, to an old-age or disability insurance benefit under title II of the Social Security Act; and

(vii) an annuity amount provided by section 4(e)(3) shall not be paid to a spouse otherwise eligible therefor for any month prior to the month such spouse would be entitled, upon filing an application therefor, to a wife's or husband's insurance benefit under title II of the Social Security Act.

For the purpose of determining annuity amounts provided under sections 3(a), 4(a), and 4(f) of this Act, the provisions with respect to the beginning dates of annuities set forth in this subsection shall be deemed to govern the beginning dates of monthly benefits provided under the Social Security Act.

<sup>12</sup>So in law. Probably should be a semi-colon.

<sup>13</sup>So in law. Probably should be "therefor".

(b) An application for any payment under this Act shall be made and filed in such manner and form as the Board may prescribe. An application filed with the Board for an employee annuity, spouse annuity, or divorced spouse annuity on the basis of the employment record of an employee who will have completed less than ten years of service shall be deemed to be an application for any benefit to which such applicant may be entitled under this 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. An individual who was entitled to an annuity under paragraph (iv) or (v) of section 2(a)(1) of this Act for the month preceding the month in which he attained retirement age (as defined in section 216(l) of the Social Security Act), shall be deemed to have filed an application for an annuity under paragraph (i) of section 2(a)(1) on the date on which he attained retirement age (as defined in section 216(l) of the Social Security Act), and a widow or widower who was entitled to an annuity under section 2(d)(1) of this Act on the basis of disability for the month preceding the month in which she or he attained age 60, shall be deemed to have filed an application for an annuity under such section 2(d)(1) on the basis of age on the date on which she or he attained age 60.

(c)(1) An individual's entitlement to an annuity under paragraph (i), (ii), or (iii) of section 2(a)(1) or to a supplemental annuity under section 2(b) shall end with the month preceding the month in which he dies.

(2) An individual's entitlement to an annuity under paragraph (iv) or (v) of section 2(a)(1) shall end on (A) the last day of the second month following the month in which he ceases to be disabled as provided for purposes of such paragraphs, (B) the last day of the month preceding the month in which he attains retirement age (as defined in section 216(l) of the Social Security Act), or (C) the last day of the month preceding the month in which he dies, whichever first occurs.

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

(4) The entitlement of a widow or widower of a deceased employee to an annuity under paragraph (i) of section 2(d)(1) on the basis of age shall end on (A) the last day of the month preceding

the month in which she or he dies or (B) the last day of the month preceding the month in which she or he remarries after the employee's death, whichever first occurs.

(5) The entitlement of a widow or widower of a deceased employee to an annuity under paragraph (i) of section 2(d)(1) on the basis of disability shall end on (A) the last day of the month preceding the month in which she or he dies, (B) the last day of the month preceding the month in which she or he remarries after the employee's death, (C) the last day of the second month following the month in which she or he ceases to be disabled as provided for purposes of such paragraph, or (D) the last day of the month preceding the month in which she or he attains age 60, whichever first occurs.

(6) The entitlement of a widow of a deceased employee to an annuity under paragraph (ii) of section 2(d)(1) shall end on (A) the last day of the month preceding the month in which she dies, (B) the last day of the month preceding the month in which she remarries after the employee's death, or (C) the last day of the month preceding the month in which she no longer has in her care a child described in clause (B) of such paragraph (ii), whichever first occurs.

(7) The entitlement of a child of a deceased employee to an annuity under paragraph (iii) of section 2(d)(1) shall end on (A) the last day of the month preceding the month in which he or she dies, (B) the last day of the month preceding the month in which he or she marries, (C) the last day of the month preceding the month in which he or she attains age 18 and does not meet the qualifications set forth in clause (B) or (C) of such paragraph (iii), (D) the last day of the month preceding (i) the month during no part of which he or she is a full-time elementary or secondary school student or (ii) the month in which he or she attains age 19, and does not meet the qualifications set forth in clause (A) or (C) of such paragraph (iii), or (E) the last day of the second month following the month in which he or she ceases to be disabled for purposes of such paragraph (iii) and does not meet the qualifications set forth in clause (A) or (B) of such paragraph (iii), whichever first occurs. A child whose entitlement to an annuity under paragraph (iii) of section 2(d)(1) terminated by reason of clause (E) of this subdivision because he or she ceased to be disabled and who again becomes disabled as provided in clause (C) of such paragraph (iii), may become reentitled to an annuity on the basis of such disability upon his or her application for such reentitlement. A child whose entitlement to an annuity under paragraph (iii) of section 2(d)(1) terminated with the month preceding the month in which he or she attained age 18, or with a subsequent month, may again become entitled to such an annuity (providing no event to disqualify the child has occurred) beginning with the first month thereafter in which he or she meets the qualifications set forth in clause (B) or (C) of such paragraph (iii), if he or she has filed an application for such reentitlement.

(8) The entitlement of a parent of a deceased employee to an annuity under paragraph (iv) of section 2(d)(1) shall end on the last day of the month preceding the month in which (A) such parent

dies or (B) such parent remarries after the employee's death, whichever first occurs.

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

(A) where an annuity would accrue for such month under section 2(a)(1) to an individual who had a current connection with the railroad industry at the time of such individual's disappearance, and under section 2(c) to such individual's spouse, had such individual been shown to be alive during such month, such individual shall be deemed, for the purposes of benefits under section 2(d), to have died in the month in which such individual disappeared, and where an annuity would accrue for such month under section 2(a)(1) to an individual who did not have a current connection with the railroad industry at the time of such individual's disappearance, and under section 2(c) to such individual's spouse, had such individual been shown to be alive during such month, such individual shall be deemed, for purposes of benefits payable under section 2(c), to be alive during such month unless the death of such individual has been established or the annuity of the spouse of such individual is otherwise terminated under subsection (c)(3) of this section, and

(B) if such individual is later determined to have been alive during any of such months, recovery of any benefits paid on the basis of such individual's compensation under section 2(d) for the months in which such individual was not known to be alive, minus the total of the amounts that would have been paid as a spouse's annuity during such months (treating the application for a widow's or widower's annuity as an application for a spouse's annuity), shall be made in accordance with section 10.

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

【45 U.S.C. 231d】

#### LUMP-SUM PAYMENTS

SEC. 6. (a)(1) Annuities under section 2(a)(1) and supplemental annuities under section 2(b) which will have become due an individual but will not have been paid at the time of such individual's death shall be payable to the person, if any, who is determined by the Board to be such individual's widow or widower and to have been living with such individual at the time of such individual's death and who will not have died before receiving payment of such annuities. If there be no such widow or widower, such annuities shall be payable to any person or persons, equitably entitled there-

to, to the extent and in the proportions that he or they shall have paid the expenses of burial of such individual, and to the extent that he or they will not have been reimbursed under subsection (b) of this section for having paid such expenses. If there be no person or persons so entitled, or if the total of such annuities exceeds the amount payable under this subdivision to such person or persons, such total, or the remainder thereof, as the case may be, shall be paid to the children, grandchildren, parents, or brothers and sisters of the deceased individual in the same manner as if such annuities were a lump sum payable under subsection (c)(1) of this section.

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

(3) Annuities under section 2(c) which will have become due a spouse or divorced wife of an individual but which will not have been paid at the time of such spouse's or divorced wife's death shall be payable to the individual from whose employment such annuities derived and who will not have died before receiving payment of such annuities. If there be no such individual, such annuities shall be paid as provided in the last two sentences of subdivision (1) of the subsection as if such annuities were annuities due to an individual but unpaid at the time of such individual's death.

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

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

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

(7) In determining for purposes of this subsection and subsections (c) and (d) of this section whether an applicant is the widow, widower, child, or parent of an employee as claimed, the rules set forth in section 216(h) of the Social Security Act shall be applied. In determining for purposes of this subsection and subsections (c) and (d) of this section whether an applicant is the grandchild, brother, or sister of an employee as claimed, the Board shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such employee was domiciled at the time of his death, or if

such employee was not so domiciled in any State, by the courts of the District of Columbia. Applicants who according to such law would have the same status relative to taking personal property as a grandchild, brother, or sister shall be deemed such.

(b)(1) Upon the death of an individual who will have completed ten years of service prior to January 1, 1975, and will have had a current connection with the railroad industry at the time of his death, a lump-sum payment shall be made in accordance with the provisions of section 5(f)(1) of the Railroad Retirement Act of 1937 as in effect on December 31, 1974, in an amount, if any, which would have been payable under such section 5(f)(1) on the basis of (A) the individual's compensation after December 31, 1936, and prior to January 1, 1975, and (B) the individual's wages (as defined in section 209 of the Social Security Act) prior to January 1, 1975. Any lump sum payable under this subdivision shall be in an amount computed as if the individual had died on January 1, 1975. No lump sum shall be payable under this subdivision if the employee died leaving a surviving divorced wife who would on proper application therefore be entitled to receive an annuity under section 2(d) of this Act for the month in which the employee's death occurred.

(2) Upon the death of an individual who will not have completed ten years of service prior to January 1, 1975, but who (i) will have completed ten years of service (or five or more years of service, all of which accrues after December 31, 1995) at the time of his death (ii) will have had a current connection with the railroad industry at the time of his death, and (iii) will have died leaving no widow surviving divorced wife, widower, child, or parent who would on proper application therefore be entitled to receive an annuity under section 2(d) of this Act for the month in which such death occurred, a lump-sum death payment shall be made in accordance with the provisions of section 202(i) of the Social Security Act in an amount equal to the amount which would have been payable under such section 202(i) if such individual's service as an employee after December 31, 1936, were included in the term "employment" as defined in that Act. If a lump sum would be payable to a widow or widower under this subdivision except for the fact that a survivor will have been entitled to receive an annuity for the month in which the individual will have died, but within one year after the individual's death there will not have accrued to survivors of the individual, by reason of his death, annuities which, after all deductions pursuant to sections 2(g) and 2(h) of this Act, are equal to such lump sum, a payment equal to the amount by which such lump sum exceeds such annuities so accrued after such deductions shall then nevertheless be made under this subdivision to the widow or widower to whom a lump sum would have been payable under this subdivision except for the fact that a monthly benefit under section 2(d) of this Act was payable for the month in which the individual dies, if such widow or widower will not have died before receiving payment of such lump sum.

(c)(1) Whenever it shall appear, with respect to the death of an employee, that no benefits, or no further benefits (other than benefits payable to a widow, widower, or parent under either this Act or the Social Security Act upon attaining the age of eligibility

therefor at a future date) will be payable under this Act or under the Social Security Act, a lump sum in an amount computed under subdivision (2) of this subsection shall be paid to such person or persons as the deceased employee may have designated by a writing filed with the Board prior to his or her death, or if there be no designation, to the following person (or, if more than one, in equal shares to the persons) whose relationship to the deceased employee will have been determined by the Board and who will not have died before receiving payment of the lump sum provided for in this subdivision—

- (i) the widow or widower of the deceased employee who was living with such employee at the time of such employee's death; or
- (ii) if there be no such widow or widower, to any child or children of such employee; or
- (iii) if there be no such widow, widower, or child, to any grandchild or grandchildren of such employee; or
- (iv) if there be no such widow, widower, child, or grandchild, to any parent or parents of such employee; or
- (v) if there be no such widow, widower, child, grandchild, or parent, to any brother or sister of such employee; or
- (vi) if there be no such widow, widower, child, grandchild, parent, brother, or sister, to the estate of such employee:

*Provided, however,* That if the employee is survived by a widow, widower, or parent who may upon attaining the age of eligibility be entitled to benefits under this Act or under the Social Security Act, such lump sum shall not be paid unless such widow, widower, or parent makes and files with the Board an irrevocable election, in such form as the Board may prescribe, to have such lump sum be paid in lieu of all benefits to which such widow, widower, or parent might otherwise become entitled under this Act on the basis of the deceased employee's compensation and years of service or under the Social Security Act on the basis of the deceased employee's wages from (A) employment with an employer as defined in section 1(a) of this Act or (B) service as an employee representative as defined in section 1(c) of this Act. Any election made and filed by a widow, widower, or parent pursuant to this subdivision shall be legally effective according to its terms. After a lump sum with respect to the death of an employee is paid pursuant to an election filed with the Board under the provisions of this subsection, no further benefits shall be paid (other than to a survivor in the circumstances described in paragraph (3)) under this Act or the Social Security Act on the basis of such employee's compensation and service under this Act, except that nothing in this Act or the Social Security Act shall operate to deprive a widow, widower, or parent making such election of any insurance benefit under title II of the Social Security Act to which such individual would have been entitled if the employee had not rendered service as an employee under this Act.

(2) The lump sum provided under subdivision (1) of this subsection shall be in an amount equal to (A) the sum of 4 per centum of the deceased employee's compensation paid after December 31, 1936, and prior to January 1, 1947, plus 7 per centum of such em-

ployee's compensation paid after December 31, 1946, and before January 1, 1959, plus 7½ per centum of such employee's compensation paid after December 31, 1958, and before January 1, 1962, plus 8 per centum of such employee's compensation paid after December 31, 1961, and before January 1, 1966, plus an amount equal to the total of all employee taxes payable by such employee after December 31, 1965, and before January 1, 1975, under the provisions of section 3201 of the Railroad Retirement Tax Act (excluding, for this purpose, the amount of the employee tax attributable to that portion of the tax rate derived from section 3101(b) of the Internal Revenue Code of 1954), plus one-half of 1 per centum of the compensation on which such taxes were payable, deeming the compensation attributable to creditable military service after June 30, 1963, and before January 1, 1975, to be taxable compensation, and one-half of the taxes payable by an employee representative under section 3211 of the Railroad Retirement Tax Act to be employee taxes under section 3201 of such Act, minus (B) the sum of all benefits paid to such employee, and to others deriving from such employee, during his or her life, or to others by reason of his or her death, under this Act, the Railroad Retirement Act of 1937, or the Social Security Act (excluding, for this purpose, payments to providers of services under section 7(d) of this Act or section 21 of the Railroad Retirement Act of 1937, any supplemental annuity payments made to the employee under section 2(b) of this Act or section 3(j) of the Railroad Retirement Act of 1937, any amounts by which that portion of the annuities provided the employee under section 3(a) of this Act or his spouse or divorced wife under section 4(a) of this Act were increased by reason of the employee's wages and self-employment income derived from employment and self-employment under the Social Security Act, that portion of the annuities provided the employee under section 3(h) of this Act or his spouse under section 4(e) of this Act, and so much of the benefits paid to the employee and to others deriving from him or her under the Social Security Act during his or her lifetime as would have been payable under that Act if such employee had not rendered service as an employee as defined in section 1(b) of this Act). In computing compensation for purposes of this subdivision there shall be excluded compensation in excess of \$300 for any month before July 1, 1954; compensation in excess of \$350 for any month after June 30, 1954, and before June 1, 1959; compensation in excess of \$400 for any month after May 31, 1959, and before November 1, 1963; compensation in excess of \$450 for any month after October 31, 1963, and before October 1, 1965; and compensation in excess of (i) \$450 or (ii) an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954, which ever is greater, for any month after September 30, 1965.

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

(A) is a divorced wife; and

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

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

(d)(1) Every individual who will have completed ten years of service at the time of his retirement or death, but does not meet the qualifications for an annuity amount determined under the provisions of section 3(h)(1) or 3(h)(2) of this Act, shall, at the time his annuity under section 2(a)(1) begins to accrue, be entitled to a lump sum in the amount provided under subdivision (2) of this subsection. If an individual otherwise eligible for a lump sum under this section dies before he becomes entitled to an annuity under section 2(a)(1) of this Act, or before he receives payment of such lump sum, such lump sum shall be payable to the person, if any, who is determined by the Board to be such individual's widow or widower and who will not have died before receiving payment of such lump sum. If there be no such widow or widower, such lump sum shall be payable to the children, grandchildren, parents, brothers and sisters, or the estate of the deceased individual in the same manner as if such lump sum were a lump sum payable under subsection (c)(1) of this section.

(2) The lump sum provided under subdivision (1) of this subsection shall be in an amount equal to the sum of (A) 1.5 per centum of so much of such individual's combined earnings for any calendar year after 1950 and before 1954 as is in excess of \$3,600, plus (B) 2 per centum of so much of such individual's combined earnings for any calendar year after 1953 and before 1957 as is in excess of \$4,200 plus (C) 2.25 per centum of so much of such individual's combined earnings for any calendar year after 1956 and before 1959 as is in excess of \$4,200 plus (D) 2.5 per centum of so much of such individual's combined earnings for the calendar year 1959 as is in excess of \$4,800 plus (E) 3 per centum of so much of such individual's combined earnings for each of the calendar years 1960 and 1961 as is in excess of \$4,800, plus (F) 3.125 per centum of so much of such individual's combined earnings for the calendar year 1962 as is in excess of \$4,800, plus (G) 3.625 per centum of so much of such individual's combined earnings for any calendar year after 1962 and before 1966 as is in excess of \$5,400, plus (H) 4.2 per centum of so much of such individual's combined earnings for the calendar year 1966 as is in excess of \$6,600, plus (I) 4.4 per centum of so much of such individual's combined earnings for the calendar year 1967 as is in excess of \$6,600, plus (J) 3.8 per centum of so much of such individual's combined earnings for the calendar year 1968 as is in excess of \$7,800, plus (K) 4.2 per centum of so much of such individual's combined earnings for each of the calendar years 1969 and 1970 as is in excess of \$7,800, plus (L) 4.6 per centum of so much of such individual's combined earnings for the calendar year 1971 as is in excess of \$7,800, plus (M) 4.6 per centum of so much of such individual's combined earnings for the calendar year 1972 as is in excess of \$9,000, plus (N) 4.85 per centum of so much of such individual's combined earnings

for the calendar year 1973 as is in excess of \$10,800, plus (O) 4.95 per centum of so much of such individual's combined earnings for the calendar year 1974 as is in excess of \$13,200. For purposes of this subsection, the term "combined earnings" shall include "compensation" as defined in section 1(h) of the Railroad Retirement Act of 1937, "wages" as defined in section 209 of the Social Security Act, and "self-employment" income as defined in section 211(b) of the Social Security Act.

(e)(1) Every individual who will have completed ten years of service (or five or more years of service, all of which accrues after December 31, 1995) at the time of his retirement or death, who will have received compensation in the nature of separation or severance pay on or after January 1, 1985, and who would have been credited with additional months of service pursuant to section 3(i)(4) of this Act except for the fact that such individual was not in an employment relation to one or more employers nor an employee representative in such months, shall, at the time his annuity under section 2(a)(1) of this Act begins to accrue, be entitled to a lump sum in the amount provided under subdivision (2) of this subsection. If the full amount of a lump sum under this subsection cannot be determined at the time an individual's annuity under section 2(a)(1) begins to accrue, such lump sum shall be payable at such time thereafter as such amount can be determined. If an individual otherwise eligible for a lump sum under this section dies before he becomes entitled to an annuity under section 2(a)(1), or before he receives payment of such lump sum, such lump sum shall be payable to the person, if any, who is determined by the Board to be such individual's widow or widower and who will not have died before receiving payment of such lump sum. If there be no such widow or widower, such lump sum shall be payable to the children, grandchildren, parents, brothers and sisters, or the estate of the deceased individual in the same manner as if such lump sum were a lump sum payable under subsection (c)(1) of this section.

(2) The lump sum provided under subdivision (1)<sup>14</sup> of this subsection shall be in an amount equal to the product of (A) the compensation attributable to the additional months of service which would have been credited to the individual due to the receipt of payments in the nature of separation or severance pay pursuant to section 3(i)(4) of this Act if such individual had remained in an employment relation to one or more employers or had continued to be an employee representative and (B) the rate of tax, or rates of tax, imposed on the compensation described in clause (A) of this subdivision by section 3201(b) of the Internal Revenue Code of 1986.

【45 U.S.C. 231e】

#### POWERS AND DUTIES OF THE BOARD

SEC. 7. (a) This Act shall be administered by the Railroad Retirement Board established by the Railroad Retirement Act of 1937 as an independent agency in the executive branch of the Government and composed of three members appointed by the President, by and with the advice and consent of the Senate. Each member

<sup>14</sup>So in law. Probably should be subdivision "(1)".

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

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

(2) In the case of—

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

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

(C) any survivor of such an individual if such survivor is entitled, or could upon application become entitled, to an annuity under section 2 of this Act, and

(D) any other person entitled to benefits under title II of the Social Security Act on the basis of the wages and self-employment income of such an individual (except a survivor of such an individual where such individual did not have a current connection with the railroad industry at the time of his death),

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

(3) If the Board finds that an applicant is entitled to an annuity or death benefit under the provisions of this Act then the Board shall make an award fixing the amount of the annuity or benefit,

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

(4)<sup>15</sup>

(A)<sup>16</sup> The Secretary of the Treasury shall serve as the disbursing agent for benefits payable under this Act, under such rules and regulations as the Secretary may in the Secretary's discretion prescribe.

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

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

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

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

(5) The Board shall establish and promulgate rules and regulations to provide for the adjustment of all controversial matters arising in the administration of this Act. All rules, regulations, or decisions of the Board shall require the approval of at least two members, and they shall be entered upon the records of the Board, which shall be a public record.

(6) The Board shall gather, keep, compile, and publish in convenient form such records and data as may be necessary to assure proper administration of this Act, including subdivision (2) of this subsection. The Board shall have power to require all employers and employees and any officer, board, commission, or other agency of the United States to furnish such information and records as shall be necessary for the administration of this Act, including subdivision (2) of this subsection. The several district courts of the United States and the District Court of the United States for the District of Columbia shall have jurisdiction upon suit by the Board

<sup>15</sup>So in law. See amendment made by section 2 of Public Law 109–305.

<sup>16</sup>So in law.

to compel obedience to any order of the Board issued pursuant to this section. The orders, writs, and processes of the District Court of the United States for the District of Columbia in such suits may run and be served anywhere in the United States. Witnesses summoned before the Board shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. The Board shall make an annual report to the President of the United States to be submitted to Congress.

(7) Notwithstanding any other provision of law, the Secretary of Health, Education, and Welfare shall furnish the Board certified reports of wages, self-employment income, and periods of service and of other records in his possession, or which he may secure, pertinent to the administration of this Act, the Railroad Unemployment Insurance Act,<sup>16</sup> the Milwaukee Railroad Restructuring Act, and the Rock Island Railroad Transition and Employee Assistance Act. The Board shall furnish the Secretary of Health, Education, and Welfare certified reports of records of compensation and periods of service reported to it pursuant to section 9 of this Act, of determinations under section 2 of this Act, and of other records in its possession, or which it may secure, pertinent to subsection (c) of this section or to the administration of the Social Security Act as affected by section 18 of this Act. Such certified reports shall be conclusive in adjudication as to the matters covered therein: *Provided, however,* That if the Board or the Secretary of Health, Education, and Welfare receives evidence inconsistent with a certified report and the application involved is still in course of adjudication or otherwise open for such evidence such recertification of such report shall be made as, in the judgment of the Board or the Secretary of Health, Education, and Welfare, whichever made the original certification, the evidence warrants. Such recertification and any subsequent recertification shall be treated in the same manner and be subject to the same conditions as an original certification.

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

of adjudication or is otherwise open for such evidence, the Board shall refer such evidence to the department or agency which made the original certification and such department or agency shall make such recertification as in its judgment the evidence warrants. Such recertification, and any subsequent recertification, shall be conclusive, made in the same manner, and subject to the same conditions as an original certification.

(9) The Board shall maintain such offices, provide such equipment, furnishings, supplies, services, and facilities, and employ such individual and provide for their compensation and expenses as may be necessary for the proper discharge of its functions. All positions to which such individuals are appointed, except one administrative assistant to each member of the Board, shall be in and under the competitive civil service and shall not be removed, or excepted therefrom. In the employment of such individuals under the civil service laws and rules the Board shall give preference over all others to individuals who have had experience in railroad service, if, in the judgment of the Board, they possess the qualifications necessary for the proper discharge of the duties of the positions to which they are to be appointed. For purposes of its administration of this Act or the Railroad Unemployment Insurance Act, or both, the Board may place, without regard to the numerical limitations contained in section 505 of the Classification Act of 1949, as amended, four positions in grade GS-16 of the General Schedule established by that Act, four positions in grade GS-17 of such schedule, and one position in grade GS-18 of such schedule.

(c)(1) Benefit payments determined by the Board to be payable under this Act shall be made 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, except that payments of annuity amounts made under sections 3(h), 4(e), and 4(h) of this Act and under sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93-445 shall be made by the disbursing agent under subsection (b)(4) from money transferred to it from the Dual Benefits Payments Account. In any fiscal year, the total amounts paid under such sections shall not exceed the total sums appropriated to the Dual Benefits Payments Account for that fiscal year. The Board shall prescribe regulations for allocation of annuity amounts which would without regard to such regulations be payable under sections 3(h), 4(e), and 4(h) of this Act and sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93-445 so that the sums appropriated to the Dual Benefits Payments Account for a fiscal year so far as practicable, are expended in equal monthly installments throughout such fiscal year, and are distributed so that recipients are paid annuity amounts which bear the same ratio to the annuity amounts such recipients would have received but for such regulations as the ratio of the total sums appropriated to pay such annuity amounts bear to the total sums necessary to pay such annuity amounts without regard to such regulations. Notwithstanding any other provision of law, the entitlement of an individual to an annuity amount under section 3(h), 4(e), or 4(h) of this Act or section 204(a)(3), 204(a)(4), 206(3), or 207(3) of Public Law 93-445 for any month in which the amount payable to such indi-

vidual is allocated under the regulations prescribed by the Board under this subsection shall not exceed the amount so allocated for that month to such individual.

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

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

(4) After the end of each month beginning with the month of October 1983, the Board shall determine the net amount, if any, which if added to or subtracted from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund would, with respect to such month, place those Trust Funds, taken as a whole, in the same position in which they would have been if (A) service as an employee after December 31, 1936, had been included

in the term “employment” as defined in the Social Security Act and in the Federal Insurance Contributions Act, and (B) this Act had not been enacted. If for any month the net amount so determined would be subtracted from those Trust Funds, the Board shall, within ten days after the end of such month, report such amount to the Secretary of the Treasury for transfer from the general fund to the Railroad Retirement Account. Any amount so reported shall further include interest (at an annual rate equal to the rate of interest borne by a special obligation issued to the Railroad Retirement Account in the month in which the transfer is made to the Account) payable from the close of the month for which the transfer is made until the date of transfer. The Secretary of the Treasury is authorized and directed to transfer to the Railroad Retirement Account from the general fund such amounts as, from time to time, may be determined by the Board pursuant to the provisions of this subdivision and reported by the Board for transfer. For such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities issued after the date of the enactment of this Act under section 3102 of title 31 of the United States Code, and the purpose for which securities may be issued under section 3102 of title 31 of the United States Code are extended to include such purpose. Each such transfer shall be made by the Secretary of the Treasury within five days after a report of the amount to be transferred is received. Not later than December 31 following the close of each fiscal year beginning with the fiscal year ending September 30, 1984, the Board shall certify to the Secretary of the Treasury the total of all amounts transferred pursuant to the provisions of this subdivision for months in such fiscal year. Within ten days after a transfer, or transfers, pursuant to subdivision (2) for a particular fiscal year, the Board shall request the Secretary of the Treasury to retransfer from the Railroad Retirement Account to the general fund an amount equal to (A) the total of all amounts, exclusive of interest, transferred to such Account pursuant to the provisions of this subdivision for months in such fiscal year, plus (B) interest (at the rate determined in subdivision (3) for such fiscal year) payable with respect to each amount transferred for a month during such fiscal year from the close of the month for which the transfer of the amount was made until the date of retransfer of such amount. The Secretary of the Treasury is authorized and directed to retransfer from the Railroad Retirement Account to the general fund such amounts as, from time to time, may be determined by the Board pursuant to the provisions of the preceding sentence of this subdivision and reported by the Board for retransfer.

(d)(1) The Board shall, for purposes of this subsection, have the same authority to determine the rights of individuals described in subdivision (2) to have payments made on their behalf for hospital insurance benefits consisting of inpatient hospital services, posthospital extended care services, home health services, hospice care, and outpatient hospital diagnostic services (all hereinafter referred to as “services”) under section 226, and parts A and C of title XVIII, of the Social Security Act as the Secretary of Health, Education, and Welfare has under such section and such parts with respect to individuals to whom such sections and such parts apply.

For purposes of section 8, a determination with respect to the rights of an individual under this subsection shall, except in the case of a provider of services, be considered to be a decision with respect to an annuity.

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

(i) has attained age 65 and (A) is entitled to an annuity under this Act or (B) would be entitled to such an annuity had he ceased compensated service and, in the case of a spouse or divorced wife, had such spouse's husband or wife ceased compensated service or (C) bears a relationship to an employee which, by reason of section 3(f)(2) of this Act, has been, or would be, taken into account in calculating the amount of the annuity of such employee; or

(ii) has not attained age 65 and (A) has been entitled to an annuity under section 2 of this Act, or under the Railroad Retirement Act of 1937 and section 2 of this Act, or could have been includable in the computation of an annuity under section 3(f)(2) of this Act, for not less than 24 months and (B) could have been entitled for 24 calendar months, and could currently be entitled, to monthly insurance benefits under section 223 of the Social Security Act or under section 202 of that Act on the basis of disability if service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act and if an application for disability benefits had been filed,

shall be certified to the Secretary of Health, Education, and Welfare as a qualified railroad retirement beneficiary under section 226 of the Social Security Act.

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

(4) The rights of individuals described in subdivision (2) of this subsection to have payment made on their behalf for the services referred to in subdivision (1) but provided in Canada shall be the same as those of individuals to whom section 226 and part A of title XVIII of the Social Security Act apply, and this subdivision shall be administered by the Board as if the provisions of section 226 and part A of title XVIII of the Social Security Act were applicable, as if references to the Secretary of Health, Education, and Welfare were to the Board, as if references to the Federal Hospital Insurance Trust Fund were to the Railroad Retirement Account, as if references to the United States or a State included Canada or a

subdivision thereof, and as if the provisions of sections 1862(a)(4), 1863, 1864, 1868, 1869, 1874(b), and 1875 were not included in such title. The payments for services herein provided for in Canada shall be made from the Railroad Retirement Account (in accordance with, and subject to, the conditions applicable under section 7(b), in making payment of other benefits) to the hospital, extended care facility, or home health agency providing such services in Canada to individuals to whom subdivision (2) of this subsection applies, but only to the extent that the amount of payments for services otherwise hereunder provided for an individual exceeds the amount payable for like services provided pursuant to the law in effect in the place in Canada where such services are furnished. For the purposes of section 10 of this Act, any overpayment under this subdivision shall be treated as if it were an overpayment of an annuity.

(5) The Board and the Secretary of Health, Education, and Welfare shall furnish each other with such information, records, and documents as may be considered necessary to the administration of this subsection or section 226, and part A of title XVIII, of the Social Security Act.

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

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

[45 U.S.C. 231f]

#### COURT JURISDICTION

SEC. 8. Decisions of the Board determining the rights or liabilities of any person under this Act shall be subject to judicial review in the same manner, subject to the same limitations, and all provisions of law shall apply in the same manner as though the decision were a determination of corresponding rights or liabilities under the Railroad Unemployment Insurance Act except that the time within which proceedings for the review of a decision with respect to an annuity, supplemental annuity, or lump-sum benefit may be

commenced shall be one year after the decision will have been entered upon the records of the Board and communicated to the claimant.

[45 U.S.C. 231g]

#### RETURNS OF COMPENSATION

SEC. 9. Employers shall file with the Board, in such manner and form and at such times as the Board by rules and regulations may prescribe, returns of compensation of employees, and, if the Board shall so require, shall furnish employees with statements of their compensation as reported to the Board. The Board's record of the compensation so returned shall be conclusive as to the amount of compensation paid to an employee during each period covered by the return, and the fact that the Board's records show that no return was made of the compensation claimed to have been paid to an employee during a particular period shall be taken as conclusive that no compensation was paid to such employee during that period, unless the error in the amount of compensation returned in the one case, or the failure to make return of the compensation in the other case, is called to the attention of the Board within four years after the day on which return of the compensation was required to be made.

[45 U.S.C. 231h]

#### ERRONEOUS PAYMENTS

SEC. 10. (a) If the Board finds that at any time more than the correct amount of annuities or other benefits has been paid to any individual under this Act, or payment has been made to an individual not entitled thereto, recovery by adjustment in subsequent payments to which such individual, or any other individual on the basis of the same compensation, wages, or self-employment income, is entitled under this Act, or the Railroad Unemployment Insurance Act may, except as otherwise provided in this section, be made under regulations prescribed by the Board. If the individual to whom more than the correct amount has been paid dies before recovery is completed, recovery may be made by setoff or adjustments, under regulations prescribed by the Board, in subsequent payments due, under this Act, or the Railroad Unemployment Insurance Act, to the estate of such individual or to any person on the basis of the compensation, wages, or self-employment income of such individual. The Board shall have the authority to recover from any payment which would be made to an individual by the Board under section 7(b)(2) of this Act the amount of annuity payments made to such individual which are erroneous because of such individual's entitlement to monthly insurance benefits under title II of the Social Security Act.

(b) Adjustments under this section may be made either by deductions from subsequent payments or, with respect to payments which are to be made during a lifetime or lifetimes, by subtracting the total amount of annuities or other benefits paid in excess of the proper amount from the actuarial value, as determined by the Board, of such payments to be made during a lifetime or lifetimes and recertifying such payments on the basis of the reduced actu-

arial value. In the latter case recovery shall be deemed to have been completed upon such recertification.

(c) There shall be no recovery in any case in which more than the correct amount of annuities or other benefits has been paid under this Act to an individual or payment has been made to an individual not entitled thereto who, in the judgment of the Board, is without fault when, in the judgment of the Board, recovery would be contrary to the purpose of the Act or would be against equity or good conscience.

(d) No certifying or disbursing officer shall be held liable for any amount certified or paid by him in good faith to any person where the recovery of such amount is waived under subsection (c) of this section or has been begun but cannot be completed under subsection (a) of this section.

【45 U.S.C. 231i】

#### WAIVER OF ANNUITIES

SEC. 11. Any person awarded an annuity under this Act may decline to accept all or any part of such annuity by a waiver signed and filed with the Board. Such a waiver may be revoked in writing at any time, but no payment of the annuity waived shall be made covering the period during which such waiver was in effect. Such a waiver will have no effect on entitlement to, or the amount of, any other annuity or benefit.

【45 U.S.C. 231j】

#### INCOMPETENCE

SEC. 12. (a) Every individual receiving or claiming benefits, or to whom any right or privilege is extended, under this Act or any other Act of Congress now or hereafter administered, in whole or in part, by the Board shall be conclusively presumed to have been competent until the date on which the Board receives written notice, in a form and manner acceptable to the Board, that he is an incompetent, or a minor, for whom a guardian or other person legally vested with the care of his person or estate has been appointed: *Provided, however,* That, regardless of the legal competency or incompetency of an individual entitled to a benefit administered by the Board, the Board may, if it finds the interest of such individual to be served thereby, recognize actions by, and conduct transactions with, and make payments to, such individual, or recognize actions by, and conduct transactions with, and make payments to, a relative or some other person for such individual's use and benefit.

(b) Every guardian or other person legally vested with the care of the person or estate of an incompetent or minor who is receiving or claiming benefits, or to whom any right or privilege is extended, under this Act or any other Act of Congress now or hereafter administered, in whole or in part, by the Board shall have power everywhere, in the manner and to the extent prescribed by the Board, but subject to the provisions of the preceding subsection, to take any action necessary or appropriate to perfect any right or exercise any privilege of the incompetent or minor and to conduct all transactions on his behalf under this or any other Act of Congress now

or hereafter administered, in whole or in part, by the Board. Any payment made pursuant to the provisions of this section shall be a complete settlement and satisfaction of any claim, right, or interest in and to such payment.

【45 U.S.C. 231k】

#### PENALTIES

SEC. 13. (a) Any person who shall knowingly fail or refuse to make any report or furnish any information required by the Board in the administration of this Act, including the provisions of section 7(b)(2) thereof, or who shall knowingly make or cause to be made any false or fraudulent statement or report when a statement or report is required to be made for the purpose of this Act, or who shall knowingly make or aid in making any false or fraudulent statement or claim for the purpose of causing an award or payment to be made, shall be punished by a fine of not more than \$10,000 or by imprisonment not exceeding one year, or both.

(b) All fines and penalties imposed by a court pursuant to this Act shall be paid to the court and be remitted from time to time by order of the judge to the Treasury of the United States to be credited to the Railroad Retirement Account.

【45 U.S.C. 231j】

#### EXEMPTION FROM LEGAL PROCESS

SEC. 14. (a) Except as provided in subsection (b) of this section and the Internal Revenue Code of 1954, notwithstanding any other law of the United States, or of any State, territory, or the District of Columbia, no annuity or supplemental annuity shall be assignable or be subject to any tax or to garnishment, attachment, or other legal process under any circumstances whatsoever, nor shall the payment thereof be anticipated.

(b)(1) This section shall not operate to exclude the amount of any supplemental annuity paid to an individual under section 2(b) of this Act from income taxable pursuant to the Federal income tax provisions of the Internal Revenue Code of 1954.

(2) This section shall not operate to prohibit the characterization or treatment of that portion of an annuity under this Act which is not computed under section 3(a), 4(a), or 4(f) of this Act, or any portion of a supplemental annuity under this Act, as community property for the purposes of, or property subject to, distribution in accordance with a court decree of divorce, annulment, or legal separation or the terms of any court-approved property settlement incident to any such court decree. The Board shall make payments of such portions in accordance with any such characterization or treatment or any such decree or settlement.

(3)(A)<sup>17</sup> Payments made pursuant to paragraph (2) of this subsection shall not require that the employee be entitled to an annuity under section 2(a)(1) of this Act: Provided, however, That where an employee is not entitled to such an annuity, payments made pursuant to paragraph (2) may not begin be-

<sup>17</sup>Margin for paragraph (3) so in law.

fore the month in which the following three conditions are satisfied:

(i) The employee has completed ten years of service in the railroad industry or, five years of service all of which accrues after December 31, 1995.

(ii) The spouse or former spouse attains age 62.

(iii) The employee attains age 62 (or if deceased, would have attained age 62).

(B) Payments made pursuant to paragraph (2) of this subsection shall terminate upon the death of the spouse or former spouse, unless the court document provides for termination at an earlier date. Notwithstanding the language in a court order, that portion of payments made pursuant to paragraph (2) which represents payments computed pursuant to section 3(f)(2) of this Act shall not be paid after the death of the employee.

(C) If the employee is not entitled to an annuity under section 2(a)(1) of this Act, payments made pursuant to paragraph (2) of this subsection shall be computed as though the employee were entitled to an annuity.

【45 U.S.C. 231m】

#### RAILROAD RETIREMENT ACCOUNT

SEC. 15. (a) The Railroad Retirement Account established by section 15(a) of the Railroad Retirement Act of 1937 shall continue to be maintained in the Treasury of the United States. There is hereby appropriated to such Account for each fiscal year, beginning with the fiscal year ending June 30, 1975, to provide for the payment of benefits to be made from such Account in accordance with the provisions of section 7(c)(1) of this Act, and to provide for expenses necessary for the Board in the administration of all provisions of this Act, an amount equal to amounts covered into the Treasury (minus refunds) during each fiscal year under the Railroad Retirement Tax Act.

(b) In addition to the amount appropriated in subsection (a) of this section, there is hereby authorized to be appropriated to the Railroad Retirement Account for each fiscal year, beginning with the fiscal year ending June 30, 1975, such amount as the Board determines to be necessary to meet (A) the additional costs, resulting from the crediting of military service under this Act, of benefits payable under section 2 of this Act, but only to the extent that such Account is not reimbursed for such costs under section 7(c)(2), (B) the additional administrative expenses resulting from the crediting of military service under this Act, and (C) any loss in interest to such Account resulting from the payment of additional benefits based on military service credited under this Act: *Provided, however,* That, in determining the amount to be appropriated to the Railroad Retirement Account for any fiscal year pursuant to the provisions of this subsection, there shall not be considered any costs resulting from the crediting of military service under this Act for which appropriations to such Account have already been made pursuant to section 4(l) of the Railroad Retirement Act of 1937. Any determination as to loss in interest to the Railroad Retirement

Account pursuant to clause (C) of the first sentence of this subsection shall take into account interest from the date each annuity based, in part, on military service began to accrue or was increased to the date or dates on which the amount appropriated is credited to the Account. The cost resulting from the payment of additional benefits under this Act based on military service determined pursuant to the preceding provisions of this subsection shall be adjusted by applying thereto the ratio of the total net level cost of all benefits under this Act to the portion of such net level cost remaining after the exclusion of administrative expenses and interest charges on the unfunded accrued liability as determined under the last completed actuarial valuation pursuant to the provisions of subsection (g) of this section. At the close of the fiscal year ending June 30, 1975, and each fiscal year thereafter, the Board shall, as promptly as practicable, determine the amount to be appropriated to the Account pursuant to the provisions of this subsection, and shall certify such amount to the Secretary of the Treasury for transfer from the general fund in the Treasury to the Railroad Retirement Account. When authorized by an appropriation Act, the Secretary of the Treasury shall transfer to the Railroad Retirement Account from the general fund in the Treasury such amounts as, from time to time, may be determined by the Board pursuant to the provisions of this subsection and certified by the Board for transfer to such Account. In any determination made pursuant to section 7(c)(2) of this Act, no further charges shall be made against the Trust Funds established by title II of the Social Security Act for military service rendered before January 1, 1957, and with respect to which appropriations authorized by clause (2) of the first sentence of section 4(l) of the Railroad Retirement Act of 1937 shall have been credited to the Railroad Retirement Account, but the additional benefit payments incurred by such Trust Funds by reason of such military service shall be taken in account in making any such determination.

[(c)]<sup>18</sup> The Railroad Retirement Supplemental Account established by section 15(b) of the Railroad Retirement Act of 1937 shall continue to be maintained in the Treasury of the United States. There is hereby appropriated to such account for each fiscal year, beginning with the fiscal year ending June 30, 1975, out of any moneys in the Treasury not otherwise appropriated, to provide for the payment of supplemental annuities under section 2(b) of this Act, and to provide for the expenses necessary for the Board in the administration of the payment of such supplemental annuities, an amount equal to such portions of the amounts covered into the Treasury (minus refunds) during each fiscal year under sections 3211(b), 3221(c), and 3221(d) of the Railroad Retirement Tax Act

<sup>18</sup> Subsection (c) was repealed by section 106(b) of the Railroad Retirement and Survivors' Improvement Act of 2001 (P.L. 107-90; 115 Stat. 887). Subsection 106(e) of such Act (115 Stat. 887-888), provides as follows:

(e) EFFECTIVE DATE.—

(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).

as are not appropriated to the Railroad Retirement Account pursuant to the provisions of subsection (a) of this section. Whenever the Board finds at any time that the balance in the Railroad Retirement Supplemental Account will be insufficient to pay the supplemental annuities which it estimates are due, or will become due, under section 2(b) of this Act, it shall request the Secretary of the Treasury to transfer from the Railroad Retirement Account to the credit of the Railroad Retirement Supplemental Account such moneys as the Board estimates would be necessary for the payment of such supplemental annuities, and the Secretary shall make such transfer. Whenever the Board finds that the balance in the Railroad Retirement Supplemental Account, without regard to the amounts transferred pursuant to the next preceding sentence, is sufficient to pay such supplemental annuities, it shall request the Secretary of the Treasury to retransfer from the Railroad Retirement Supplemental Account to the credit of the Railroad Retirement Account such moneys as in its judgment are not needed for the payment of such supplemental annuities, plus interest at an annual rate equal to the average rate of interest borne by all special obligations held by the Railroad Retirement Account on the last day of the preceding fiscal year, rounded to the nearest multiple of one-eighth of 1 per centum, and the Secretary shall make such retransfer.】

(d)(1) There is hereby created an account in the Treasury of the United States to be known as the Dual Benefits Payments Account. There is hereby authorized to be appropriated to such account for each fiscal year beginning with the fiscal year ending September 30, 1982, such sums as are necessary to pay during such fiscal year the amounts of annuities estimated by the Board to be paid under sections 3(h), 4(e), and 4(h) of this Act and under sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93-445. Not more than 30 days prior to each fiscal year beginning with the fiscal year ending September 30, 1982, the Board may request the Secretary of the Treasury to transfer from the Railroad Retirement Account to the credit of the Dual Benefits Payments Account any amount not exceeding the amount that the Board estimates will be necessary to pay on the first day of the next succeeding month the annuity amounts under sections 3(h), 4(e), and 4(h) of this Act and under sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93-445, taking into account any reduction in such annuity amounts as determined under section 7(c)(1) of this Act, and the Secretary of the Treasury shall make such transfer, but at no time shall the total amount of money outstanding to the Dual Benefits Payments Account from the Railroad Retirement Account exceed the amount necessary to pay the annuity amounts under sections 3(h), 4(e), and 4(h) of this Act and sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93-445 for one month. Not more than 10 days after the funds appropriated to the Dual Benefits Payments Account for each such fiscal year are received into such Account, the Board shall request the Secretary of the Treasury to retransfer from the Dual Benefits Payments Account to the credit of the Railroad Retirement Account an amount equal to the amount transferred to the Dual Benefits Payments Account prior to or during such fiscal year under the preceding sentence, to-

gether with such additional amount determined by the Board to be equal to the loss of interest to the Railroad Retirement Account resulting from such transfer, and the Secretary of the Treasury shall make such retransfer. The Secretary of the Treasury shall from time to time transfer from the Dual Benefits Payments Account to the disbursing agent under section 7(b)(4) amounts necessary to pay benefits payable from that Account.

(2) The Secretary of the Treasury—

(i) shall transfer from the general fund as a loan to the Board on January 1, 1984, one-third of the special amount described in subdivision (3) of this subsection;

(ii) shall transfer from the general fund as a loan to the Board on January 1, 1985, one-third of the special amount described in subdivision (3) of this subsection, plus an amount equal to the interest that one-third would have earned had it been in the Railroad Retirement Account since January 1, 1984; and

(iii) shall transfer from the general fund as a loan to the Board on January 1, 1986, the final one-third of the special amount described in subdivision (3) of this subsection, plus an amount equal to the interest that one-third would have earned had it been in the Railroad Retirement Account since January 1, 1984.

(3) The special amount referred to in subdivision (2) of this subsection is the amount which, as of January 1, 1984, would place the Railroad Retirement Account in the same position it would have been on that date if not annuity amounts had been paid during the period beginning January 1, 1975 and ending September 30, 1981, under sections 3(h), 4(e), and 4(h) of this Act and under sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 983-445, and no sums had been appropriated as authorized in section 15(d) of this Act.

(4) For the purposes of subdivision (2) of this subsection, the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities issued after the date of the enactment of the Railroad Retirement Solvency Act of 1983 under section 3102 of title 31 of the United States Code and the purposes for which securities may be so issued are extended to include such purposes.

(5) The amounts transferred to the Board as loans under subdivision (2) of this subsection shall be deposited in the Railroad Retirement Account.

(6) The amounts transferred as loans under subdivision (2) of this subsection shall be repaid to the general fund to the extent sums are appropriated for that purpose, and there are hereby authorized to be appropriated, in addition to any other sums authorized to be appropriated for the purposes of this Act and from any sums in the Treasury not otherwise appropriated, such sums as may be necessary to make such repayments.

(e) At the request and direction of the Board, it shall be the duty of the Secretary of the Treasury (hereinafter referred to as the "Secretary") to invest such portion of the amounts credited to the Railroad Retirement Account and the Dual Benefits Payments Ac-

count as are not transferred to the National Railroad Retirement Investment Trust as the Board may determine in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (A) on original issue at the issue price; or (B) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31, are hereby extended to authorize the issuance at par of special obligations exclusively to the accounts. Such obligations issued for purchase by the accounts shall have maturities fixed with due regard for the needs of the accounts, and shall bear interest at a rate equal to the average market yield, computed as of the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing notes of the United States then forming a part of the public debt that are not due or callable until after the expiration of three years from the end of such calendar month, except that where such rate is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such rate: *Provided*, That the rate of interest on such obligations shall in no case be less than 3 per centum per annum. At the request of the Board the Secretary shall purchase other interest-bearing obligations of the United States, or obligations guaranteed as to both principal and interest by the United States, or other obligations which are lawful investments for trust funds of the United States, on original issue or at the market price: *Provided*, That the interest yield of such obligations shall not be less than the interest rate determined in accordance with the preceding sentence. At the request of the Board, the Secretary shall sell at the market price such obligations in the accounts (other than special obligations issued exclusively to the accounts) as the Board designates. The Board shall from time to time request the Secretary to redeem such special obligations issued exclusively to the accounts as the Board designates and upon such request the Secretary shall redeem such obligations at par plus accrued interest. All requests of the Board to the Secretary, provided for in this subsection, shall be mandatory upon the Secretary. It shall be the duty of the Board to determine at all times what proportion of the accounts shall be invested in other than special obligations issued to the accounts and further to determine which of such obligations available to the accounts consistent with the requirements of this subsection will provide the greatest rate of return on the funds invested.

(f) The Board is hereby authorized and directed to select two actuaries, one from recommendations made by representatives of employees and the other from recommendations made by representatives of employers as defined in paragraph (i) of section 1(a)(1) of this Act. These actuaries, along with a third who shall be designated by the Secretary of the Treasury, shall be known as the Actuarial Advisory Committee with respect to the Railroad Retirement Account. The actuaries so selected shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of pension plans: *Provided, however*, That these requirements shall not apply to any actuary who served as a member of

the Committee prior to January 1, 1975. The Committee shall examine the actuarial reports and estimates made by the Board and shall have authority to recommend to the Board such changes in actuarial methods as they may deem necessary. The compensation of the members of the Committee, exclusive of the member designated by the Secretary, shall be fixed by the Board on a per diem basis.

(g) The Board shall include in its annual report a statement of the status and the operations of the Railroad Retirement and Railroad Retirement Supplemental Accounts, and the Dual Benefits Payments Account. At intervals not longer than three years the Board shall make an estimate of the liabilities created by this Act and shall include such estimate in its annual report.

(h) There are hereby authorized to be appropriated from time to time such sums as may be necessary to provide for the expenses of the Board in administering the provisions of this Act.

(i)(1) The Secretary of the Treasury shall implement procedures to permit the identification of each check issued for benefits under this Act that has not been presented for payment by the close of the sixth month following the month of its issuance.

(2) The Secretary of the Treasury shall, on a monthly basis, credit each account established in the Treasury for the payment of benefits under this Act for the proportionate amount of benefit checks (including interest thereon) drawn on each such Account more than six months previously but not presented for payment and not previously credited to such Account, to the extent provided in advance in appropriation Acts.

(3) If a benefit check is presented for payment to the Treasury and the amount of the appropriate portion thereof has been previously credited pursuant to paragraph (2) to an Account or Accounts, the Secretary of the Treasury shall nevertheless pay such check, if otherwise proper, recharge such Account or Accounts for the amount of such check attributable to such Account or Accounts and notify the Board.

(4) A benefit check bearing the current date may be issued to an individual who did not negotiate the original benefit check and who surrenders such check for cancellation if the Secretary of the Treasury determines it is necessary to effect proper payment of benefits.

(j) NATIONAL RAILROAD RETIREMENT INVESTMENT TRUST.—

(1) ESTABLISHMENT.—The National Railroad Retirement Investment Trust (hereinafter in this subsection referred to as the “Trust”) is hereby established as a trust domiciled in the District of Columbia and shall, to the extent not inconsistent with this 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  $\frac{2}{3}$  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  $\frac{2}{3}$  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) invest assets of the Trust in a manner consistent with such investment guidelines, either directly or through the retention of independent investment managers;

(C) adopt bylaws and other rules to govern its operations;

(D) employ professional staff, and contract with outside advisers, including the Railroad Retirement Board, to provide legal, accounting, investment advisory or management services (compensation for which may be on a fixed contract fee basis or on such other terms as are customary for such services), or other services necessary for the proper administration of the Trust;

(E) sue and be sued and participate in legal proceedings, have and use a seal, conduct business, carry on operations, and exercise its powers within or without the District of Columbia, form, own, or participate in entities of any kind, enter into contracts and agreements necessary to carry out its business purposes, lend money for such purposes, and deal with property as security for the payment of funds so loaned, and possess and exercise any other powers appropriate to carry out the purposes of the Trust;

(F) pay administrative expenses of the Trust from the assets of the Trust; and

(G) transfer money to the disbursing agent or as otherwise provided in section 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.

(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) STATE AND LOCAL TAXES.—The Trust shall be exempt from any income, sales, use, property, or other similar tax or fee imposed or levied by a State, political subdivision, or local taxing authority. The district courts of the United States shall have original jurisdiction over a civil action brought by the

Trust to enforce this subsection and may grant equitable or declaratory relief requested by the Trust.

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

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

(l) NATIONAL RAILROAD RETIREMENT INVESTMENT TRUST.—The National Railroad Retirement Investment Trust shall from time to time transfer to the disbursing agent described in section 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).

[45 U.S.C. 231n]

#### SOCIAL SECURITY EQUIVALENT BENEFIT ACCOUNT

SEC. 15A. (a) There is hereby created an account in the Treasury of the United States to be known as the “Social Security Equivalent Benefit Account”.

(b) TRANSFERS, ETC., TO SOCIAL SECURITY EQUIVALENT BENEFIT ACCOUNT.—

(1) NET TIER 1 TAXES, ETC.—There is hereby appropriated to the Social Security Equivalent Benefit Account for each fiscal year, beginning with the fiscal year beginning October 1, 1984, an amount equal to the sum of the following amounts:

(A) NET TIER 1 TAXES.—Amounts covered into the Treasury (minus refunds) during such fiscal year under sections 3201(a), 3211(a)(1), and 3221(a) of the Railroad Retirement Tax Act.

(B) INCOME TAX LIABILITIES ATTRIBUTABLE TO TAXATION OF SOCIAL SECURITY EQUIVALENT BENEFITS.—The amount which (but for this section) would have been transferred to the Railroad Retirement Account under section 121(e) of the Social Security Amendments of 1983 to the extent that the amount which would have been so transferred is attributable to taxation of social security equivalent benefits.

Amounts appropriated to the Railroad Retirement Account shall be appropriately reduced to take into account the amounts appropriated under this paragraph to the Social Security Equivalent Benefit Account.

(2) FINANCIAL INTERCHANGE AMOUNTS.—On and after October 1, 1984, any amount which (but for this section) would have been transferred to the Railroad Retirement Account pursuant to paragraph (2) or (4) of section 7(c) of this Act shall be transferred to the Social Security Equivalent Benefit Account. On and after October 1, 1984, no transfer shall be made to the Railroad Retirement Account pursuant to paragraph (2) or (4) of section 7(c) of this Act.

(3) CERTAIN CREDITED MILITARY SERVICE AMOUNTS.—To the extent that the authorization for appropriation contained in section 15(b) is attributable to the cost of social security equivalent benefits, on and after October 1, 1984, any reference in such section to the Railroad Retirement Account shall be treated as a reference to the Social Security Equivalent Benefit Account.

(4) TIME AND MANNER OF CREDITS AND TRANSFERS.—Amounts appropriated or transferred to the Social Security Equivalent Benefit Account under this section shall be credited or transferred to such Account at the same time and in the same manner as such amounts would have been credited or transferred to the Railroad Retirement Account but for this section.

(c)(1) Except as otherwise provided in this section, amounts in the Social Security Equivalent Benefit Account shall be available only for purposes of paying social security equivalent benefits under this Act and to provide for the administrative expenses of the Board allocable to social security equivalent benefits. The Secretary shall from time to time transfer to the disbursing agent under section 7(b)(4) amounts necessary to pay those benefits.

(2) On and after October 1, 1984, any transfer which (but for this paragraph) would be required to be made from the Railroad Retirement Account under paragraph (2) or (4) of section 7(c) shall be made from the Social Security Equivalent Benefit Account.

(d)(1) Whenever the Board finds that the balance in the Social Security Equivalent Benefit Account will be insufficient to pay social security equivalent benefits which it estimates are due in any month, it shall request the Secretary of the Treasury to transfer from the Railroad Retirement Account to the credit of the Social Security Equivalent Benefit Account such moneys as the Board estimates will be necessary for the payment of such benefits, and the Secretary shall make such transfer.

(2) Upon establishment of the National Railroad Retirement Investment Trust and from time to time thereafter, the Board shall direct the Secretary of the Treasury to transfer, in such manner as will maximize the investment returns to the Railroad Retirement system, the balance of the Social Security Equivalent Benefit Account not needed to pay current benefits and administrative expenses required to be paid from that Account to the National Railroad Retirement Investment Trust or the Railroad Retirement Account, and the Secretary shall make that transfer. Any balance transferred under this paragraph shall be used by the National Railroad Retirement Investment Trust or the Railroad Retirement Board only to pay benefits under this Act or to purchase obligations of the United States (either directly or through a commingled ac-

count consisting only of such obligations) that are backed by the full faith and credit of the United States pursuant to chapter 31 of title 31, 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 or to purchase such additional obligations.

(e) The provisions of subsections (e), (f), and (g) of section 15 are hereby made applicable to the Social Security Equivalent Benefit Account.

(f)(1) For purposes of making payments of social security equivalent benefits, references in the<sup>19</sup> Act of the Railroad Retirement Account shall be treated as references to the Social Security Equivalent Benefit Account.

(2) For purposes of this section, the term “social security equivalent benefits” means benefits payable under this Act which are of a kind taken into account in determining the amount of transfers made under section 7(c)(2) of this Act.

【45 U.S.C. 231n-1】

#### PRIVATE PENSIONS

SEC. 16. Nothing in this Act shall be taken as restricting or discouraging payment by employers to retired employees of pensions or gratuities in addition to the annuities paid to such employees under this Act, nor shall this Act be taken as terminating any trust heretofore, created for the payment of such pensions or gratuities. The annuity, except a supplemental annuity under section 2(b), of an individual shall not be reduced on account of any pension or gratuity paid by an employer to such individual.

【45 U.S.C. 231o】

#### FREE TRANSPORTATION

SEC. 17. It shall not be unlawful for carriers by railroad subject to this Act to furnish free transportation to individuals receiving annuities under this Act in the same manner as such transportation is furnished to employees in their service.

【45 U.S.C. 231p】

#### CREDITING SERVICE UNDER THE SOCIAL SECURITY ACT

SEC. 18. (1) Except as provided in subdivision (2), the term “employment” as defined in section 210 of the Social Security Act shall not include service performed by an individual as an employee as defined in section 1(b) of this Act.

(2) For the purpose of determining (i) monthly insurance benefits under the Social Security Act to an employee who will have completed less than ten years of service (or less than five years of service, all of which accrues after December 31, 1995) and to others deriving from him or her during his or her life and (ii) monthly insurance benefits and lump-sum death benefits under such Act with respect to the death of an employee who (A) will have completed less than ten years of service (or less than five years of service, all

<sup>19</sup>So in law. Probably should be “this”.

of which accrues after December 31, 1995) or (B) will have completed ten or more years of service (or five or more years of service, all of which accrues after December 31, 1995) but will not have had a current connection with the railroad industry at the time of his death, and for the purposes of section 203 and section 216(i) of that Act, section 210(a)(9) of the Social Security Act and subdivision (1) of this section shall not operate to exclude from "employment" under the Social Security Act service which would otherwise be included in such "employment" but for such sections. For such purpose, compensation paid in a calendar year shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the year in which the employee will have been in service as an employee. In the application of the Social Security Act pursuant to this subdivision to service as an employee, all service as defined in section 1(d) of this Act shall be deemed to have been performed within the United States.

[45 U.S.C. 231q]

#### AUTOMATIC BENEFIT ELIGIBILITY REQUIREMENT ADJUSTMENTS

SEC. 19. (a) If title II of the Social Security Act is amended at any time after December 31, 1974, to reduce the eligibility requirements for old-age insurance benefits, disability insurance benefits, wife's insurance benefits payable to a wife, husband's insurance benefits, child's insurance benefits payable to a child of a deceased individual, widow's insurance benefits payable to a widow, widower's insurance benefits, mother's insurance benefits payable to a widow, or parent's insurance benefits, such reduced eligibility requirements shall be applicable, in accordance with regulations prescribed by the Board, to individuals, spouses, or survivors, as the case may be, under section 2 of this Act to the extent that such reduced eligibility requirements would provide such individuals, spouses, or survivors with entitlement to annuities under such section 2 to which they would not be entitled except for such reduced eligibility requirements: *Provided, however,* That no annuity shall be paid to any person pursuant to the provisions of this subsection if that person does not satisfy an eligibility requirement imposed by section 2 of this Act of a kind not imposed by the Social Security Act on December 31, 1974, or an eligibility requirement imposed by section 2 of this Act of a kind which was imposed by the Social Security Act on December 31, 1974, but which was not reduced by the amendment to that Act: *Provided further,* That the annuity amounts to which such individuals, spouses, or survivors will be entitled under this Act by reason of the provisions of this subsection shall be only such amounts as are determined under the provisions of section 3(a), 4(a), or 4(f), respectively, of this Act.

(b) If title II of the Social Security Act is amended at any time after December 31, 1974 to provide monthly insurance benefits under that Act to a class of beneficiaries not entitled to such benefits thereunder prior to January 1, 1975, every person who is a member of such class of beneficiaries shall be entitled to annuities under section 2 of this Act, in accordance with regulations prescribed by the Board, in an amount equal to the amount of the monthly insurance benefit to which such person would have been

entitled under the Social Security Act if service as an employee after December 31, 1936, had been included in the term “employment” as defined in that Act.

(c) If section 226 or title XVII of the Social Security Act is amended at any time after December 31, 1974, to reduce the conditions of entitlement to, or to expand the nature of, the benefits payable thereunder, or if health care benefits in addition to, or in lieu of, the benefits payable under such section 226 or such title XVIII are provided by any provision of law which becomes effective at any time after December 31, 1974, such reductions in the conditions of entitlement to benefits, such expanded benefits, or such additional, or substituted, health care benefits shall be available to every employee (as defined in this Act), and those deriving from him, in the same manner, and to the same, extent, as if his service as an employee after December 31, 1936, had been included in the term “employment” as defined in the Social Security Act. The Board shall have the same authority, in accordance with regulations prescribed by it, to determine the rights of employees who will have completed ten years of service (or five or more years of service, all of which accrues after December 31, 1995), and of those deriving from such employees, to benefits provided by reason of the provisions of this subsection as the Secretary of Health, Education, and Welfare has with respect to individuals insured under the Social Security Act.

(d) Notwithstanding the provisions of subsections (a), (b), and (c) of this section—

(1) No annuity or other benefit shall be payable to any person on the basis of the compensation and years of service of an individual by reason of the provisions of subsection (a), (b), or (c) of this section if, and to the extent that, such annuity or other benefit would duplicate a benefit payable to such person on the basis of such compensation and years of service under a provision of the Social Security Act, or any other Act of Congress, which becomes effective after December 31, 1974.

(2) No annuity shall be payable to a person by reason of subsection (a) or (b) of this section unless the individual upon whose compensation and years of service such annuity would be based will have (A) completed ten years of service (or five or more years of service, all of which accrues after December 31, 1995), and (B) in the case of a survivor, had a current connection with the railroad industry at the time of his death.

(3) If the Social Security Act is amended after December 31, 1974, to remove any, or all, restriction on the receipt of more than one monthly insurance benefit thereunder, annuity amounts provided a person under section 3(h), 4(e), or 4(h) of this Act, or under section 204(a)(3), 204(a)(4), 206(3), or 207(3) of title II of this Act, shall be reduced (but not below zero) by the amount of any annuity provided such person under this Act by reason of such amendment.

(4) If and to the extent that an annuity or other benefit payable to a person by reason of the provisions of subsection (a), (b), or (c) of this section duplicates an annuity or other benefit then payable to such person under other provisions of this Act, such annuity or other benefit then payable under other

provisions of this Act shall be reduced (but not below zero) by the amount of the annuity or other benefit payable by reason of subsection (a), (b), or (c).

【45 U.S.C. 231r】

#### SEPARABILITY

SEC. 20. If any provision of this Act, or the application thereof to any person or circumstance, should be held invalid, the remainder of such Act, or the application of such provision to other persons or circumstances, shall not be affected thereby.

【45 U.S.C. 231s】

#### SHORT TITLE

SEC. 21. This Act may be cited as the “Railroad Retirement Act of 1974”.

【45 U.S.C. 231t】

#### BENEFIT PRESERVATION

SEC. 22. (a)(1) On or before May 1 of each year beginning in 1984, the Railroad Retirement Board shall prepare a five-year projection of anticipated revenues to and payments from the Railroad Retirement Account to determine the ability of such Account to pay benefits in each of the next succeeding five calendar years. On or before May 1 of each year beginning in 2003, the Railroad Retirement Board shall compute its projection of the account benefits ratio and the average account benefits ratio (as defined by section 3241(c) of the Internal Revenue Code of 1986) for each of the next succeeding five fiscal years. No later than July 1 of each year, the Board shall submit a written report to the President, the Speaker of the House, and the President of the Senate setting forth the results of the projections prepared pursuant to the preceding two sentences. If the projection indicates that the funds in the Railroad Retirement Account will be insufficient to pay the full amount of the benefits under this Act which are payable from that Account at any time during the five-year period, the Board’s report shall include—

(A) the first fiscal year during which benefits under this Act must be reduced, in the absence of any adjustments, because insufficient funds (including any general revenue borrowing authority under this Act) would preclude payment of full benefits (other than benefits<sup>20</sup> payable from the Dual Benefits Payments Account) for every month in such fiscal year;

(B) the first fiscal year during which the Board would recommend suspension of the authority to borrow contained in section 10(d) of the Railroad Unemployment Insurance Act, in order to prevent depletion of the Railroad Retirement Account; and

(C) the amount, if any, of adjustments (stated in terms of percentage of taxable payroll), and any other changes such as cash flow adjustments, necessary to preserve the financial solvency of the Railroad Retirement Account, if such adjustments

<sup>20</sup> So in law. Should be “benefits”.

were effective at the beginning of the next succeeding fiscal year.

(2) Not less than 20 nor more than 30 days after the submission of a written report under this subsection which indicates that, in the absence of any adjustments, the Railroad Retirement Account will contain insufficient funds to pay the full amount of the benefits under this Act which are payable from that Account at some time during the five-year period covered by the report, the Board shall publish such report in the Federal Register.

(b) Not later than 180 days after the publication in the Federal Register of any Board report referred to in subsection (a) of this section which states an amount of adjustments (in terms of percentage of taxable payroll) necessary to preserve the financial solvency of the railroad retirement account—

(1) representatives of railroad employees and carriers shall, jointly or separately, submit to the President, the Speaker of the House, and the President of the Senate funding proposals designed to preserve the financial solvency of the Railroad Retirement Account; and

(2) the President shall submit to the Speaker of the House and the President of the Senate such recommendations as he may deem appropriate with respect to the preservation of the Railroad Retirement Account, including a specific proposal to assure continuous payments of social security equivalent benefits by separating the social security equivalent benefits from industry pension equivalent benefits payable under this Act.

(c) Not later than 180 days after the submission of a written report under subsection (a) of this section which states the first fiscal year during which benefits under this Act must be reduced because insufficient funds would preclude payment of full benefits for every month of that year, the Board shall issue and publish in the Federal Register such regulations as may be necessary which shall be designed to—

(1) provide a constant level of benefits at the maximum level possible for every month of that fiscal year; and

(2) provide that no individual shall receive less during that fiscal year than the amount otherwise payable if the employee's service as an employee after December 31, 1936, had been covered under the Social Security Act, minus the amount of any reduction required under section 3(m) or 4(i) of this Act.

Unless otherwise provided by law enacted after the date of enactment of this section, or by a later report filed by the Board under subsection (a) of this section, regulations issued by the Board under this subsection shall apply beginning with the fiscal year designated by the Board in its written report under subsection (a) of this section. Any Board regulation which becomes effective under this subsection may be modified, rescinded, or superseded in the same manner and to the same extent as in the case of any other Board regulation issued under authority of this Act.

[45 U.S.C. 231u]

COMPUTATION AND CERTIFICATION OF ACCOUNT BENEFIT RATIOS

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.

[45 U.S.C. 231v]