

RAILROAD RETIREMENT AND SURVIVORS' IMPROVEMENT
ACT OF 2001

MAY 24, 2001.—Ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Transportation and
Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 1140]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom
was referred the bill (H.R. 1140) to modernize the financing of the
railroad retirement system and to provide enhanced benefits to em-
ployees and beneficiaries, having considered the same, report favor-
ably thereon with an amendment and recommend that the bill as
amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Railroad Retirement and Sur-
vivors’ Improvement Act of 2001”.

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

Sec. 1. Short title; table of contents.

TITLE I—AMENDMENTS TO RAILROAD RETIREMENT ACT OF 1974

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

TITLE II—AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986

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

TITLE I—AMENDMENTS TO RAILROAD RETIREMENT ACT OF 1974

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

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

“(10)(i) If for any month the unreduced annuity provided under this section for a widow or widower is less than the widow’s or widower’s initial minimum amount computed pursuant to paragraph (ii) of this subdivision, the unreduced annuity shall be increased to that initial minimum amount. For the purposes of this subdivision, the unreduced annuity is the annuity without regard to any deduction on account of work, without regard to any reduction for entitlement to an annuity under section 2(a)(1) of this Act, without regard to any reduction for entitlement to a benefit under title II of the Social Security Act, and without regard to any reduction for entitlement to a public service pension pursuant to section 202(e)(7), 202(f)(2), or 202(g)(4) of the Social Security Act.

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

“(A) in subsection (g)(1)(i) ‘100 per centum’ shall be substituted for ‘50 per centum’; and

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

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

(b) EFFECTIVE DATE.—

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

(A) on or after that date; and

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

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

SEC. 102. RETIREMENT AGE RESTORATION.

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

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

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

(d) EFFECTIVE DATES.—

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

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

based was computed under section 3(a)(3) of such Act, as in effect on December 31, 2001.

SEC. 103. VESTING REQUIREMENT.

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

(1) by inserting in subdivision (1) “(or, for purposes of paragraphs (i), (iii), and (v), five years of service, all of which accrues after December 31, 1995)” after “ten years of service”; and

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

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

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

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

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

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

“(i) An individual entitled to an annuity under this section who has completed five years of service, all of which accrues after 1995, but who has not completed ten years of service, and the spouse, divorced spouse, and survivors of such individual, shall not be entitled to an annuity amount provided under section 3(a), section 4(a), or section 4(f) of this Act unless the individual, or the individual’s spouse, divorced spouse, or survivors, would be entitled to a benefit under title II of the Social Security Act on the basis of the individual’s employment record under both this Act and title II of the Social Security Act.”

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

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

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

Security Act. An application filed with the Board for an annuity on the basis of the employment record of an employee who will have completed ten years of service shall, unless the applicant specified otherwise, be deemed to be an application for any benefit to which such applicant may be entitled under this Act or title II of the Social Security Act.”

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

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

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

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

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

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

(i) CONFORMING AMENDMENTS.—

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

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

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

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

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

SEC. 104. REPEAL OF RAILROAD RETIREMENT MAXIMUM.

(a) EMPLOYEE ANNUITIES.—

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

(A) by striking subdivision (1); and

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

(2) CONFORMING AMENDMENTS.—

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

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

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

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

SEC. 105. INVESTMENT OF RAILROAD RETIREMENT ASSETS.

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

“(j) RAILROAD RETIREMENT INVESTMENT TRUST.—

“(1) ESTABLISHMENT.—The 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.—The Trust shall have a Board of Trustees, consisting of 7 members, each appointed by a unanimous vote of the Railroad Retirement Board. The Railroad Retirement Board may remove any member so appointed by unanimous vote. Of the members, 3 shall represent the interests of labor, 3 shall represent the interests of management, and 1 shall represent the interests of the general public. The members of the Board of Trustees shall not be considered officers or employees of the Government of the United States.

“(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. A vacancy in the Board of Trustees shall not affect the powers of the Board of Trustees and shall be filled in the same manner as the selection of the member whose departure caused the vacancy. Upon the expiration of a term of a member of the Board of Trustees, that member shall continue to serve until a successor is appointed.

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

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

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

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

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

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

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

“(A) DUTIES OF THE BOARD OF TRUSTEES.—The Trust and each member of the Board of Trustees shall discharge their duties 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, 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 responsi-

bility 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) APPLICATION OF FIDUCIARY STANDARDS TO RAILROAD RETIREMENT BOARD.—

“(A) IN GENERAL.—The provisions of paragraph (5)(A) shall apply to the members of the Railroad Retirement Board in the discharge of their duty to appoint the members of the Board of Trustees under paragraph (3)(A) in the same manner as such provisions apply to the members of the Board of Trustees.

“(B) ENFORCEMENT.—For purposes of this paragraph, the provisions of paragraph (5)(F) shall apply by substituting ‘the Secretary of Labor’ for ‘the Railroad Retirement Board’.

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

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

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

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

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

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

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

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

SEC. 106. ELIMINATION OF SUPPLEMENTAL ANNUITY ACCOUNT.

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

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

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

(d) TRANSFER.—

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

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

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

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

(e) EFFECTIVE DATE.—

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

(2) ACCOUNT IN EXISTENCE UNTIL TRANSFER MADE.—The Railroad Retirement Supplemental Account under section 15(c) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(c)) shall continue to exist until the date that the Secretary of the Treasury makes the transfer described in subsection (d)(2).

SEC. 107. TRANSFER AUTHORITY REVISIONS.

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

“(k) TRANSFERS TO THE TRUST.—The Board shall, upon establishment of the 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 Railroad Retirement Investment Trust. The Secretary shall make that transfer.”

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

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

(c) SOCIAL SECURITY EQUIVALENT BENEFIT ACCOUNT.—

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

“(2) Upon establishment of the 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 Railroad Retirement Investment Trust, and the Secretary shall make that transfer. Any balance transferred under this paragraph shall be used by the Railroad Retirement Investment Trust only to pay benefits under this Act or to purchase obligations of the United States that are backed by the full faith and credit of the United States pursuant to chapter 31 of title 31, United States Code. The proceeds of sales of, and the interest income from, such obligations shall be used by the Trust only to pay benefits under this Act.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“COMPUTATION AND CERTIFICATION OF ACCOUNT BENEFIT RATIOS

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

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

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

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

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

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

“(c) **DEFINITION.**—As used in this section, the term ‘account benefits ratio’ has the meaning given that term in section 3241(c) of the Internal Revenue Code of 1986.”.

TITLE II—AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986

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

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

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

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

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

SEC. 203. REPEAL OF SUPPLEMENTAL ANNUITY TAX.

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

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

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

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

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

“(b) **TIER 2 TAX.**—

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

“(2) **APPLICABLE PERCENTAGE.**—For purposes of paragraph (1), the term ‘applicable percentage’ means—

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

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

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

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

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

“(b) **TIER 2 TAX.**—

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

“(2) **APPLICABLE PERCENTAGE.**—For purposes of paragraph (1), the term ‘applicable percentage’ means—

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

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

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

“(c) **CROSS REFERENCE.**—

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

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

“(b) **TIER 2 TAX.**—

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

“(2) **APPLICABLE PERCENTAGE.**—For purposes of paragraph (1), the term ‘applicable percentage’ means—

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

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

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

“Subchapter E—Tier 2 Tax Rate Determination

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

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

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

“(b) **TAX RATE SCHEDULE.**—

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

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

“(1) AVERAGE ACCOUNT BENEFITS RATIO.—For purposes of this section, the term ‘average account benefits ratio’ means, with respect to any calendar year, the average determined by the Secretary of the account benefits ratios for the 10 most recent fiscal years ending before such calendar year. If the amount determined under the preceding sentence is not a multiple of 0.1, such amount shall be increased to the next highest multiple of 0.1.

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

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

(e) CONFORMING AMENDMENTS.—

(1) Section 24(d)(3)(A)(iii) is amended by striking “section 3211(a)(1)” and inserting “section 3211(a)”.

(2) Section 72(r)(2)(B)(i) is amended by striking “3211(a)(2)” and inserting “3211(b)”.

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

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

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

“Subchapter E. Tier 2 tax rate determination.”.

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

PURPOSE OF THE BILL

H.R. 1140 modernizes the federally administered railroad retirement system by improving benefits (including higher annuities for retirees’ surviving spouses, lowered pension retirement age, and reduced vesting period), reducing payroll tax burdens (with future automatic tax rate adjustments to reflect the performance of pension assets), and allowing professionally managed diversified investment of pension assets through an investment trust to produce higher future investment returns.

BACKGROUND AND NEED FOR THE LEGISLATION

The railroad retirement system was created separate from the Social Security program through a series of laws enacted in the

1930's, culminating in the Railroad Retirement and Carriers' Taxing Acts of 1937. There was ample precedent for legislation taking into account the particular circumstances of the rail industry. Numerous laws pertaining to rail operations and safety, as well as the Railway Labor Act of 1926, had been enacted since the Interstate Commerce Act of 1887, and many more have been enacted since the 1930's.

The need for a separate railroad retirement system arose from the inadequate financing of many of the railroads' preexisting private pension plans, and a desire to promote employment opportunities for younger workers in the nation's largest industry through the creation of a system of immediate benefit payments to older workers based on accumulated service. Social Security did not begin paying benefits until 1940 and did not credit service prior to 1937.

Substantive changes to the Railroad Retirement and Carriers' Taxing Acts of 1937, including its replacement by the current Railroad Retirement Act of 1974, and substantive amendments to that latter Act have generally been enacted on the basis of joint recommendations negotiated by representatives of rail labor and management.

The last major reform of railroad retirement occurred in 1983 with enactment of the Railroad Retirement Solvency Act. This Act raised tier 2 tax rates on both employers and employees, and for the first time subjected railroad retirement tier 2 benefits to federal income tax. It also raised the age at which one can receive a full annuity from 60 with thirty years of service to 62 with thirty years of service.

The railroad retirement system is administered by the Railroad Retirement Board, which is an independent agency in the executive branch of the United States Government. The Board has three members, each of whom is appointed by the President and confirmed by the Senate. The Railroad Retirement Act requires that one Board Member be appointed upon the recommendation of railroad labor and another Member appointed on the recommendation of rail management. The Chair is appointed to represent the public at large.

The primary annuities paid under the Railroad Retirement Act consist of two different components called tiers. The tier 1 benefit is based upon both the railroad and non-railroad earnings of the railroad employee, using social security formulas, and approximates (with some minor exceptions) what would be payable under the Social Security Act. Tier 2 benefits are based on an employee's railroad service only and are computed under benefit formulas in the Railroad Retirement Act. Tier 2 is the functional equivalent of a private industry-wide pension plan.

In fiscal year 2000, the Railroad Retirement Board paid \$8.3 billion in retirement and survivor benefits to 724,000 beneficiaries. At the end of fiscal year 2000, there were 308,597 railroad retirees, 161,283 spouses or divorced spouses of retirees, and 211,291 survivors receiving railroad retirement benefits.

Payroll taxes on railroad employers and employees serve as the primary source of funding for railroad retirement benefits. Other sources include fund transfers under the financial interchange with the Social Security system for tier 1 benefits; investment earnings

from the trust funds; general revenue appropriations for vested dual benefits; income taxes on benefits; and a work hour tax paid by railroad employers called the supplemental annuity tax.

The changes made in H.R. 1140 apply only to the tier 2 component of railroad retirement and are funded entirely by payroll taxes on railroad employers and employees and earnings from the investment of those taxes. Currently, railroads pay a 16.1 percent payroll tax and employees pay a 4.9 percent payroll tax for tier 2 benefits. H.R. 1140 would not create any general fund subsidies to the railroad retirement system.

LEGISLATIVE HISTORY AND COMMITTEE CONSIDERATION

On September 17, 1998, the Subcommittee on Railroads held a hearing on H. Con. Res. 52, modifying the Railroad Retirement tier 2 Benefits for Widows and Widowers, which had been introduced by Congressman Jack Quinn (R-NY). H. Con. Res. 52 was a concurrent resolution urging that the railroad industry, including rail labor, management and retiree organizations, open discussions for adequately funding an amendment to the Railroad Retirement Act of 1974 to modify the guaranteed minimum benefit for widows and widowers. Following the hearing, rail labor and management initiated discussions on a comprehensive reform of railroad retirement.

H.R. 4844, introduced in the 106th Congress, was cosponsored by the bipartisan leadership of the Transportation and Infrastructure Committee and the Ways and Means Committee, and represented the agreement between management and a majority of rail labor that came out of those negotiations. Following Committee consideration, H.R. 4844 was brought to the House floor, where the bill passed 391–25. The legislation was subsequently reported out of the Senate Committee on Finance, but not considered on the Senate Floor. The Railroad Retirement reform measure was reintroduced in the 107th Congress by Chairman of the Transportation and Infrastructure Committee, Don Young, and Ranking Member Jim Oberstar, as H.R. 1140. H.R. 1140 was identical to the House passed version of H.R. 4844. In Committee, the Subcommittee on Railroads amended H.R. 1140, inserting new effective dates to reflect the passage of time, and making other minor technical changes. On May 9, 2001, the Subcommittee on Railroads met in open session and favorably reported H.R. 1140. On May 16, 2001, the Committee on Transportation and Infrastructure met in open session and favorably reported H.R. 1140.

SUMMARY OF H.R. 1140

Changes to the tax structure

Both Railroad Retirement benefits and payroll tax rates are fixed by current law. Thus, changes in the system require Congressional action. H.R. 1140 would make the tier 2 tax rates more responsive to actual financing needs by the establishment of an automatic tax adjustment formula. Under this statutory formula, payroll taxes would be raised or lowered automatically, without further action by Congress, depending on the level of funds available to pay benefits. (A similar system of adjustable tax rates for railroad unemployment benefits was enacted in 1988.)

Payroll taxes would be set each calendar year, pursuant to a statutory formula. In any calendar year for which the 10-year accounts benefits ratio¹ at the close of the previous fiscal year was no lower than 4.0 and no higher than 6.0, the tax rates would be set at “normal” levels of 13.1 percent for the employer and 4.9 percent for the employee. (The proposed reduction of the employer tax rate from the current 16.1 percent to 13.1 percent is discussed below.) These “normal” rates are projected to keep the average balance at or above a 4-year benefit reserve over the next 75 years, based on improving returns by an estimated 2 percentage points (discussed below). If the average fund balance ratio falls below 4.0 or exceeds 6.0, the tax rates would vary in accordance with the statutory formula. The 4-year minimum benefits reserve requirement represents a higher level of reserves than the Railroad Retirement Account has had over most of the last 40 years. Key features of the operation of the tax adjustment mechanism include:

- *Allocation of Tax Rate Changes.* Any increase in the payroll tax above the normal rates would be borne entirely by railroad employers. Any reduction in the rates below the normal rates would be divided equally between railroad employers and employees.

- *Future Benefit Changes.* If the average fund balance ratio exceeds 6.0, employees may choose between a tier 2 tax rate reduction specified in the statute, or a benefit increase of equal value. Benefit increases would be legislated by Congress, and management has agreed to support enactment of this legislation.

- *Increase in Employee Tax Rate by Additional Benefit Equivalent.* If any additional benefit is enacted as agreed above, the legislation would provide that the employee tax rate that otherwise would be effective under the statutory formula would be increased by the cost of the benefit.

Investment of assets

Currently, investment of RRA assets is limited to U.S. government securities. Railroad Retirement Board projections for the RRA assume an annual return of 6 percent on investments. Between 1985 and 1998, the average annual return on RRA assets was unusually high at 9.12 percent, but this still lagged far behind the average annual return in large multi-employer pension plans of 15.17 percent over the same period. Under H.R. 1140, authority would be provided for tier 2 RRA assets to be invested in a new diversified investment portfolio, as are assets of private sector pension plans. A Railroad Retirement Investment Trust would be established to invest the assets of the RRA in a Trust Fund outside of Treasury. An independent Board of Trustees would be appointed to administer the Trust. The Trustees would be responsible for establishing investment guidelines for the prudent management of tier 2 assets and for selecting outside investment advisors and managers to implement investment policies. There would be 7 members of the Board of Trustees, all with investment experience and selected by a unanimous vote of the Railroad Retirement Board.

In designing this investment proposal, it was assumed that investments by the Trust would result in an average annual return

¹This is the ratio of the fund balance to annual benefit payments and administrative expenses.

of 8 percent, i.e., 2 percentage points above current projections. Improving performance of the Trust portfolio by this amount permits the enhancement of employee benefits and the reduction of railroad employer tax rates, while maintaining at least an average benefit reserve of 4 years or more. If the investment portfolio of the Trust performs well in the future, additional employer tax reductions and employee tax reductions of equal value would be possible.

Benefit improvements

More effective management of tier 2 assets would allow for the adoption of certain benefit improvements while protecting the long-term stability of the railroad retirement system. Payment of vested dual benefits and supplemental annuity benefits would continue as under current law. The bill would provide for the following benefit improvements:

- *Expansion of Surviving Spouse Benefit.* Surviving spouses would inherit the full tier 2 annuity of the deceased retiree. Currently, the surviving spouse may receive no more than 50 percent of the retiree's annuity.

- *Liberalized Early Retirement.* Currently, an employee with 30 years of service is eligible to retire at age 62 with no actuarial reduction in benefits. H.R. 1140 would allow for early retirement at age 60 with 30 years of service without a benefit reduction. As such, the bill would return the early retirement eligibility age to its pre-1984 level. The spouse of such an employee would also be eligible for an unreduced annuity at age 60.²

- *Liberalized Vesting.* The ten-year service requirement to vest for tier 1 and tier 2 annuities would be reduced to five years. Any employee with five years of post-1995 service would be vested. This requirement would be consistent with private industry practices.

- *Railroad Retirement Act Maximum.* The limit on certain tier 2 annuities awarded to an employee and an employee's spouse would be repealed.

Tax reductions

Railroad employers currently pay 16.1 percent of taxable payroll into the tier 2 account. Improved earnings from investing the tier 2 assets would permit a phased reduction of employer taxes over the first three years following enactment of the proposal. The phase-in would occur as follows: 15.6 percent in 2002; 14.2 percent in 2003; and 13.1 percent in 2004. Employee tax rates would continue at the current 4.9 percent, except as provided under the tax adjustment mechanism described above.

In addition, the supplemental annuity tax (SAT) would be eliminated and supplemental annuity benefits would be paid directly from the Trust. (There would be no change in supplemental annuity benefits paid to eligible retirees.) The SAT is a cents-per-hour tax, currently set at 26.0 cents, paid only by employers. Benefits are available only to employees hired prior to October 1981.

²*Post-retirement Health Benefit.* As part of the national collective bargaining agreement between labor and rail management, an early retirement health benefits plan is available for retirees at age 61. Management and labor have agreed to re-negotiate the agreement to lower the eligibility age to 60 and to adjust the maximum lifetime benefit for medical inflation, if H.R. 1140 is enacted. This would conform eligibility for this private health benefit plan with eligibility for early retirement.

Administration

H.R. 1140 would continue the basic administrative structure of railroad retirement for tier 1, the railroad industry counterpart to Social Security. Tier 2 benefits would be paid from the Trust, which would be administered by a fiduciary, seven-member Board of Trustees. The Board is required to hire professional investment managers. Management of the Trust assets is subject to fiduciary standards similar to those under ERISA.

SECTION-BY-SECTION EXPLANATION

TITLE I

Sec. 101. Expansion of widow(er)s' benefit

The Railroad Retirement Act provides for the payment of an annuity to the widow or widower of a deceased railroad employee. The annuity is comprised of two components, or tiers. The tier 1 component of a Railroad Retirement widow(er)'s annuity is based on the employee's combined Railroad Retirement and Social Security credits, figured under Social Security formulas, and approximates what Social Security would pay if railroad work were covered by that system. The widow(er)'s tier 1 benefit is generally equal to the amount of the tier 1 benefit that the employee received at the time of his or her death, but may be reduced for receipt of certain other benefits, including Social Security benefits. The tier 2 component of a Railroad Retirement widow(er)'s annuity is generally equal to fifty percent of the tier 2 benefit that was payable to the employee at the time of his or her death. Both the widow(er)'s tier 1 and tier 2 benefit components are increased by cost-of-living adjustments.

Section 101 provides a guaranteed amount for widow(er)s based on the amount of the tier 1 and tier 2 benefit that would have been payable to the employee at the time of the award of the widow(er)'s annuity. This initial minimum amount is to be calculated at the time of the award of a widow(er)'s annuity and is not adjusted thereafter. It is computed by taking the amount of the widow(er)'s regular unreduced annuity under the current computational provisions of the Railroad Retirement Act, except that the tier 2 benefit is increased from 50 percent of the employee's tier 2 amount to 100 percent of that amount. (The unreduced annuity is the amount before any deduction on account of work and without regard to any reductions for entitlement benefits under the Railroad Retirement Act, Title II of the Social Security Act and a public service pension.)

For any month in which the initial minimum amount exceeds the unreduced annuity computed under the current law formula, the excess amount is added to the widow(er)'s tier 2 benefit. Coupled with the tier 1 widow(er)'s benefit, which under current law is generally equal to the amount of the employee's tier 1 benefit, the new tier 2 benefit computation provides widow(er)s with an initial benefit equal to the benefit due the employee at the time the widow(er)'s annuity is awarded.

The amendment is effective on the first day of the first full month after enactment. It applies to annuities accruing after the effective date. It also applies to annuities previously awarded

under the current law tier 2 benefit formula. The computation of the initial minimum amount for widow(er)s whose annuities began prior to the effective date is made as of the date of the original annuity award and is not adjusted for inflation.

Sec. 102. Retirement Age Restoration

The Railroad Retirement Act of 1974 provided for full annuities at age 60 with 30 years of service for employees and full annuities at age 60 for their spouses. As part of legislation addressing a funding crisis in the Railroad Retirement system, the Railroad Retirement Solvency Act of 1983 retained the provision for early retirement at age 60 for employees with 30 years of railroad service and for their spouses, but imposed a reduction in the tier 1 annuity component for employee and spouse annuities that begin before the employee reaches age 62. The full tier 2 annuity component remained payable for both employees and spouses at age 60.

Section 102 amends the Railroad Retirement Act to again provide full tier 1 annuities to employees at age 60 with 30 years of service and to spouses of employees with 30 years of service at age 60. For purposes of calculating the amount of the tier 1 component, the employee and spouse are deemed to have attained full retirement age as defined by section 216(1) of the Social Security Act. Accordingly, section 102 repeals current sections 3(a)(3), 4(a)(3), and 4(a)(4) of the Railroad Retirement Act, which imposes the reduction in the tier 1 annuity components of employees and spouses for retirement prior to age 62.

Section 102 applies to employees and spouses of those employees whose annuities begin on January 1, 2002, or later.³

Sec. 103. Vesting requirement

Under current law, an employee must have accrued at least 10 years of railroad service to be entitled to an annuity under the Railroad Retirement Act. The Act also provides that the spouse of an employee may be entitled to an annuity if the employee had at least 10 years of railroad service. Finally, an employee's survivors may be entitled to benefits under the Railroad Retirement Act if the employee had at least 10 years of railroad service and had a current connection with the railroad industry at his or her death. If an employee does not accrue 10 years of railroad service prior to retirement or death, the employee's railroad service is transferred to the Social Security Administration for use in computing any benefits that may be payable under that Act.

Section 103 of the bill amends the Railroad Retirement Act to reduce the vesting requirement for such benefits from the current 10 years of railroad service to 5 years of railroad service based on service after 1995. Employees with less than 10 years of employment before 1996 would have to meet either the 10-year vesting requirement or acquire 5 years of post-1995 railroad service for age and service benefits.

³ As part of the national collective bargaining agreement between labor and rail management, an early retirement health benefit plan is available for retirees at age 61. Management and labor had agreed to re-negotiate the agreement to lower the eligibility age to 60 and to adjust the maximum lifetime benefit for medical inflation, if the railroad retirement reform proposal is adopted by Congress. This would conform eligibility for this private health benefit plan with eligibility for early retirement.

Under current law, an individual entitled to a disability annuity may receive a tier 2 benefit if he or she has 10 years of service. Section 103(a) provides that an individual entitled to a disability annuity who has more than five, but less than ten years of service is eligible for a tier 2 benefit at age 62, subject to the same reductions for early retirement that apply to individuals who have attained age 62 with less than 30 years of service.

Section 103(b) of the bill provides computation rules for individual annuities. Where an employee applies for either a Social Security benefit or a tier 1 benefit based on an employment record of less than ten years of service, the employee will not be entitled to receive higher combined benefits under both Social Security and Railroad Retirement than the employee would have received under either system.

Section 103(c) conforms the vesting requirement for survivors' benefits to that for employee age and service annuities. No conforming amendment for spouse benefits is required as entitlement to such benefits is dependent upon the employee being entitled to benefits.

Section 103(d) provides that an employee's tier 1 benefits and other benefits that are equivalent to Social Security benefits, such as spouse benefits, divorced spouse benefits and survivor benefits, would only be payable if the employee had sufficient service, based on combined service under the Social Security and Railroad Retirement Acts, to qualify the employee for benefits under the Social Security Act.

Section 103(e) of the bill applies rules with respect to spouse benefits and divorced spouse benefits similar to those applied to employee annuities under section 103(b) to provide that a spouse or divorced spouse will not be entitled to receive higher combined benefits under both Social Security and Railroad Retirement than the annuitant would have received under either system.

Section 103(f) provides that where an annuitant applies first for a Railroad Retirement annuity, it will be deemed to be an application for any benefit for which the applicant may be entitled under the Railroad Retirement Act or section 202(a), section 202(b), or section 202(c) of the Social Security Act.

Sections 103 (g) (h) and (i) make other conforming amendments to the Railroad Retirement Act and the Social Security Act to reflect the revised five-year vesting rules.

The amendments made by section 103 shall take effect on January 1, 2002.

Sec. 104. Repeal of the railroad retirement maximum

Under current law, the total amount of Railroad Retirement benefits payable to an employee and spouse is limited to the "Railroad Retirement Act maximum," which is based on the employee's average monthly earnings prior to retirement. The maximum is derived from the highest two years of creditable Railroad Retirement or Social Security covered earnings in the ten-year period ending with the year the employee's annuity begins. The maximum cannot be more than the final average monthly compensation and cannot be less than \$1,200.

The maximum was enacted to limit benefits to a reasonable "cap" based on the employee's earnings at the time of retirement and was

intended to primarily apply to employees who worked past age 65. However, the maximum has had the unintended effect of reducing benefits for long-service retirees with moderate earnings, and for retirees with no earnings or low earnings in the ten-year period ending with the year the employee's annuity begins.

Section 104 repeals the retirement maximum effective January 1, 2002. The annuities of persons whose annuities were reduced under the Railroad Retirement maximum are recalculated, on a prospective basis. After the effective date, these persons receive the amount that would have been payable had the maximum not been applied to their benefits.

Sec. 105. Investment of railroad industry assets

Section 105(a) of the bill creates a new Railroad Retirement Investment Trust ("Trust") for tier 2 benefits with authority to invest the assets of the Trust on behalf of the Railroad Retirement Board ("RRB") and to transfer funds to a qualified financial institution appointed as a disbursing agent for the payment of Railroad Retirement benefits. The Trust would be established directly by the statute and would be treated as domiciled in the District of Columbia. It shall be governed by the laws of the District of Columbia to the extent that those laws are not inconsistent with this legislation.

The Trust would not be treated as an agency or instrumentality of the Federal government. The Board of Trustees ("Trustees") of the Trust would be comprised of seven members: three members representing the interests of labor; three members representing the interests of management; and one member representing the interests of the general public. The RRB would appoint the Trustees from among persons who have experience and expertise in the management of financial investments and pension plans and must unanimously agree to each Trustee. The RRB would establish rules to provide for (i) appropriate compensation for the services rendered to the Trust by the Trustee representing the interests of the general public and other trustees to the extent that such other trustees are neither employed by railroad carriers or railway labor organizations, and (ii) reimbursement of expenses incurred by all Trustees with respect to Trust business.

The Trustees have the authority to employ professional staff and shall contract with outside advisors to provide legal, accounting, investment advisory or other services necessary for proper administration of the Trust. To promote efficient operation and eliminate unnecessary duplication, the Trustees may contract with the RRB (on a full reimbursement basis) to provide administrative services to the Trust; provided, however, that the Trust must hire independent advisors to meet its investment, fiduciary and reporting obligations under the Act.

The Trustees would (i) retain independent advisors to assist it in the formulation and adoption of its investment guidelines; (ii) retain independent investment managers to invest the assets of the Trust in a manner consistent with such investment guidelines; and (iii) invest assets in the Trust, pursuant to such guidelines. The Trustees also would transfer, at the direction of the RRB, funds to the disbursing agent for the payment of Railroad Retirement benefits. Administrative costs would be funded from the assets of the Trust.

Five members of the Board of Trustees would constitute a quorum to do business. Investment guidelines would be adopted by a unanimous vote of the Trustees. All other decisions of the Board of Trustees would be decided by majority vote.

The Trustees would be subject to reporting and fiduciary standards parallel to Employee Retirement Income Security Act ("ERISA") requirements with respect to fiduciaries of private employee pension benefit plans. These reporting and fiduciary standards include general fiduciary obligations such as the duty to act solely in the interest of the RRB, and through it, in the interest of the participants and beneficiaries of the programs funded under the Act; a duty to act with the care, skill, prudence and diligence similar to that of a prudent person in similar circumstances; a duty to diversify investments and a duty to act in accordance with governing documents. (These same fiduciary standards apply to the RRB with respect to appointment of the Trustees.) With respect to the Trustees, the bill contains prohibitions against self-dealing activities such as dealing with the assets of the Trust in the Trustee's own interest; prohibitions against Trustee exculpatory provisions in any agreement or instrument (Trustees may be covered by liability insurance); bonding requirements; and an annual audit and report to Congress on the financial status of the Trust. No rules similar to the ERISA funding requirements of Part 3 of Title I of ERISA and related provisions would apply to the Trustees, the Trust or Trust assets.

The RRB is authorized to seek judicial enforcement of the fiduciary standards applicable to the Trustees. Correlatively, the Secretary of Labor may judicially enforce the fiduciary standards governing RRB appointment of the Trustees.

The assets of the Trust transferred to it from the Railroad Retirement Account and the Social Security Equivalent Benefit ("SSEB") Account would be held in trust for the RRB to pay benefits and for the purpose of prudent investment of those assets to generate investment income. As such, the Trust shall not be subject to the Investment Company Act of 1940 and any similar law. The Trust would be treated as falling within the exemption in section 3(32) of ERISA for certain plans, including those financed under the Railroad Retirement Act. Consistent with the express exception in the Labor-Management Relations Act (the "LMRA") excluding persons and individuals subject to the Railway Labor Act from coverage under the LMRA (29 U.S.C. § 152(2)-(3)), the Trust would not be subject to the LMRA.

Section 105(c) of the bill provides that the provisions of section 105 shall take effect on the first day of the first full month after the date of enactment.

Sec. 106. Elimination of supplemental annuity account

Current law (section 2(b) of the Railroad Retirement Act) provides for a supplemental annuity for certain employees who performed railroad service in at least one month prior to October 1, 1981. The supplemental annuity is funded entirely through a tax on employers, currently set at 26.0 cents per hour. Approximately one-third of the taxes collected each year is not needed to fund supplemental annuities and is transferred to the Railroad Retirement Account ("RRA"), where it is used to pay tier 2 benefits.

Section 106 repeals section 15(c) of the Railroad Retirement Act, which establishes a separate Railroad Retirement Supplemental Account. The supplemental annuity tax is repealed in section 202. Both provisions would be effective January 1, 2002. The supplemental annuity benefit provisions of the Railroad Retirement Act are not affected and supplemental annuities will be funded from the new Trust.

Sec. 107. Transfer authority revisions

Section 107(a) of the bill provides that, once the Trust has been established pursuant to Section 105, the RRB would determine from time to time what portion of the Railroad Retirement Account is not needed to pay current administrative expenses. The Board would then direct the Secretary of Treasury to transfer that portion to the Trust.

Section 107(b) provides that the Investment Trust shall from time to time transfer to a qualified non-governmental financial institution ("Disbursing Agent") amounts necessary to pay tier 2 and supplemental annuity benefits, and administrative expenses related to those benefits.

Section 107(c) provides that the RRB would from time to time determine the amount of the balance in the SSEB Account that is in excess of the amount needed to pay current benefits, and direct the Secretary of the Treasury to transfer such excess amount to the Trust. Amounts transferred to the Trust from the SSEB Account shall be used by the Trust only to pay benefits under the Act or to purchase U.S. Government securities. This subsection also provides that the Secretary of Treasury shall be authorized to transfer from the SSEB Account to the Disbursing Agent amounts necessary to pay SSEB benefits.

Section 107(d) provides that the Secretary of Treasury shall be authorized to transfer from the Dual Benefits Payments Account to the Disbursing Agent amounts necessary to make Dual Benefit payments.

Section 107(e) of the bill requires the RRB, in consultation with the Trustees and the Secretary of the Treasury, to contract with a Disbursing Agent to serve as payer with respect to all benefits payable under the Railroad Retirement Act. The RRB would certify the amounts due to each individual to the Secretary of the Treasury who, in turn, would direct the Disbursing Agent to make payment of benefits. All Railroad Retirement benefits due to an individual, from whatever source, would be consolidated by the Disbursing Agent into a single monthly check or transfer to the beneficiary. The Board would certify to the Trust the amount of funds to be transferred to the Disbursing Agent to fund payment of benefits. The RRB would continue to pay all benefits as under the law in effect prior to enactment until the Disbursing Agent is selected.

Section 107(f) of the bill provides that benefits, as determined by the RRB, would be paid by the Disbursing Agent, from money transferred to it by the Trust.

Section 107(g) of the bill gives the RRB, in consultation with the Secretary of the Treasury, the discretion to either hold or convert to cash obligations held as of the date of enactment.

Sec. 108. Annual Ratio Projections and Certifications by the Railroad Retirement Board

Section 108 of the bill would make the RRB responsible for making annual projections of the account benefits ratio and the average account benefits ratio for each of the next succeeding five years on or before May 1 of each year beginning in 2003. The average account benefits ratio is the average of the account benefits ratios for the 10 most recent fiscal years ending before such calendar year. The bill defines the term “account benefits ratio” as the amount determined by dividing the fair market value of the assets in the Railroad Retirement Account and the Trust (and for years before 2001, the Social Security Equivalent Benefits Account) as of the close of such fiscal year by the total benefits and administrative expenses paid from the Railroad Retirement Account and the Trust during such fiscal year. On or before November 1, 2003, the Railroad Retirement Board will compute the account benefits ratio and certify it to the Secretary of Treasury.

TITLE II

Sec. 201. Amendment to the Internal Revenue Code of 1986

This section provides that all references in Title II that are expressed in terms of an amendment to, or repeal of, a section or other provision, are to a section or other provision of the Internal Revenue Code of 1986.

Sec. 202. Tax Exemption for Railroad Retirement Investment Trust

Section 202 provides for tax-exemption of the Trust.

Sec. 203. Repeal of Supplemental Annuity Tax

The supplemental annuity is financed by an excise tax imposed on employee representatives and employers under sections 3211(b), 3221(c), and 3221(d) of the Internal Revenue Code. The amendment made by section 203 repeals this excise tax, effective for calendar years after 2001. (See also, section 106.)

Sec. 204. Employer, Employee Representative, and Employee Tier 2 Tax Rate Adjustments

Section 204(a) would amend section 3221(b) of the Internal Revenue Code to reduce the tier 2 tax rate on employers for calendar years 2002 and 2003 from the current rate of 16.1% to 15.6% and 14.2%, respectively. For years thereafter, the tier 2 tax rate would be determined under a new section 3241 that would be added by section 204(d) of the bill.

Section 204(b) would make similar changes in the tier 2 tax rates imposed on employee representatives under section 3211 of the Internal Revenue Code. Employee representatives would pay a tier 2 tax of 14.75% in calendar year 2002 and 14.20% in calendar year 2003. As with the tier 2 tax rate for employers, the tier 2 tax rate for years after 2003 would be determined under the new section 3241.

There would be no change in the tier 2 tax rate for employees in the years 2002 and 2003. However, for calendar years after 2003, the employee tier 2 tax rate would be determined under the new section 3241.

Section 204(d) provides for the determination of the tier 2 tax rates applicable to employers, employee representatives, and employees for calendar years after 2003. The rates would be based on the account benefits ratio, which is defined as the fair market value of assets in the RRA and of the Trust as of the close of the fiscal year divided by the total benefits and administrative expenses paid from the RRA and the Trust during such fiscal year. For the years before 2002, the assets of the SSEB Account are also included in the calculation of the account benefits ratio. Depending on the average account benefits ratio, tier 2 tax rates for employers and employee representatives would fall within a range between 8.2% and 22.1%, while the tax rate for employees would be between 0% and 4.9%.⁴

The Secretary of Treasury would use the account benefits ratio to calculate the average account benefits ratio (the average of the account benefits ratios for the ten most recent fiscal years) and to determine the tier 2 tax rates in accordance with the schedule set forth in 3241(b). In order to calculate the average account benefits ratio in the first year, on or before November 1, 2003, the RRB would compute the account benefits ratios for each of the ten consecutive fiscal years, ending with the most recent fiscal year and certify each of the account benefits ratios to the Secretary. No later than December 1 of each year, the Secretary would publish a notice in the Federal Register of the rates of tax determined under section 3241 which are applicable for the following year.

CONCLUSION

H.R. 1140 is a landmark piece of legislation that provides benefits for all the participants in the railroad retirement system. It modernizes and strengthens the financing of the program while also providing for improved retirement benefits for railroad workers and their families.

ROLLCALL VOTES

Clause 3(b) of rule XIII of the House of Representatives requires each committee report to include the total number of votes cast for and against on each rollcall vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no rollcall votes on this legislation.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, oversight findings and recommendations have been made by the Committee as reflected in this report.

⁴The Labor-Management Agreement provides that, after the enactment of this legislation, employee representatives may elect to convert any amount by which the employee rate is projected to be less than 4.9% into an expanded retirement benefit. The cost of this new benefit shall not exceed, on a 75-year percentage of payroll basis, the benefit of this projected difference. If any additional benefit is enacted, the future enabling legislation shall provide that the employee tax rate that otherwise would be effective under the statutory schedule will be increased by the cost (on a 75-year percentage of payroll basis) of such benefit, or at the employee representative's election, that the benefits will terminate if the average account benefits ratio goes below 6. Management has agreed to support future legislation providing for any such conversion consistent with this policy.

COST OF LEGISLATION

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is satisfied where a cost estimate and comparison prepared by the Director of the Congressional Budget Office (CBO) under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. The cost estimate prepared by the Director of the CBO is included with this report.

COMPLIANCE WITH HOUSE RULE XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office has not been received. When available, it will be printed in the Congressional Record.

2. With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance and objectives for which any measure authorizes funding is required.

3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, a cost estimate from the Director of Congressional Budget Office (CBO) is included with this report.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 1140—Railroad Retirement and Survivors' Improvement Act of 2001

Summary: H.R. 1140 would make several changes to the Railroad Retirement program. The bill would expand benefits for certain participants in the program and reduce the number of years of covered railroad service needed before a worker (and qualified spouse) can be vested in the system. The legislation would also eliminate the Supplemental Annuity tax and lower the payroll tax rate on railroad employers. Finally, the bill would create a new Railroad Retirement Investment Trust and establish a board to manage this fund. That board would be authorized to invest the reserves of the Railroad Retirement System in private securities.

Assuming that investments in private securities are treated as budget outlays, as specified in OMB Circular A-11, CBO estimates that H.R. 1140 would increase direct spending by \$13.8 billion during the 2002–2006 period and by \$10.6 billion over the 2002–2011 period. It would reduce revenues by \$1.7 billion from 2002 through 2006 and by \$4.0 billion in the 10-year period. Because the bill would affect direct spending and receipts, pay-as-you-go procedures would apply. The net effect of H.R. 1140 would be to decrease the budget surplus by \$15.5 billion from 2002 through 2006 and by \$14.6 billion over the 2002–2011 period. Because there is little precedent for the purchase of private securities by the federal government, alternative budgetary treatments are possible that could substantially alter the budgetary impact.

The legislation contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1140 is summarized in Table 1. The costs of this legislation fall within budget function 600 (income security).

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF H.R. 1140

	By fiscal year, in millions of dollars—										
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
CHANGES IN DIRECT SPENDING											
Benefit Changes:											
Expansion of Widow/er Benefits	0	83	92	94	95	97	100	102	104	106	108
Reduction in Retirement Age	0	37	121	192	228	259	305	359	397	420	443
Reduction in Vesting Requirements	0	(1)	(1)	(1)	(1)	(1)	1	1	1	1	2
Repeal of Ceiling on Railroad Retirement Benefits	0	11	14	15	16	18	19	20	22	24	25
Subtotal	0	131	227	301	339	374	425	481	523	550	578
Investment in non-Treasury Securities ²	0	15,320	-460	-660	-830	-920	-990	-1,060	-1,140	-1,250	-1,340
Total	0	15,451	-233	-359	-491	-546	-565	-579	-617	-700	-762
CHANGES IN REVENUES											
Repeal of Supplementary Annuity Tax ³	0	-59	-79	-81	-79	-77	-76	-75	-75	-74	-74
Adjustment in Tier II Tax Rate ³	0	-59	-198	-329	-362	-366	-374	-379	-383	-384	-386
Total	0	-118	-277	-410	-441	-443	-450	-454	-458	-458	-460
TOTAL CHANGES IN THE BUDGET SURPLUS											
Increase or Decrease (-) in the Surplus	0	-15,569	-44	-51	50	103	115	125	159	242	302

¹ Less than \$500,000.

² The budgetary treatment of this provision follows the instructions in OMB Circular A-11. CBO assumes that the investment board will maintain 20 percent of the portfolio in U.S. Treasury securities, 20 percent in corporate securities, and 60 percent in private equities.

³ Assumes that 20 percent of employer-paid payroll tax reductions are offset by additional income and employee-paid tax collections.

Note.—Components may not sum to totals because of rounding.

Basis of estimate: The Railroad Retirement system has two main components. Tier I of the system is financed by taxes on employers and employees equal to the Social Security payroll tax and provides qualified railroad retirees (and their qualified spouses, dependents, widows, or widowers) with benefits that are roughly equal to Social Security. Covered railroad workers and their employers pay the Tier I tax instead of the Social Security payroll tax, and most railroad retirees collect Tier I benefits instead of Social Security. Tier II of the system operates much like traditional multi-employer pension systems, with employers and employees contributing a certain percentage of pay toward the system to finance defined benefits to eligible railroad retirees (and qualified spouses, dependents, widows, or widowers) upon retirement. But while most multi-employer plans are run by a group of cooperating employers in the same industry, the federal government collects the Tier II payroll contribution and pays out the benefits.

H.R. 1140 would make fundamental changes to the Railroad Retirement system by expanding certain retirement benefits, reducing

payroll taxes, and authorizing a new government organization to invest funds credited to the Railroad Retirement Account in the private securities market. In addition, the bill would eliminate the separate account for supplemental benefits and pay those benefits directly from the Railroad Retirement Investment Trust.

CBO assumes an enactment date of September 30, 2001.

Direct spending

H.R. 1140 would make several changes in Railroad Retirement benefits, including

- Expanding benefits for qualified widows and widowers;
- Reducing the normal retirement age for Tier I benefits to 60;
- Reducing the system's vesting requirements; and
- Repealing the cap on the Railroad Retirement benefits.

The bill also would establish a new entity called the Railroad Retirement Investment Trust, which would be responsible for investing the reserves of the Railroad Retirement System in private securities, as well as in U.S. Treasury Securities. Without changes in law, CBO estimates that outlays for the Railroad Retirement benefits will be 8.5 billion in fiscal year 2002 and will grow to \$10.5 billion by 2011.

Benefit changes. The four changes in Railroad Retirement benefits (described below) would increase spending by \$0.1 billion in 2002 and by \$3.9 billion over the 2002–2011 period. A fifth change, which would have no budgetary effects, would shift the payment of the Supplemental Annuity from its separate account to the Railroad Retirement Investment Trust.

Expansion of Widows' and Widowers' Benefits. Section 101 of the legislation would increase Railroad Retirement annuities payable to certain widows and widowers of railroad employees. Under current law, the Tier II component of a widow(er)'s Railroad Retirement annuity is generally equal to 50 percent of the Tier II benefit that was payable to the retired employee at the time of his or her death. Section 101 would provide a guaranteed minimum benefit for widow(er)s based on 100 percent of the employee's Tier II annuity. This provision would generally provide widow(er)s with the same Tier II benefits that were previously being paid to the now deceased railroad retiree.

Section 101 would apply to benefits paid in months beginning 30 days after the bill is enacted. For widow(er)s whose benefits begin before that date, the guaranteed minimum would be based on the amount of the original annuity without adjustment for inflation.

According to the Railroad Retirement Board, this would initially affect approximately 50,000 widow(er)s currently collecting benefits. CBO estimates this provision would increase direct spending by \$83 million in 2002 and by \$979 million during the 2002–2011 period.

Reduction in Retirement Age. Section 102 of the legislation would provide for full retirement benefits at age 60 for railroad workers (and qualified spouses) who have at least 30 years of covered service. Under current law, retirees with 30 years of service may begin collecting full Tier II benefits at age 60, but Tier I benefits are reduced if they file before the age of 62. This legislation would eliminate that reduction in Tier I benefits, which was enacted in the

Railroad Solvency Act of 1983. Based on data provided by the Railroad Retirement Board, CBO estimates this provision would initially affect about 2,500 workers and would increase direct spending by \$37 million in 2002 and by \$2.8 billion over the 2002–2011 period.

Reduction in Vesting Requirement. Section 103 would reduce the number of years of covered service needed before workers (and qualified spouses) become vested in the Railroad Retirement System from 10 years to five years. The reduced vesting requirement would only apply to qualified service performed after 1995. Employees who had fewer than 10 years of qualified railroad employment before 1996 would either have to meet the current 10-year vesting requirement or have five years of covered service after 1995 in order to be vested. Section 103 would correspondingly reduce the vesting requirements for disability and survivor benefits.

Based on information provided by the Railroad Retirement Board, CBO estimates this proposal would have a negligible effect on direct spending through 2006, but would increase direct spending by \$6 million during the 2007–2011 period.

Repeal of the Ceiling on Railroad Retirement Benefits. Current law caps the total monthly benefits payable to a retiree and spouse under the Railroad Retirement system. This cap is calculated based on the employee's average monthly salary during the two years prior to retirement, or the worker's monthly Social Security earnings in the 10-year period prior to retirement. The maximum cannot be more than the final average monthly compensation and cannot be less than \$1,200. Section 104 would repeal this limit, effective January 1, 2002. The Railroad Retirement Board indicates that about 2,000 employee annuitants and 12,000 spouse annuitants currently collect reduced benefits because of the cap. CBO estimates that eliminating the Railroad Retirement maximum would increase direct spending by \$11 million in 2002 and by \$182 million from 2002 through 2011.

Investment in Non-Treasury Securities. Section 105 of H.R. 1140 would establish a new entity, the Railroad Retirement Investment Trust, which would be allowed to invest in non-Treasury securities, such as publicly traded stocks in private companies. By law, the fund's assets, which CBO estimates will total about \$19.2 billion in December 2001, now consist solely of U.S. government securities. Because those securities are the safest possible investment, they generally earn a lower rate of return than riskier instruments like corporate stocks and bonds. Similar restrictions apply to the investment policies of each major federal trust fund—Social Security, Medicare, Civil Service Retirement, Military Retirement, the Highway Trust Fund, and others. H.R. 1140 would make Railroad Retirement an exception to that rule.

Estimate Under Current Budgetary Treatment. The current budgetary treatment of federal investments in non-Treasury financial instruments is specified in the Office of Management and Budget (OMB) Circular A-11, which states that the purchases of such securities should be displayed as outlays and the sales of such securities and returns such as dividends and interest payments should be treated as offsetting receipts or collections. Under this budgetary treatment, this bill's authorization for such investment practices would increase outlays by \$15.3 billion in 2002. Beginning in

2003, however, most proceeds from stock dividends and sales would be used to pay benefits because tax revenues would not be sufficient to fund all benefits payments. Thus, the new investment practices result in decreased outlays beginning in 2003, and net spending of \$6.7 billion over the 10-year period.

As required by the bill, funds currently held in the Railroad Retirement Account and the Social Security Equivalent Benefit Account that are not currently needed to pay benefits would be transferred to the newly created Railroad Retirement Investment Trust. CBO assumes that about \$19.2 billion in those accounts would be transferred on December 31, 2001, and would promptly be invested in various financial instruments. Based on the practices of other multi-employer pension plans, CBO further assumes the managers of the fund would keep 20 percent of the investments in U.S. Treasury securities, 20 percent in high-grade corporate bonds, and the remaining 60 percent in equities. Because purchases of Treasury securities are not considered outlays, only 80 percent of the initial investments of the fund would be shown as federal outlays. The estimates assume that Treasury securities yield about a 6 percent return, high-grade corporate bonds a 7 percent return, and equities a 9 percent return. The assumption of returns on Treasury securities is based on CBO's January 2001 economic projections, while the assumed returns on corporate bonds and equities are consistent with the 1999 report of the Technical Panel on Assumptions and Methods to the Social Security Advisory Board.

Current Budgetary Treatment vs. Possible Alternatives. For most federal programs, accounting for outlays is straightforward. The federal government buys goods and services—such as defense and medical care—and makes transfer payments like Social Security and payments for Food Stamps by issuing a check or its equivalent. Those payments are counted as outlays when they are issued. The A-11 treats the purchases of assets—financial or physical—in the same way. The purchase price simply appears as a federal outlay. Specifically, the A-11 states:

[w]e treat an investment in non-U.S. securities (equity or debt securities) as a purchase of an asset. You must record an obligation and an outlay for the purchase in an amount equal to the purchase price. * * * You record interest received on such investments as a collection when you receive it and in the amount that you receive. * * * You record the proceeds from the sale or redemption of a non-U.S. security as a collection when received and in the amount received.

In contrast, the A-11 directs that U.S. securities be treated as equivalent to cash, and tells agencies to count transactions involving such securities as a change in the mix of asset holdings rather than as a purchase or sale of assets. Thus, purchases of non-Treasury securities are deemed to be outlays under the A-11 guidelines, but purchases of Treasury securities are not. In practice, this difference has been of little consequence because the government has only rarely acquired non-Treasury securities.

Some budget experts think that this long-standing practice is ill-suited to purchases of financial assets that the government acquires as a way of preserving (or enhancing) the value of cash bal-

ances. (For example, the current treatment would dictate that if current or future budget surpluses were entirely invested in non-Treasury securities, the budget would record government expenditures equal to receipts, which might not be a useful indicator of the government's financial condition.) It can also be argued that purchases of financial assets in order to preserve or enhance the value of cash balances are very different in nature, and should be treated differently in the budget, than purchases of goods and services, entitlement benefits, grants, employees' salaries, and other programmatic or operational activities of the government. Consequently, some analysts have argued that these purchases should not be treated as outlays, but rather as a means of financing the activities of the federal government. In this estimate, CBO has followed the instructions of the A-11, but we may consider a different budgetary treatment in the future.

Revenues

H.R. 1140 would make several changes to the payroll tax specified in the Railroad Retirement Act, and would result in estimated net revenue losses of \$0.1 billion in 2002 and \$4.0 billion over the 10-year period. Because reductions in employer-paid employment taxes are assumed to be passed through to workers as higher compensation, mostly in the form of wages, increased income and employee-paid payroll tax collections are assumed to offset 20 percent of the lost payroll tax revenues.

Supplemental Annuity Tax. Section 203 of the bill would repeal the Supplemental Annuity tax, which is currently levied on employers to pay for a third layer of benefits on top of Tier I and Tier II. Instead of being paid from a separate account, supplemental benefits would be paid directly from the Railroad Retirement Account. Based on information provided by the Railroad Retirement Board, CBO estimates that this provision would reduce net revenue by \$375 million over the 2002–2006 period and by \$749 million over the 2002–2011 period.

Tier II Payroll Tax Rates. The bill would also lower the Tier II tax rate on employers from its current level of 16.1 percent to 14.75 percent in calendar year 2002 and 14.2 percent in calendar year 2003. Thereafter, H.R. 1140 would link future Tier II tax rates to the financial condition of the Railroad Retirement Investment Trust (see Table 2). Specifically, the bill would require the Railroad Retirement Board to calculate the ratio of assets held in the trust fund (using the average balance in the fund over the previous 10 years) to the total Railroad Retirement benefits paid out in a given year (the account benefit or trust fund ratio). In 2004, CBO expects the account benefit ratio would be about 5.6, which would cause payroll tax rates to be set at 13.1 for employers and 4.9 for employees (which is the current rate for employees). CBO estimates that the Tier II tax rates will remain at that level through at least 2011 and that the changes in the tax rate would reduce revenue by \$1.3 billion over the 2002–2006 period and \$3.2 billion from 2002 through 2011. (Under current law, CBO estimates that Tier II tax revenues will total about \$31 billion over the 2002–2011 period.)

If, however, the account benefit ratio rises or falls below expectations, a change in payroll tax rates could be triggered by the bill. For instance, if the board determined that this ratio had gone

above 6.0, then the Tier II payroll tax rate for both employers and employees would be reduced. Conversely, if the board determined that the ratio had fallen below 4.0, then the payroll tax for railroad employers would increase.

Under reasonable assumptions about railroad employment and investment income to the trust fund, CBO estimates that neither outcome would occur during the next 10 years. For example, if the new trust fund held only Treasury securities, the account benefit ratio would fall from 6.0 today to 5.1 by 2011. If the trust fund were invested in a wider variety of securities, and the rates of return matched CBO's assumptions, the ratio would be roughly 5.8 in 2011.

Although that conclusion represents CBO's best judgment, the unexpected could happen. For example, rapid growth in the railroad industry's payroll or spectacular returns in the stock market could trigger tax cuts by 2011. On the other hand, employment that is significantly lower than expected or a drop in stock values could lead to automatic tax increases.

TABLE 2.—DETERMINATION OF TIER II TAX RATE

If the account benefit ratio is:		The Tier II tax rates would be:	
At least	But less than	For employers	For employees
0	2.5	22.1	4.9
2.5	3.0	18.1	4.9
3.0	3.5	15.1	4.9
3.5	4.0	14.1	4.9
4.0	6.1	13.1	4.9
6.1	6.5	12.6	4.4
6.5	7.0	12.1	3.9
7.0	8.5	11.6	3.4
7.5	8.0	11.1	2.9
8.0	8.5	10.1	1.9
8.5	9.0	9.1	0.9
9.0	NA	8.2	0

Note.—The account benefit ratio is calculated by dividing average trust fund assets over the previous 10 years by the total Railroad Retirement benefits paid in a given year.

NA = Not applicable.

Pay-as-you-go-considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending and receipts. The net changes in outlays and governmental receipts that are subject to pay-as-you-go procedures are shown in Table 3. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

TABLE 3.—ESTIMATED EFFECTS OF H.R. 1140 ON DIRECT SPENDING AND RECEIPTS

	By fiscal year, in millions of dollars—										
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Changes in outlays	0	15,451	-233	-359	-491	-546	-565	-579	-617	-700	-762
Changes in receipts	0	-118	-277	-410	-441	-443	-450	-454	-458	-458	-460

Intergovernmental and private-sector impact: H.R. 1140 contains no intergovernmental or private-sector mandates as defined by UMRA and would impose no costs on state, local, or tribal governments.

Comparison with other estimates: The Railroad Retirement Board has prepared an estimate of the individual benefit increases and projected trust fund holdings under H.R. 1140. The board's estimate contains trust fund projections using three different assumptions about employment levels in the railroad industry.

Using the middle employment assumption, which CBO believes is the most realistic, the Railroad Retirement Board estimates that the cost of benefits under H.R. 1140 would increase by \$1.4 billion from 2002 through 2006 and by \$3.9 billion during the 2002–2011 period, slightly more than CBO estimates. In addition, the board estimates that revenues from Tier II payroll taxes would decrease by \$1.5 billion from 2002 through 2006 and \$3.6 billion over the 2002–2011 period. The board's estimates do not include any impact the lower employer-paid payroll taxes might have on income and employee-paid payroll tax receipts. On a comparable basis, excluding impacts on income and employee-paid payroll tax receipts, CBO estimates Tier II revenue losses of \$1.6 billion over five years and \$4.0 billion over 10 years. Both the board and CBO estimate that balances in the new trust fund would rise steadily over time, but would not be high enough to trigger a reduction in the payroll tax during the next 10 years.

Estimate prepared by: Federal Costs: Geoffrey Gerhardt and Ed Harris. Impact on State, Local, and Tribal Governments: Leo Lex. Impact on the Private Sector: Ralph Smith.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause (3)(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act. (Public Law 104–4.)

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

Because the legislation applies only to railroad employers and employees, the Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act. (Public Law 104–1.)

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

RAILROAD RETIREMENT ACT OF 1974

* * * * *

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) * * *

* * * * *

(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).

* * * * *

(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) * * *

* * * * *

(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.

COMPUTATION OF EMPLOYEE ANNUITIES

SEC. 3. (a)(1) * * *

(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) In lieu of an annuity amount provided under subdivision (1), the annuity of an individual entitled to an annuity under paragraph (ii) of section 2(a)(1) of this Act which begins to accrue before the individual attains age 62 shall be in an amount equal to—

[(i) for each month prior to the first month throughout which the individual is age 62, the amount (after any reduction on account of age but before any deductions on account of work) of the old-age insurance benefit to which such individual would have been entitled under the Social Security Act as of the date on which such individual's annuity begins to accrue if such individual had attained age 62 on the first day of the month in which his or her annuity begins to accrue and 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, using for purposes of this computation the number of benefit computation years applicable to a person born in the year in which such individual was born; and

[(ii) for months beginning with the first month throughout which the individual is age 62, the amount (after any reduction on account of age but before any deductions on account of work) of the old-age insurance benefit to which such individual would have been entitled under the Social Security Act 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.]

(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.*

* * * * *

(f) [(1) If the total amount of an individual's annuity and supplemental annuity computed under the preceding subsections of this section would, before any reductions on account of age, before any reduction due to such individual's entitlement to a monthly insur-

ance benefit under the Social Security Act, and disregarding any increases in such total amount which become effective after the date on which such individual's annuity under section 2(a)(1) of this Act begins to accrue, exceed an amount equal to the sum of (A) 100 percentum of his "final average monthly compensation" up to an amount equal to 50 percentum 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 in which such individual's annuity under section 2(a)(1) of this Act begins to accrue, plus (B) 80 percentum of so much of his "final average monthly compensation" as exceeds 50 percentum 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 in which such individual's annuity under section 2(a)(1) of this Act begins to accrue, the supplemental annuity of such individual first, and then, if necessary, the annuity amount of such individual as computed under subsection (b) of this section, shall be reduced until such total amount of such individual's annuity and supplemental annuity equals such sum or until such supplemental annuity and such annuity amount computed under subsection (b) of this section are reduced to zero, whichever occurs first: *Provided, however,* That the provisions of this subdivision shall not operate to reduce the total amount of an individual's annuity and supplemental annuity computed under the preceding subsections of this section below \$1,200. For purposes of this subdivision, the "final average monthly compensation" of an individual shall except as provided in the following sentence be determined by dividing the total compensation received by such individual in the two calendar years, consecutive or otherwise, in which he was credited with the highest total compensation during the ten-year period ending with December 31 of the year in which such individual's annuity under section 2(a)(1) of this Act begins to accrue by 24. If the individual's "average monthly compensation" is determined under subdivision (2) of subsection (b) of this section, the "final average monthly compensation" for such individual shall be the average of the compensation for the 24 months in which the compensation determined for the purpose of subdivision (2) of subsection (b) of this section is the highest. For purposes of this subdivision, the term "compensation" shall include "compensation" as defined in section 1(h) of this Act, "wages" as defined in section 209 of the Social Security Act, "self-employment income" as defined in section 211(b) of the Social Security Act, and wages deemed to have been paid under section 217 or 229 of the Social Security Act on account of military service: *Provided, however,* That in no case shall the compensation with respect to any calendar month exceed the limitation on the compensation for such month prescribed in subsection (j) of this section. Wages and self-employment income included as compensation for purposes of this subdivision 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 calendar quarter in which credited, in the case of wages paid before 1978, or in equal proportions with respect to all months in the calendar year in which credited, in the case of self-employment income and in the case of wages paid after 1977.】

【(2)】 (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[, without regard to the provisions of subdivision (1) of this subsection,] 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.

[(3)] (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.

* * * * *

COMPUTATION OF SPOUSE AND SURVIVOR ANNUITIES

SEC. 4. (a)(1) * * *

(2) For purposes of this subsection, **if an individual is entitled to an annuity under paragraph (ii) of section 2(a)(1) of this Act which did not begin to accrue before such individual attained age 62, the spouse of such individual entitled to an annuity under clause (B) of paragraph (ii) of section 2(c)(1) of this Act** *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(1) of the Social Security Act.

[(3) In the case of an individual entitled to an annuity under section 2(a)(1)(ii) of this Act which began to accrue before such individual attained age 62, the annuity of the spouse of such individual under section 2(c) of this Act shall, in lieu of an annuity amount provided under subdivision (1), be in an amount equal to—

[(i) for each month prior to the first month throughout which both the individual and the spouse are age 62, 50 percentum of that portion of the individual's annuity as is, or was prior to such individual's attaining age 62, computed under section 3(a)(3)(i) of this Act, reduced to the same extent such amount would be reduced under section 202(b)(4) of the Social Security Act (in the case of a wife) or under section 202(c)(2) of the Social Security Act (in the case of a husband) as if such amount were a wife's insurance benefit or a husband's insurance benefit, respectively, under such Act; and

[(ii) for months beginning with the first month throughout which both the individual and the spouse are age 62, the amount (after any reduction on account of age are based on the spouse's age at the time the amount under this paragraph first becomes payable but before any deductions on account of work) of the wife's insurance benefit or the husband's insurance benefit to which such spouse would have been entitled under the Social Security Act if the individual's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act.

[(4) In the case of an individual entitled to an annuity under paragraph (iv) or (v) of section 2(a)(1) of this Act, the annuity of the spouse of such individual entitled to an annuity under section

2(c)(1)(ii)(B) of this Act shall, in lieu of an annuity amount provided under subdivision (1), be in an amount equal to the amount (after any reduction on account of age but before any deductions on account of work) of the wife's insurance benefit or the husband's insurance benefit to which such spouse would have been entitled under the Social Security Act if the individual's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act. For purposes of this subdivision, spouses who have not attained age 62 shall be deemed to have attained age 62.】

(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.

* * * * *

【(c) If (A) the total amount of the annuity of a spouse of an individual as computed under the preceding subsections of this section as of the date on which the annuity of such individual under section 2(a)(1) of this Act began to accrue (before any reduction due to such spouse's entitlement to a monthly insurance benefit under the Social Security Act) plus (B) the total amount of the annuity and supplemental annuity of the individual (before any reduction due to such individual's entitlement to a monthly insurance benefit under the Social Security Act) subject to the provisions of section 3(f)(1) of this Act would, before any reductions in the amounts specified in clauses (A) and (B) on account of age and disregarding any increases in such amounts which become effective after the date on which the individual's annuity under section 2(a)(1) of this Act began to accrue, exceed the amount determined under clauses (A) and (B) of section 3(f)(1) of this Act, the portion of the annuity of such spouse determined under subsection (b) of this section as of the date on which the individual's annuity under section 2(a)(1) began to accrue shall be reduced until the sum of the amounts specified in clauses (A) and (B) of the subsection equals the amount determined under clauses (A) and (B) of section 3(f)(1) or until such amount under subsection (b) is reduced to zero, whichever occurs first. If, after such amount under subsection (b) is reduced to zero, the sum of the remaining amounts specified in clauses (A) and (B) of this subsection still exceeds the amount determined under clauses (A) and (B) of section 3(f)(1), the supplemental annuity of the individual first, and then, if necessary, the annuity amount of the individual computed under subsections (b), (c), and (d) of section 3 as of the date on which the individual's annuity under sec-

tion 2(a)(1) began to accrue, shall be reduced until the amounts specified in clauses (A) and (B) of this subsection equals the amounts determined under clauses (A) and (B) of section 3(f)(1) or until such supplemental annuity and such annuity amount are reduced to zero, whichever occurs first. Notwithstanding the preceding provisions of this subsection, the provisions of this subsection shall not operate to reduce the total of the amounts specified in clauses (A) and (B) of this subsection below \$1,200.】

* * * * *
 (g)(1) * * * * *
 * * * * *

(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 percentum" shall be substituted for "50 percentum"; and*

(B) *in subsection (g)(2)(ii) "130 percentum" shall be substituted for "80 percentum" 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.*

* * * * *

ANNUITY BEGINNING AND ENDING DATES

SEC. 5. (a) * * * *

* * * * *

(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 annuity under this Act 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 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.

* * * * *

LUMP-SUM PAYMENTS

SEC. 6. (a) * * *
 (b)(1) * * *

(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.

* * * * *

(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 of 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.

* * * * *

POWERS AND DUTIES OF THE BOARD

SEC. 7. (a) * * *

(b)(1) * * *

(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,

* * * * *

[(4) The Board shall from time to time certify to the Secretary of the Treasury the name and address of each individual entitled to receive a payment, the amount of such payment, and the time at which it should be made, and the Secretary of the Treasury through the Division of Disbursements of the Treasury Department, and prior to audit by the General Accounting Office, shall make payment in accordance with the certification by the Board.]

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

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

(i) to the Secretary of the Treasury the amounts required to be transferred from the Social Security Equivalent Benefit Ac-

count 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 Railroad Retirement Investment Trust the amounts required to be transferred from the 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.

* * * * *

(c)(1) Benefit payments determined by the Board to be payable under this Act shall be made **【from the Railroad Retirement Account】** *by the disbursing agent under subsection (b)(4) from money transferred to it from the Railroad Retirement Investment Trust or the Social Security Equivalent Benefit Account, as the case may be,* except that **【payments of supplemental annuities under section 2(b) of this Act shall be made from the Railroad Retirement Supplemental Account, and】** 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 individual 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.

* * * * *

(d)(1) * * *

(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)(3)~~ 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)(3)~~ 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.

* * * * *

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~~],~~ except those portions of the amounts covered into the Treasury under sections 3211(b), 3221(c), and 3221(d) of such Tax Act as are necessary to provide sufficient funds to meet the obligation to pay supplemental annuities at the level provided under section 3(e) of this Act and, with respect to those entitled to supplemental annuities under section 205(a) of title II of this Act, at the level provided under section 205(a). The Board is directed to determine what portion of the taxes collected under sections 3211(b), 3221(c), and 3221(d) of the Railroad Retirement Tax Act is to be credited to the Railroad Retirement Account pursuant to the preceding provisions of this subsection and what portion of such taxes is to be credited to the Railroad Retirement Supplemental Account pursuant to the provisions of subsection (c) of this section. The Board shall make such a determination with respect to each calendar quarter commencing with the quarter beginning January 1, 1975, shall make each such determination not later than fifteen days before each calendar quarter, and shall, as soon as practicable after each such determination, advise the Secretary of the Treasury of the determination made. The Secretary of the Treasury shall credit the amounts covered into the Treasury under sections 3211(b), 3221(c), and 3221(d) of the Railroad Retirement Tax Act to the Railroad Retirement Account and the Railroad Re-

irement Supplemental Account in such proportions as is determined by the Board pursuant to the provisions of this subsection].

* * * * *

[(c) 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 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 percentum, 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, together 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.*

* * * * *

(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, the Dual Benefits Payments Account and the Railroad Retirement Supplemental Account as, in the judgment of the Board, is not immediately required for the payment of annuities, supplemental annuities, and death benefits. Such investments may be made only *and the Dual Benefits Payments Account as are not transferred to the 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 **the Second Liberty Bond Act, as amended** *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 percentum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 percentum nearest such rate: *Provided*, That the rate of interest on such obligations shall in no case be less than 3 percentum 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 foregoing requirements]** *the requirements of this subsection* will provide the greatest rate of return on the funds invested.

* * * * *

(j) *RAILROAD RETIREMENT INVESTMENT TRUST.*—

(1) *ESTABLISHMENT.*—*The 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.*—*The Trust shall have a Board of Trustees, consisting of 7 members, each appointed by a unanimous vote of the Railroad Retirement Board. The Railroad Retirement Board may remove any member so appointed by unanimous vote. Of the members, 3 shall represent the interests of labor, 3 shall represent the interests of management, and 1 shall represent the interests of the general public. The members of the Board of Trustees shall not be considered officers or employees of the Government of the United States.*

(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. A vacancy in the Board of Trustees shall not affect the powers of the Board of*

Trustees and shall be filled in the same manner as the selection of the member whose departure caused the vacancy. Upon the expiration of a term of a member of the Board of Trustees, that member shall continue to serve until a successor is appointed.

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

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

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

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

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

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

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

(A) DUTIES OF THE BOARD OF TRUSTEES.—The Trust and each member of the Board of Trustees shall discharge their duties 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, 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 percentum 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) **APPLICATION OF FIDUCIARY STANDARDS TO RAILROAD RETIREMENT BOARD.**—

(A) **IN GENERAL.**—*The provisions of paragraph (5)(A) shall apply to the members of the Railroad Retirement Board in the discharge of their duty to appoint the members of the Board of Trustees under paragraph (3)(A) in the same manner as such provisions apply to the members of the Board of Trustees.*

(B) **ENFORCEMENT.**—*For purposes of this paragraph, the provisions of paragraph (5)(F) shall apply by substituting “the Secretary of Labor” for “the Railroad Retirement Board”.*

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

(8) **QUORUM.**—*Five members of the Board of Trustees constitute a quorum to do business. Investment guidelines must be adopted by a unanimous vote of the entire Board of Trustees. All other decisions of the Board of Trustees shall be decided by*

a majority vote of the quorum present. All decisions of the Board of Trustees shall be entered upon the records of the Board of Trustees.

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

(k) TRANSFERS TO THE TRUST.—The Board shall, upon establishment of the 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 Railroad Retirement Investment Trust. The Secretary shall make that transfer.

(l) RAILROAD RETIREMENT INVESTMENT TRUST.—The 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).

SOCIAL SECURITY EQUIVALENT BENEFIT ACCOUNT

SEC. 15A. (a) * * *

* * * * *

(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.*

* * * * *

(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. [Whenever later in such month there is a transfer to the Social Security Equivalent Benefit Account under paragraph (2) or (4) of section 7(c) of this Act, the amount so transferred shall be immediately retransferred to the Railroad Retirement Account. The amount retransferred under the preceding sentence shall not exceed the amount of any outstanding transfers under this paragraph from the Railroad Retirement Account plus such additional amounts determined by the Board to be equal to the loss of interest to the Railroad Retirement Account resulting from such outstanding transfers.

[(2) Whenever the Board determines that—

[(A) amounts in the Railroad Retirement Account will not be sufficient to pay the annuities which it estimates are due, or will become due, from such Account, and

[(B) the transfer under this paragraph will not jeopardize the present or future payment of social security equivalent benefits, the Board shall request the Secretary of the Treasury to transfer from the Social Security Equivalent Benefit Account to the Railroad Retirement Account such moneys as the Board estimates will be necessary for the payment of such annuities, and the Secretary shall make such transfer. No transfer under this paragraph shall be required to be repaid.]

(2) Upon establishment of the 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 Railroad Retirement Investment Trust, and the Secretary shall make that transfer. Any balance transferred under this paragraph shall be used by the Railroad Retirement Investment Trust only to pay benefits under this Act or to purchase obligations of the United States that are backed by the full faith and credit of the United States pursuant to chapter 31 of title 31, United States Code. The proceeds of sales of, and the interest income from, such obligations shall be used by the Trust only to pay benefits under this Act.

* * * * *

CREDITING SERVICE UNDER THE SOCIAL SECURITY ACT

SEC. 18. (1) * * *

(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 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.

AUTOMATIC BENEFIT ELIGIBILITY REQUIREMENT ADJUSTMENTS

SEC. 19. (a) * * *

* * * * *

(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) * * *

(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.

* * * * *

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 projection prepared pursuant to the preceding sentence] *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) * * *

* * * * *

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.

SECTION 205 OF THE SOCIAL SECURITY ACT

EVIDENCE, PROCEDURE, AND CERTIFICATION FOR PAYMENT

SEC. 205. (a) * * *

* * * * *

(i) Upon final decision of the Commissioner of Social Security, or upon final judgment of any court of competent jurisdiction, that any person is entitled to any payment or payments under this title, the Commissioner of Social Security shall certify to the Managing Trustee the name and address of the person so entitled to receive such payment or payments, the amount of such payment or payments, and the time at which such payment or payments should be made, and the Managing Trustee, through the Fiscal Service of the Department of the Treasury, and prior to any action thereon by the General Accounting Office, shall make payment in accordance with the certification of the Commissioner of Social Security (except that 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 the Railroad Retirement Act of 1937 or the Railroad Retirement Act of 1974, (B) the 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 the Railroad Retirement Act of 1974, and (D) any other person entitled to benefits under section 202 of this 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, as defined in the Railroad Retirement Act of 1974, at the time of his death), such certification shall be made to the Railroad Retirement Board which

shall provide for such payment or payments to such person on behalf of the Managing Trustee in accordance with the provisions of the Railroad Retirement Act of 1974): *Provided*, That where a review of the Commissioner's decision is or may be sought under subsection (g) the Commissioner of Social Security may withhold certification of payment pending such review. The Managing Trustee shall not be held personally liable for any payment or payments made in accordance with a certification by the Commissioner of Social Security.

* * * * *

INTERNAL REVENUE CODE OF 1986

Subtitle A—Income Taxes

* * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * *

Subchapter A—Determination of Tax Liability

* * * * *

PART IV—CREDITS AGAINST TAX

* * * * *

Subpart A—Nonrefundable Personal Credits

* * * * *

SEC. 24. CHILD TAX CREDIT.

(a) * * *

* * * * *

(d) ADDITIONAL CREDIT FOR FAMILIES WITH 3 OR MORE CHILDREN.—

(1) * * *

* * * * *

(3) SOCIAL SECURITY TAXES.—For purposes of paragraph (1)—

(A) IN GENERAL.—The term “social security taxes” means, with respect to any taxpayer for any taxable year—

(i) * * *

* * * * *

(iii) 50 percent of the taxes imposed by [section 3211(a)(1)] *section 3211(a)* on amounts received by the taxpayer during the calendar year in which the taxable year begins.

* * * * *

Subchapter B—Computation of Taxable Income

* * * * *

PART II—ITEMS SPECIFICALLY INCLUDED IN GROSS INCOME

* * * * *

SEC. 72. ANNUITIES; CERTAIN PROCEEDS OF ENDOWMENT AND LIFE INSURANCE CONTRACTS.

(a) * * *

* * * * *

(r) CERTAIN RAILROAD RETIREMENT BENEFITS TREATED AS RECEIVED UNDER EMPLOYER PLANS.—

(1) * * *

(2) TIER 2 TAXES TREATED AS CONTRIBUTIONS.—

(A) * * *

* * * * *

(B) TIER 2 PORTION.—For purposes of subparagraph (A)—

(i) AFTER 1984.—With respect to compensation paid after 1984, the tier 2 portion shall be the taxes imposed by sections 3201(b), ~~3211(a)(2)~~ 3211(b), and 3221(b).

* * * * *

Subchapter F—Exempt Organizations

* * * * *

PART I—GENERAL RULE

* * * * *

SEC. 501. EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.

(a) * * *

* * * * *

(c) LIST OF EXEMPT ORGANIZATIONS.—The following organizations are referred to in subsection (a):

(1) * * *

* * * * *

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

* * * * *

Subtitle C—Employment Taxes

* * * * *

CHAPTER 22—RAILROAD RETIREMENT TAX ACT

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

* * * * *

Subchapter A—Tax on Employees

* * * * *

SEC. 3201. RATE OF TAX.

(a) * * *

[(b) **TIER 2 TAX.**—In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to 4.90 percent of the compensation received during any calendar year by such employee for services rendered by such employee.]

(b) *TIER 2 TAX.*—

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

(2) *APPLICABLE PERCENTAGE.*—*For purposes of paragraph (1), the term “applicable percentage” means—*

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

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

* * * * *

Subchapter B—Tax on Employee Representatives

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SEC. 3211. RATE OF TAX.

[(a) **IMPOSITION OF TAXES.**—

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

[(2) **TIER 2 TAX.**—In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to the following percentage of the compensation received during any calendar year by such employee representatives for services rendered by such employee representative:

[In the case of compensation received during:	The rate shall be:
1985	13.75
1986 or thereafter	14.75

[(3) CROSS REFERENCE.—

[For application of different contribution bases with respect to the taxes imposed by paragraphs (1) and (2), see section 3231(e)(2).

[(b) In addition to other taxes, there is hereby imposed on the income of each employee representative a tax at a rate equal to the rate of excise tax imposed on every employer, provided for in section 3221(c), for each man-hour for which compensation is paid to him for services rendered as an employee representative.]

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

(b) TIER 2 TAX.—

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

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

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

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

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

(c) CROSS REFERENCE.—

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

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Subchapter C—Tax on Employers

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SEC. 3221. RATE OF TAX.

(a) * * *

[(b) TIER 2 TAX.—In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to 16.10 percent of the compensation paid during any calendar year by such employer for services rendered to such employer.

[(c) In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, for each man-hour for which compensation is paid by such

employer for services rendered to him during any calendar quarter, at such rate as will make available sufficient funds to meet the obligation to pay supplemental annuities at the level provided under section 3(j) of the Railroad Retirement Act of 1937 as in effect on December 31, 1974 and administrative expenses in connection therewith. For the purpose of this subsection, the Railroad Retirement Board is directed to determine what rate is required for each calendar quarter. The Railroad Retirement Board shall make the determinations provided for not later than fifteen days before each calendar quarter. As soon as practicable after each determination of the rate, as provided in this subsection, the Railroad Retirement Board shall publish a notice in the Federal Register, and shall advise all employers, employee representatives, and the Secretary, of the rate so determined. With respect to daily, weekly, or monthly rates of compensation such tax shall apply to the number of hours comprehended in the rate together with the number of overtime hours for which compensation in addition to the daily, weekly, or monthly rate is paid. With respect to compensation paid on a mileage or piecework basis such tax shall apply to the number of hours constituting the hourly equivalent of the compensation paid. Each employer of employees whose supplemental annuities are reduced pursuant to section 3(j)(2) of the Railroad Retirement Act of 1937 or section 2(h)(2) of the Railroad Retirement Act of 1974 shall be allowed as a credit against the tax imposed by this subsection an amount equivalent in each month to the aggregate amount of reductions in supplemental annuities accruing in such month to employees of such employer. If the credit so allowed to such an employer for any month exceeds the tax liability of such employer accruing under this subsection in such month, the excess may be carried forward for credit against such taxes accruing in subsequent months but the total credit allowed by this paragraph to an employer shall not exceed the total of the taxes on such employer imposed by this subsection. At the end of each calendar quarter the Railroad Retirement Board shall certify to the Secretary with respect to each such employer the amount of credit accruing to such employer under this paragraph during such quarter and shall notify such employer as to the amount so certified.

[(d) Notwithstanding the provisions of subsection (c) of this section, the tax imposed by such subsection (c) shall not apply to an employer with respect to employees who are covered by a supplemental pension plan which is established pursuant to an agreement reached through collective bargaining between the employer and employees. There is hereby imposed on every such employer an excise tax equal to the amount of the supplemental annuity paid to each such employee under section 2(b) of the Railroad Retirement Act of 1974, plus a percentage thereof determined by the Railroad Retirement Board to be sufficient to cover the administrative costs attributable to such payments under section 2(b) of such Act.]

(b) TIER 2 TAX.—

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

(2) *APPLICABLE PERCENTAGE.*—For purposes of paragraph (1), the term “applicable percentage” means—

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

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

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

[(e)] (c) *CROSS REFERENCE.*—

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

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Subchapter D—General Provisions

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SEC. 3231. DEFINITIONS.

(a) * * *

* * * * *

(e) *COMPENSATION.*—For purposes of this chapter—

(1) * * *

(2) *APPLICATION OF CONTRIBUTION BASES.*—

(A) *COMPENSATION IN EXCESS OF APPLICABLE BASE EXCLUDED.*—

(i) * * *

* * * * *

(iii) *HOSPITAL INSURANCE TAXES.*—Clause (i) shall not apply to—

(I) * * *

(II) so much of the rate applicable under section [3211(a)(1)] 3211(a) as does not exceed the rate of tax in effect under section 1401(b).

* * * * *

(B) *APPLICABLE BASE.*—

(i) * * *

(ii) *TIER 2 TAXES, ETC.*—For purposes of—

(I) the taxes imposed by sections 3201(b), [3211(a)(2)] 3211(b), and 3221(b), and

* * * * *

(4)(A) For purposes of applying sections 3201(a), [3211(a)(1)] 3211(a), and 3221(a), in the case of payments made to an employee or any of his dependents on account of sickness or accident disability, clause (i) of the second sentence of paragraph (1) shall exclude from the term “compensation” only—

(i) payments which are received under a workmen’s compensation law, and

(ii) benefits received under the Railroad Retirement Act of 1974.

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Subchapter E—Tier 2 Tax Rate Determination

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

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

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

(b) *TAX RATE SCHEDULE.*—

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

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

(1) *AVERAGE ACCOUNT BENEFITS RATIO.*—For purposes of this section, the term “average account benefits ratio” means, with respect to any calendar year, the average determined by the Secretary of the account benefits ratios for the 10 most recent fiscal years ending before such calendar year. If the amount determined under the preceding sentence is not a multiple of 0.1, such amount shall be increased to the next highest multiple of 0.1.

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

(d) *NOTICE.*—No later than December 1 of each calendar year, the Secretary shall publish a notice in the Federal Register of the rates

of tax determined under this section which are applicable for the following calendar year.

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