

Railroad Retirement Board to certify to the Secretary of Health, Education, and Welfare, in order to provide hospital insurance benefits for annuitants, pensioners, and certain other aged individuals for purposes of the Social Security program, the name of anyone aged 65 who was entitled to an annuity or pension under this subchapter, would have been so entitled had he ceased compensated service and had applied for such annuity, or bore a particular relationship to certain qualified employees, and specified such additional information as such certification was to include.

#### INCREASES IN CERTAIN PENSIONS AND ANNUITIES

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

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

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

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

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

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

#### PERMANENCY OF INCREASES IN CERTAIN PENSIONS AND ANNUITIES

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

#### PRESUMPTION OF HIGHER INCREASES IN ANNUITIES

Pub. L. 90-257, §108(b), Feb. 15, 1968, 82 Stat. 23, provided that in cases where an annuity was payable in the month before the month with respect to which increases in benefits under title II of the Social Security

Act, sections 401 et seq. of Title 42, The Public Health and Welfare, provided for by Pub. L. 90-248, Jan. 2, 1968, 81 Stat. 821, known as the Social Security Amendments of 1967, became effective in an amount determined under this subchapter, other than under the first proviso of section 228c(e) of this title, the provisions of Pub. L. 90-257 were to be presumed to provide a higher amount of increase in annuity than the provisions of the Social Security Amendments of 1967 would provide under the first proviso of section 228c(e) of this title.

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

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

#### TRANSFER OF FUNDS FOR PAYMENT OF SUPPLEMENTAL ANNUITIES

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

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

#### SUBCHAPTER IV—RAILROAD RETIREMENT ACT OF 1974

##### CODIFICATION

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

#### § 231. Definitions

For the purposes of this subchapter—

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

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

(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility

or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad;

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

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

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

(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 [45 U.S.C. 151 et seq.], and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

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

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

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

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

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

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

(iii) an individual shall be deemed to be in the service of a general committee of a railway-labor-organization employer not conducting the principal part of its business in the United States only if (A) he is representing a local lodge or division described in clause (A) or (B) of paragraph (ii); or (B) all, or substantially all, the individuals represented by such general committee are employees of an employer conducting the principal part of its business in the United States; or (C) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is

not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case the Board may prescribe such other formula as it finds to be equitable, and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 per centum of his remuneration for such service no part of such remuneration shall be regarded as compensation.

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

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

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

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

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

(iv) he was on August 29, 1935, absent from the service of an employer by reason of a discharge which, within one year after the effective date thereof, was protested, to an appropriate labor representative or to the employer, as wrongful, and which was followed within

ten years of the effective date thereof by his reinstatement in good faith to his former service with all his 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 [45 U.S.C. 228f], or if during the last payroll period before August 29, 1935, in which he rendered service to an employer he was not in the service of an employer, in accordance with subsection (d), with respect to any service in such payroll period, or if he could have been in the employment relation to an employer only by reason of his having been, either before or after August 29, 1935, in the service of a local lodge or division defined as an employer in subsection (a).

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

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

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

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

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

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

(2) For purposes of section 231b(i)(2) of this title, a "war service period" shall mean (A) any

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

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

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

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

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

(2) An employee shall be deemed to be paid "for time lost" the amount he is paid by an em-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The term “Board” means the Railroad Retirement Board.

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

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

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

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

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

(o) An individual shall be deemed to have “a current connection with the railroad industry” at the time an annuity begins to accrue to him and at death if, in any thirty consecutive cal-

endar months before the month in which an annuity under this subchapter begins to accrue to him, or the month in which he dies if that first occurs, he will have been in service as an employee in not less than twelve calendar months and, if such thirty calendar months do not immediately precede such month, he will not have been engaged in any regular employment other than employment for an employer or employment with the Department of Transportation, the Interstate Commerce Commission, the Surface Transportation Board, the National Mediation Board, the National Transportation Safety Board, the State-owned railroad (as defined in the Alaska Railroad Transfer Act of 1982 [45 U.S.C. 1201 et seq.]), so long as it is an instrumentality of the State of Alaska, or the Railroad Retirement Board in the period before such month and after the end of such thirty months. For purposes of section 231a(b) of this title and section 231a(d) of this title only, an individual shall be deemed also to have “a current connection with the railroad industry” if, after having completed twenty-five years of service, such individual involuntarily and without fault ceased rendering service as an employee under this subchapter and did not thereafter decline an offer of employment in the same class or craft as the individual’s most recent employee service. For purposes of section 231a(d) of this title only, an individual shall be deemed to have a “current connection with the railroad industry” if a pension will have been payable to that individual under the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.] or a retirement annuity based on service of not less than 10 years (as computed in awarding the annuity) will have begun to accrue to that individual prior to 1948 under the Railroad Retirement Act of 1937. For the purposes of section 231a(d) of this title only, an individual shall be deemed also to have a “current connection with the railroad industry” if he will have completed ten years of service and (A) he would be neither fully nor currently insured under the Social Security Act [42 U.S.C. 301 et seq.] if his service as an employee after December 31, 1936, were included in the term “employment” as defined in that Act, or (B) he has no quarters of coverage under the Social Security Act.

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

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

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

(Aug. 29, 1935, ch. 812, §1, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93-445, title I, §101, Oct. 16, 1974, 88 Stat. 1305; amended Pub. L. 94-547, §4(a), Oct. 18, 1976, 90

<sup>2</sup> See References in Text note below.

Stat. 2526; Pub. L. 97-35, title XI, § 1116, Aug. 13, 1981, 95 Stat. 628; Pub. L. 97-468, title VI, § 615(b)(6), Jan. 14, 1983, 96 Stat. 2578; Pub. L. 98-76, title IV, §§ 402(a), 403(a), 410(a), Aug. 12, 1983, 97 Stat. 434, 435; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-647, title VII, § 7304(a), Nov. 10, 1988, 102 Stat. 3778; Pub. L. 101-239, title X, § 10208(d)(2)(B)(ii), Dec. 19, 1989, 103 Stat. 2481; Pub. L. 104-88, title III, § 323, Dec. 29, 1995, 109 Stat. 950.)

## REFERENCES IN TEXT

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

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

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

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

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

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

## AMENDMENTS

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

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

Subsec. (o). Pub. L. 104-88, § 323(3), inserted “the Surface Transportation Board,” after “the Interstate Commerce Commission.”.

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

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

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

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

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

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

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

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

Subsec. (o). Pub. L. 97-35, § 1116(b)(2), inserted after first sentence “For purposes of section 231a(b) of this title and section 231a(d) of this title only, an individual shall be deemed also to have ‘a current connection with the railroad industry’ if, after having completed twenty-five years of service, such individual involuntarily and without fault ceased rendering service as an employee under this subchapter and did not thereafter decline an offer of employment in the same class or craft as the individual’s most recent employee service. For purposes of section 231a(d) of this title only, an individual shall be deemed to have a ‘current connection with the railroad industry’ if a pension will have been payable to that individual under the Railroad Retirement Act of 1937 or a retirement annuity based on service of not less than 10 years (as computed in awarding the annuity) will have begun to accrue to that individual prior to 1948 under the Railroad Retirement Act of 1937.”

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

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

## EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

## EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title VII, § 7304(b), Nov. 10, 1988, 102 Stat. 3778, provided that: “The amendment made by this section [amending this section] shall apply with respect to annuities accruing in months after the date of enactment of this Act [Nov. 10, 1988].”

## EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98-76, title IV, § 402(c), Aug. 12, 1983, 97 Stat. 434, provided that: “The amendments made by this section [amending this section and section 351 of this title] shall apply to compensation paid for services rendered after June 30, 1983.”

Pub. L. 98-76, title IV, § 403(c), Aug. 12, 1983, 97 Stat. 434, provided that: “The amendments made by this section [amending this section and section 351 of this title] shall be effective August 13, 1981.”

Pub. L. 98-76, title IV, § 410(b), Aug. 12, 1983, 97 Stat. 436, provided that: “The amendment made by this section [amending this section] shall apply with respect to payments made on or after January 1, 1982.”

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

## EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-35, title XI, § 1129, Aug. 13, 1981, 95 Stat. 641, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

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

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

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

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

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

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

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

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

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

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

“(g) The amendments made by sections 1118(b), 1118(g), 1120(b), 1122(a)(2), 1122(b)(1), 1122(c), 1124, 1126, and 1127 of this Act [enacting section 231u of this title, amending sections 231b, 231d, 231f, and 231n of this title, and enacting provisions set out as a note under section 231n of this title] shall take effect October 1, 1981.

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

## EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-547, § 4(c)(1), Oct. 18, 1976, 90 Stat. 2527, provided that: “The amendments made by subsection (a) of this section [amending this section] shall be effective January 1, 1975.”

## EFFECTIVE DATE

Pub. L. 93-445, title VI, § 602(a)-(d), Oct. 16, 1974, 88 Stat. 1360, 1361, provided that:

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

“(b) The provision of section 1(o) of the Railroad Retirement Act of 1974 [section 231(o) of this title] which provides that a ‘current connection with the railroad industry’ will not be broken by ‘employment with the Department of Transportation, the Interstate Commerce Commission, the National Mediation Board, or the Railroad Retirement Board’ shall not be applicable (A) for purposes of paragraph (iv) of section 2(a)(1) of such Act [section 231a(a)(1)(iv) of this title], to an individual who became disabled, as provided for purposes of such paragraph, prior to January 1, 1975, (B) for purposes of section 2(b)(1) of such Act [section 231a(b)(1) of

this title), to an individual whose annuity under section 2(a) of the Railroad Retirement Act of 1937 [section 228b(a) of this title] or section 2(a)(1) of the Railroad Retirement Act of 1974 [section 231a(1) of this title] first began to accrue prior to January 1, 1975, and (C) for purposes of section 2(d)(1) [section 231a(d)(1) of this title] of such Act, to a survivor of a deceased employee if such employee died prior to January 1, 1975.

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

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

#### ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104-88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104-88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104-88, set out as a note under section 1301 of Title 49.

#### TRANSITIONAL PROVISIONS

Pub. L. 93-445, title II, Oct. 16, 1974, 88 Stat. 1351, effective Jan. 1, 1975, as amended by Pub. L. 94-92, title II, § 202(a), Aug. 9, 1975, 89 Stat. 465; Pub. L. 94-547, § 1, Oct. 18, 1976, 90 Stat. 2523, provided that:

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

under the Railroad Retirement Act of 1937 [subchapter III of this chapter], and no pension under section 6 of the Railroad Retirement Act of 1937 [section 228f of this title] shall be payable for any month after December 31, 1974.

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

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

“SEC. 203. (a) Every individual who would have been entitled to a pension under section 6 of the Railroad Retirement Act of 1937 [section 228f of this title] for the month of January 1975, if this Act [enacting this subchapter] had not been enacted, shall be entitled to an annuity under paragraph (i) of section 2(a)(1) of the Railroad Retirement Act of 1974 [section 231a(a)(1) of this title] in an amount determined under the provisions of section 3(a) of such Act [section 231b(a) of this title], which amount shall initially be equal to the amount determined under clause (i) of section 3(a)(6) of the Railroad Retirement Act of 1937 [section 228c(a)(6) of this title] for the purpose of computing the last increase in such individual’s pension under section 6 of the Railroad Retirement Act of 1937 [section 228f of this title] pursuant to the provisions of section 105 of Public Law 93-69 [set out as a note under sections 228e to 228z-1 of this title], less the amount of any monthly insurance benefit to which such individual is actually entitled (before any deductions on account of work) under the Social Security Act [section 301 et seq. of Title 42].

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

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

“SEC. 204. (a) Every individual who was entitled to an annuity under section 2(a)1, 2(a)2, 2(a)3, 2(a)4, or 2(a)5 of the Railroad Retirement Act of 1937 [section 228b(a)1, 228b(a)2, 228b(a)3, 228b(a)4, or 228b(a)5 of this title] for the month of December 1974, or who would have been entitled to such an annuity for such month except for the provisions of section 2(d) of such Act [section 228b(d) of this title], and who would have been entitled to such an annuity for the month of January 1975, if this Act [enacting this subchapter] had not been enacted, shall be entitled to an annuity under paragraph (i), (ii), (iii), (iv), or (v), respectively, of section 2(a)(1) of the Railroad Retirement Act of 1974 [section 231a(a)(1) of this title], beginning January 1, 1975: *Pro-*



vided, however, That if an individual who was entitled to an annuity under section 2(a)4 or 2(a)5 of the Railroad Retirement Act of 1974 [probably should read "Railroad Retirement Act of 1937" classified to section 228b(a)4 or 228b(a)5, of this title] is age 65 or older, on January 1, 1975, such individual shall be entitled to an annuity under paragraph (i) of section 2(a)(1) of the Railroad Retirement Act of 1974 [section 231a(a)(1) of this title]. For purposes of this subsection—

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

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

“(3) if the individual was entitled to an old-age insurance benefit or a disability insurance benefit under the Social Security Act [section 301 et seq. of

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

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

“(b) An individual who was awarded an annuity under section 2(a) of the Railroad Retirement Act of 1937 [section 228b(a) of this title], but who could not have become eligible for an annuity under paragraph 2 of such section, shall not be eligible for an annuity under paragraph (ii) of section 2(a)(1) of the Railroad Retirement Act of 1974 [section 231a(a)(1) of this title].

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

[Pub. L. 94-92, title II, §202(b), Aug. 9, 1975, 89 Stat. 465, provided that: “The amendment made by this section [enacting section 204(c) of Pub. L. 93-445] shall be effective January 1, 1975.”]

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

[Effective Date of 1976 Amendment. Pub. L. 94-547, §1(d), Oct. 18, 1976, 90 Stat. 2524, provided that: “The amendments made by this section [enacting section 204(d) and amending sections 204(a)(1), (2) and 206(1) of Pub. L. 93-445] shall be effective January 1, 1975: *Provided, however,* That the increases in annuities effective June 1, 1975, and June 1, 1976, shall be in the amount which would have been provided if this Act [enacting section 204(d) of Pub. L. 93-445, amending sections 204(a)(1), (2) and 206(1) of Pub. L. 93-445 and this section and section 231c and 231n of this title and section 3231

of Title 26, Internal Revenue Code, and enacting provisions set out as notes under this section and sections 231c and 231n of this title and 3231 of Title 26] had not been enacted.”]

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

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

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

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

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

“(2) that portion of the spouse’s annuity as is provided under section 4(b) of the Railroad Retirement Act of 1974 [section 231c(b) of this title] shall be in an amount, if any, equal to 50 per centum of the individual’s annuity as computed in accordance with the provisions of paragraph (2) of section 204(a) of this title: *Provided, however*, That, in case of a spouse who is not entitled to an annuity amount provided under paragraph (3) of this section, if (A) the amounts of the annuity provided a spouse for the month of January 1975 by the provisions of paragraph (1) (before any reduction due to such spouse’s entitlement to a wife’s or husband’s insurance benefit under the Social Security Act [section 301 et seq. of Title 42]) and the preceding provisions of this paragraph exceed (B) the amount of the annuity to which such spouse was entitled (before any reduction on account of age) for the month of December 1974 under section 2(e) or 2(h) of the Railroad Retirement Act of 1937 [section 228b(e) or 228b(h) of this title] (deeming, for this purpose, any increase in the amount of such annuity which, had this Act [enacting this subchapter] not been enacted, would have become effective January 1, 1975, by reason of an increase in the maximum amount payable as a wife’s insurance benefit under the Social Security Act to have been effective for the month of December 1974), or to which such spouse would have been entitled for such month under such section 2(e) or 2(h) [section 228b(e) or 228b(h) of this title] except for the provisions of section 2(d) of such Act [section 228b(d) of this title], the amount of the annuity provided such spouse for the month of January 1975 by the preceding provisions of this paragraph shall be reduced until the total of the amounts described in clause (A) of this proviso equals the amount described in clause (B): *Provided further*, That, if the amount of the annuity of the spouse provided by paragraph (1) of this section is reduced by reason of the provisions of section 4(i)(2) of the Railroad Retirement Act of 1974 [section 231c(i)(2) of this title], the amount of the annuity provided such spouse by the preceding provisions of this paragraph shall not be less than an amount which would cause the total of the annuity amounts provided such spouse under paragraph (1) (before any reduction pursuant to the provisions of section 202(k) or 202(q) of the Social Security Act [section 402(k) or 402(q) of Title 42] and before any reduction due to such spouse’s entitlement to a wife’s or husband’s insurance benefit under the Social Security Act) and paragraph (2) of this section for the month of January 1975 to equal the amount of the annuity (before any reduction on account of age) which such spouse would have received for such month under section 2(e) or 2(h) of the Railroad Retirement Act of 1937 [section 228b(e) or 228b(h) of this title] (without regard to the provisions of section 2(d) of that Act [section 228b(d) of this title]) if this Act [enacting this subchapter] had not been enacted; and

“(3) if the spouse was entitled to an old-age insurance benefit or a disability insurance benefit under the Social Security Act [section 301 et seq. of Title 42] of [on] December 31, 1974, or was fully insured under that Act on that date, or was entitled to a wife’s or a husband’s insurance benefit under that Act on that date, the annuity amounts provided under paragraphs (1) and (2) of this section shall be increased by an amount determined under the provisions of section 4(e)(1) [section 231c(e)(1) of this title], or, if the spouse was entitled only to a wife’s or husband’s insurance benefit, 4(e)(3) [section 231c(e)(3) of this title] of the Railroad Retirement Act of 1974: *Provided, however*, That, if the spouse was entitled to a monthly insurance benefit under the Social Security Act of [on] December 31, 1974, such amount shall not be less nor more than an amount which would cause (A) the total of (i) the annuity amounts provided the spouse by the provisions of this section for the month of January 1975 plus (ii) the monthly insurance benefit to which such spouse is entitled for that month under the Social Security Act (before any reductions

on account of age and deductions on account of work) to equal (B) the total of (i) the spouse's annuity under the Railroad Retirement Act of 1937 [subchapter III of this chapter] (prior to any reduction on account of age and without regard to section 2(d) of that Act [section 228b(d) of this title]) plus (ii) the monthly insurance benefit under the Social Security Act (before any reduction on account of age and deductions on account of work) which such spouse would have received for such month if this Act [enacting this subchapter] had not been enacted.

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

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

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

"(3) if the survivor is a widow or widower who was entitled to an old-age insurance benefit or a disability insurance benefit under the Social Security Act [section 301 et seq. of Title 42] on December 31, 1974, or was fully insured under that Act on that date, the annuity amounts provided under paragraphs (1) and (2) of this section shall be increased by an amount determined under the provisions of 4(h)(1) of the Railroad Retirement Act of 1974 [section 231c(h)(1) of this title]; *Provided, however*, That, if the widow or wid-

ower was entitled to a monthly insurance benefit under the Social Security Act on December 31, 1974, such amount shall not be less nor more than an amount which would cause (A) the total of (i) the annuity amounts provided the widow or widower by the provisions of this section for the month of January 1975 plus (ii) the monthly insurance benefit to which such widow or widower is entitled for that month under the Social Security Act (before any deductions on account of work) to equal (B) the total of (i) the widow's or widower's annuity under the Railroad Retirement Act of 1937 [subchapter III of this chapter] (without regard to section 5(i) of that Act [section 228e(i) of this title]) plus (ii) the monthly insurance benefit under the Social Security Act (before any deductions on account of work) which such widow or widower would have received for such month if this Act [enacting this subchapter] had not been enacted.

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

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

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

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

### § 231a. Annuity eligibility requirements

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

(1) The following-described individuals, if they shall have completed ten years of service (or, for