

NO. 45692-3-II

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**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

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PATRICK J. BIRGEN,

Appellant,

v.

WASHINGTON STATE  
DEPARTMENT OF LABOR AND INDUSTRIES,

Respondent.

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**BRIEF OF RESPONDENT  
DEPARTMENT OF LABOR AND INDUSTRIES**

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## I. INTRODUCTION

This case arises under RCW Title 51, the Industrial Insurance Act. When a worker receives both workers' compensation benefits (total disability) and social security benefits, the Department of Labor and Industries (Department) may reduce the amount of workers' compensation benefits to take into account the social security benefits. Reducing the amount the Department has to pay the worker prevents the worker from receiving a windfall in the form of duplicate wage-replacement benefits.

The Department reduces the worker's benefits using 42 U.S.C. § 424a of the Social Security Act. RCW 51.32.220. Under 42 U.S.C. § 424a, the amount of the reduction depends in part on the worker's "average current earnings." The Department followed this statute to calculate Patrick Birgen's average current earnings based on the highest annual wages he has received in his entire working life, which he earned in 1983, the year before he became disabled. Birgen does not dispute that his 1983 earnings are the highest annual earnings he has ever received, nor does he argue that the Department miscalculated his 1983 earnings. Rather, with no support in the provisions of either the Industrial Insurance Act or the Social Security Act, Birgen argues that the Department should have updated his 1983 wages to their present day value when determining his average current earnings.

The Board of Industrial Insurance Appeals (Board) and the superior court properly rejected Birgen's argument that his 1983 wages should be updated when calculating his average current earnings, as the plain language of the relevant statutes do not authorize such updating. This Court should affirm.

## **II. STATEMENT OF THE ISSUES**

RCW 51.32.220 directs the Department to use 42 U.S.C. § 424a to calculate an offset, under which the Department must calculate the "average current earnings." 42 U.S.C. § 424a(a)(8)(C) calculates worker's average current earnings by looking at the "wages and self-employment income . . . for the calendar year" of the injury and the "highest annual wages" earned within five years of the injury.

Does 42 U.S.C. § 424a require the Department to "update" a worker's past wages to their present day value when calculating the worker's average current earnings when the statute bases this calculation on the wages in the "calendar year" and wages within five years of the injury and does not provide for indexing for inflation?

## **III. STATEMENT OF THE CASE**

Birgen suffered an industrial injury to his neck in 1984, while working for the Boise Cascade Corporation. CP 79. Birgen's claim was allowed and, ultimately, the Board determined that he was a permanently

and totally disabled worker as of 1991, and that he should receive pension benefits. CP 82.

In 2012, the Department determined that Birgen was receiving social security benefits in the amount of \$830 a month and that the highest yearly wages he had ever earned was \$30,965, which he earned in 1983. CP 62-63. The Department reduced Birgen's total permanent disability benefit rate from \$2,911.42 to \$2,081.42 per month as a result of his concurrent receipt of industrial insurance benefits and social security benefits. CP 62-63; App's Br. at 10. This reduction in Birgen's industrial insurance benefits based on his concurrent receipt of social security benefits is known as an "offset." *See, e.g., Allan v. Dep't of Labor & Indus.*, 66 Wn. App. 415, 420, 832 P.2d 489 (1992).

RCW 51.32.220 and RCW 51.32.225 require the Department to offset a worker's total disability benefits when the worker is also receiving social security benefits for the same time period. Under those statutes, the reduction is made using the Social Security Act, which, in turn, provides that the amount of the reduction depends on the amount of social security benefits and industrial insurance benefits the worker would otherwise be eligible to receive, as well as the worker's "average current earnings." *See* RCW 51.32.220; RCW 51.32.225. Here the Department found that the

annual wage of \$30,965 should be used to calculate his average current earnings. CP 62-63.

Birgen appealed to the Board, arguing that the Department should have, when determining the amount of his social security offset, updated his 1983 earnings to their present day value when calculating his average current earnings. CP 65-67, 102-09, 155-67. Following Birgen's motion for summary judgment (CP 102-09), an industrial appeals judge issued a proposed decision that granted summary judgment to the Department, concluding that there was no legal basis for the Department to adjust a worker's average current earnings based on inflation as neither the Industrial Insurance Act nor the Social Security Act provide any basis for updating a worker's wages to their present day value when calculating the worker's average current earnings. CP 55-58 .

Birgen petitioned the Board for review of the proposed decision and order. CP 26-36. The Board granted review, but it did so only to make minor corrections to the findings of fact and conclusions of law. CP 17-19. The Board affirmed the Department. CP 17-19.

Birgen appealed the Board's decision to the Pierce County Superior Court. CP 1. The superior court affirmed the Board's decision, concluding that both the Department and the Board were correct that neither the Industrial Insurance Act nor the Social Security Act provide

any authority for Birgen's argument that his 1983 wages should have been updated to their present day value when calculating his average current earnings. CP 191-94.

Birgen then appealed to this Court. CP 195-202.

#### IV. STANDARD OF REVIEW

Review of superior court decisions in workers' compensation cases is under the ordinary standard of review for civil cases. RCW 51.52.140; *Ruse v. Dep't of Labor & Indus.*, 138 Wn.2d 1, 5, 977 P.2d 570 (1999). In its role as an appellate court, this Court reviews the decision of the superior court, not that of the Board. *See Rogers v. Dep't of Labor & Indus.*, 151 Wn. App. 174, 179-81, 210 P.3d 355 (2009). The facts in this case are not in dispute, and the questions raised by the appeal are primarily questions of statutory interpretation, which are questions of law that are reviewed de novo. *Dep't of Labor & Indus. v. Granger*, 159 Wn.2d 752, 757, 153 P.3d 839 (2007). However, Department and Board interpretations of the Industrial Insurance Act are entitled to great deference, and the courts "must accord substantial weight to the agenc[ies'] interpretation of the law." *Littlejohn Constr. Co. v. Dep't of*



*Labor & Indus.*, 74 Wn. App. 420, 423, 873 P.2d 583 (1994); *Ackley-Bell v. Seattle Sch. Dist. No. 1*, 87 Wn. App. 158, 165, 940 P.2d 685 (1997).<sup>1</sup>

## V. ARGUMENT

The Department correctly calculated Birgen's social security offset using 42 U.S.C. § 424a(a) as required by RCW 51.32.220. 42 U.S.C. § 424a does not provide for updating a worker's wages to present value when calculating the "average current earnings," a necessary calculation to determine the amount of the offset. A worker's average current earnings are typically calculated based on the worker's highest annual wage earned as of the date that the worker became disabled or any of the five previous years. Birgen agrees with the Department that the highest wage he earned was earned in 1983, which is within a year of the date that he became disabled (in 1984), and that he earned \$30,965 in 1983. App's Br. at 10. Birgen argues that his wage should be updated to its present day value.

However, 42 U.S.C. § 424a(a)(8) provides for the use of one-twelfth of the wage the worker earned the "calendar year" of the worker's

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<sup>1</sup> At the Board this case was heard on summary judgment. Birgen notes that the industrial appeals judge granted summary judgment to the Department "despite [the Department's] failure to file a cross motion." App. Br. at 5. However, Birgen does not argue that summary judgment cannot be granted to a non-moving party, nor does he cite any legal authority that would support the conclusion that such is error. In any event, it is settled law that summary judgment may be granted in favor of the nonmoving party where the facts are not in dispute and the undisputed facts establish that the non-moving party is entitled to judgment as a matter of law. *Rubenser v. Felice*, 58 Wn.2d 862, 365 P.2d 320 (1961); *see also Impehoven v. Dep't of Revenue*, 120 Wn.2d 357, 841 P.2d 752 (1992).

disability or any of the five previous years, without in any way suggesting that that wage should be updated to its present day value or otherwise modified. Therefore, this Court can only reasonably interpret the statute as requiring the Department to use a worker's actual wages earned, not wages that have been updated. Birgen's argument that his wages should be updated fails because 42 U.S.C. § 424a unambiguously requires the use of actual wages and he provides no support for reading in additional provisions in the statute.

**A. RCW 51.32.220 Reduces A Worker's Benefits To Prevent The Worker From Receiving Duplicate Benefits, And It Directs The Use of 42 U.S.C. § 424a, Which Does Not Provide For Updated Wages, To Calculate The Reduction**

The offset provision in RCW 51.32.220 prevents a worker from receiving a windfall of duplicate wage-replacement benefits. *E.g.*, *Frazier v. Dep't of Labor & Indus.*, 101 Wn. App. 411, 3 P.3d 221 (2000); *Potter v. Dep't of Labor & Indus.*, 101 Wn. App. 399, 3 P.3d 229 (2000); *Herzog v. Dep't of Labor & Indus.*, 40 Wn. App. 20, 25, 696 P.2d 1247 (1985) (rejecting worker's interpretation of how the offset provisions work, since his interpretation would "result in a windfall, contrary to the obvious intent of the controlling statutes."), *cited by* App. Br. at 9. When injured workers receive social security benefits in addition to total

disability benefits from the Department, the Department must offset their workers' compensation benefits under RCW 51.32.220.<sup>2</sup>

The Social Security Act, like the Industrial Insurance Act, has provisions providing for offsets in the event of concurrent industrial insurance and social security benefits. *See* 42 U.S.C. § 424a. However, as the *Herzog* case notes, 42 U.S.C. § 424a(d) authorizes the states to adopt their own "offset" provisions, and, where a state has enacted such a provision, the worker shall instead receive the full amount of his or her *social security* benefits, and the *workers' compensation* benefits will instead be offset. *Herzog*, 40 Wn. App. at 21-22; *see also Harris v. Dep't of Labor & Indus.*, 120 Wn.2d 461, 469, 843 p.2d 1056 (1993); *Regnier v. Dep't of Labor & Indus.*, 110 Wn.2d 60, 63, 749 P.2d 1299 (1988).

RCW 51.32.220(1) provides that a worker's total disability benefits shall be reduced by an amount equal to "the benefits payable under the federal old-age, survivors and disability insurance act as now or hereafter amended" but that the reduction of industrial insurance benefits is "*not to exceed the amount of the reduction established pursuant to*

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<sup>2</sup> RCW 51.32.220 applies to a worker who receives social security *disability* benefits, while RCW 51.32.225 applies to a worker who receives social security *retirement* benefits. RCW 51.32.225 provides that the procedures that are used under RCW 51.32.220 (1) through (6) to determine the amount of the offset also apply to social security retirement benefits. Here, the record does not reveal whether Birgen received social security disability benefits or social security retirement benefits. For the sake of simplicity, and because the result would be identical under either RCW 51.32.220 or RCW 51.32.225, the Department will refer to RCW 51.32.220 throughout this brief, unless otherwise indicated.

*42 U.S.C. Sec. 424a.*” (Emphasis added.) Thus, under RCW 51.32.220(1), the amount that a worker’s industrial insurance benefits are reduced is either the amount of the worker’s social security benefits or the amount that the worker’s social security benefits would have been reduced under 42 U.S.C. § 424a, whichever results in a lower offset. *See also Herzog*, 40 Wn. App. at 21-22 (noting that the amount of the offset under RCW 51.32.220 is determined by following 42 U.S.C. § 424a. Here, Birgen’s offset was equal to his social security benefit rate, because, under 42 U.S.C. § 424a, his social security benefits are completely offset.

Under 42 U.S.C. § 424a(a), the social security benefits are reduced by an amount that depends on the industrial insurance benefits and social security benefits that the worker is eligible for, as well as the worker’s “average current earnings.”<sup>3</sup> Whether the Department properly calculated Birgen’s average current earnings is relevant because, if Birgen could show that 80 percent of his average current earnings was higher than his industrial insurance benefit rate, this would mean the Department reduced Birgen’s industrial insurance benefits by more than it should have reduced them.

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<sup>3</sup> Under 42 U.S.C. § 424a(a) the social security benefits “shall be reduced (but not below zero) by the amount by which the sum of” the worker’s social security benefits and workers’ compensation benefits “exceeds the higher of 80% of his ‘average current earnings’” or the worker’s social security benefits.

There are three ways to calculate a worker's current average earning and none of them involve indexing a worker's wages for inflation. 42 U.S.C. § 424a(a)(8) provides that a worker's "average current earnings" is equal to the largest of three things:

- (A) the average monthly wage (determined under section 415(b) of this title as in effect prior to January 1979) used for purposes of computing his benefits under section 423 of this title,
- (B) one-sixtieth of the total of his wages and self-employment income...for the five consecutive calendar years after 1950 for which such wages and self-employment were highest, or
- (C) one-twelfth of the total of his wages and self-employment income...for the calendar year in which he had the highest such wages and income during the period of consisting of the calendar year in which he became disabled...and the five years preceding that year.

Although a worker's average current earnings can be calculated in one of three ways under this statute, using subsection (a)(8)(C) usually leads to the highest calculation of the worker's average current earnings. There is no dispute that subsection (a)(8)(C) is the one that should be used in Birgen's case.

None of the methods are indexed for inflation. The Social Security Administration has released a Program Operations Manual System (POMS) that provides social security administration staff with instructions on how to calculate a worker's average current earnings. *See* POMS DI 52150.010, *available at* <http://policy.ssa.gov/poms.nsf/lnx/0452150010>, last visited July 8, 2104.<sup>4</sup> POMS documents, while not binding on the courts, are persuasive authority, as they are official publication issued by the federal agency that is charged with administrating the Social Security Act. *Powderly v. Schweiker*, 704 F.2d 1092, 1096-97 (9th Cir.1983); *Bubnis v. Chater*, 958 F. Supp. 111, 121 (E.D.N.Y. 1997), *aff'd* *Bubnis v. Apfel*, 150 F.3d 177 (2nd Cir. 1998); *see also In re Guardianship of Knutson*, 160 Wn. App. 854, 868, 250 P.3d 1072 (2011) (citing definition of "legal service" contained in POMS in support of its ruling that DSHS did not violate Social Security Act). In summarizing the three methods of calculating the ACE under 42 U.S.C. § 424a(a)(8), the POMS specifies that all three methods involve using *unindexed* earnings. POMS DI 52150.010, p. 1.

Here, the Department properly used Birgen's social security benefit rate (\$830) as, under the formula contained in 42 U.S.C. § 424a, his social security benefits are completely offset.

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<sup>4</sup> A copy of the POMS has been attached for the court's convenience as an appendix. Copies of the relevant statutes are also appended.

**B. Neither RCW 51.32.220 Nor 42 U.S.C. § 424a Provides For Updating A Worker's Wages To Their Present Day Value When Calculating A Worker's Average Current Earnings**

Under the plain language of the Industrial Insurance Act and the Social Security Act, the Department does not index a worker's wages to account for inflation when calculating the worker's average current earnings. The plain meaning of a statute "is discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related statutory provisions, and the statutory scheme as a whole." *Tingey v. Haisch*, 159 Wn.2d 652, 657, 152 P.3d 1020 (2007). Where a statute's meaning is plain, "a court will give effect to that plain meaning as an expression of legislative intent." *Dep't of Labor & Indus. v. Slauch*, 177 Wn. App. 439, 445, 312 P.3d 676 (2013), *review denied*, 180 Wn.2d 1007 (2014). If the plain language of the statute is unambiguous, as here, the court's inquiry is at an end. *Manary v. Anderson*, 176 Wn.2d 342, 352, 292 P.3d 96 (2013). It is only where a statute is ambiguous—that is, subject to more than one reasonable interpretation—that it is necessary for the court to resort to canons of construction or extrinsic evidence of legislative intent. *See Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 12, 43 P.3d 4 (2002). Here, no such resort is necessary.

**1. Under The Plain Language Of The Relevant Statutes, A Worker's Wages Are Not Updated To Their Current Value When Calculating The Worker's Average Current Earnings**

Neither the state nor the federal statute requires updating a worker's wages to current value. It is only by adding words to the statute that Birgen's updating theory would be plausible. The plain language of RCW 51.32.220 requires the Department to follow 42 U.S.C. § 424a when calculating the amount by which a worker's industrial insurance benefits shall be reduced, and 42 U.S.C. § 424a does not require updating. There is no ambiguity in this provision.

The plain language of the federal statute focuses on the earning in the relevant calendar years and does not provide for updating. Here, the relevant provision of 42 U.S.C. § 424a(a)(8)(C) provides that the average current earning be based on the highest year's earning in a five-year period before the injury:

one-twelfth of the total of his wages and self-employment income . . . for the calendar year in which he had the highest such wages and income during the period consisting of the calendar year in which he became disabled . . . and five years preceding that year.

Subsection (a)(8)(C) provides that a worker's average current earnings are equal to one-twelfth of the highest annual wage that the worker has actually earned within five years of the year that the worker



became disabled. With regard to whether the wages are updated or not, the key language in that subsection of the statute states that the worker's average current earnings are "one-twelfth of the total of his wages and self-employment income . . . for the calendar year in which he had the highest such wages and income."

As none of those words in that statutory phrase are expressly defined by the statute, they are each given their usual and ordinary meaning. *See Burton v. Lehman*, 153 Wn.2d 416, 422-23, 103 P.3d 1230 (2005). When the words in that phrase are given their usual and ordinary meaning, that language can only be reasonably interpreted as meaning that a worker's average current earnings are equal to one-twelfth of the highest annual wage actually earned during the year that the worker became disabled or any of the five years before that date. The statute focuses on the "wages and self-employment income . . . for the calendar year." This is looking at the wages in the relevant calendar year and does not state the wages should be increased for inflation. Nothing in the statute requires either the Department or the Social Security Administration to update a worker's past wages to their present day value when calculating the worker's average current earnings. To the contrary, the statute looks to the wages actually earned in the relevant calendar year.

The statute does not need to expressly rule out updating to have that meaning, contrary to Birgen's arguments. Birgen argues that subsection (a)(8)(C) is ambiguous because it neither expressly says that the wages are updated nor expressly says that they are not. App's Br. at 17. While it is true that subsection (a)(8)(C) does not expressly discuss updating, this does not render the statute ambiguous. As noted, statutory language is only ambiguous if the words in the statute—given their usual and ordinary meaning—can reasonably be interpreted as having more than one meaning. *Slaugh*, 177 Wn. App. at 445. By expressly directing the use of the worker's highest annual wages, without in any way suggesting that that number should be modified in any fashion, 42 U.S.C. § 424a(a)(8) unambiguously provides that the wage figure is not modified to account for inflation or any other factor. Put another way, because the words in the statute do not provide for updating, they cannot be reasonably read to require updating.

Furthermore, Birgen's argument is contrary to the well-settled rule that a court should neither add to nor subtract from the words in a statute when discerning its meaning. *See Rest. Dev., Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003) (explaining that words cannot be added to a statute when interpreting it); *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2013) (explaining that words cannot be deleted from a statute

when interpreting it). Here, subsection (a)(8)(C) can only be read to require “updating” of a worker’s wages if language to that effect is added to the statute. As a court should not add words to a statute when interpreting its meaning, Birgen’s argument that his wages should be updated fails. *See Cananwill*, 150 Wn.2d at 682.

42 U.S.C. § 424a(a)(8)’s requirement to use the highest amount to determine the average current amount does not implicitly mean that the wages are updated. Birgen argues that since 42 U.S.C. § 424a(a)(8) directs the use of the largest of one of three figures when calculating a worker’s average current earnings, this supports the inference that Congress intended for a worker’s wages to be updated. App’s Br. at 20-21. However, this argument fails, as it rests on a logical fallacy. While it is true that 42 U.S.C. § 424a(a)(8) directs the use of whichever of three methods results in the highest calculation of the worker’s average current earnings, none of the three methods allow for the use of updated wages.

Birgen’s argument that his wages should be updated to their present day value has no support in any of the relevant statutes. Therefore, the superior court properly rejected Birgen’s argument and affirmed the Department and the Board.

**2. Reading 42 U.S.C. § 424a(a) In Conjunction With Related Provisions In The Social Security Act Shows That A Worker's Wages Are Not Updated**

Reading 42 U.S.C. § 424a(a)(8) in conjunction with the related provisions within the Social Security Act demonstrates that a worker's wages are not updating when calculating a worker's wages, contrary to Birgen's arguments. *Contra* App. Br. at 20-22.

Related statutory provisions indicate that Congress had the opportunity to use updating when initially calculating a worker's average current earnings, and that Congress chose not to. A court looks to the entire statute and to related statutes when interpreting the provision at issue. *See Tingey*, 159 Wn.2d at 657. One of the alternative methods of calculating the average current earnings, subsection (a)(8)(A), shows that updating is not required. This provision directs the use of the "average monthly wage," as that term was defined under the *pre-1979* version of 42 U.S.C. § 415(b), to calculate the worker's average current earnings. As the POMS explains, under the pre-1979 version of 42 U.S.C. § 415(b), a worker's "average monthly wage" was used to calculate the worker's primary benefit amount under the Social Security Act. POMS DI 52150.010, p. 4-5. As the POMS states, a worker's wages are not indexed when calculating the "average monthly wage." POMS DI 52150.010, p. 4.

In contrast to the pre-1979 law used to determine the wage amount under subsection (a)(8)(A), the current version of 42 U.S.C. § 415(b) does provide for indexing for inflation. Under the current version of 42 U.S.C. § 415(b), a worker's social security benefits are calculated by the worker's "average indexed current earnings" rather than the worker's "average monthly wage." As the term itself implies, "average indexed current earnings" are updated to account for changes to the average national wage. *See* 42 U.S.C. § 415(b).<sup>5</sup>

However, 42 U.S.C. § 424a(8)(A) directs the use of the "average monthly wage" as that term was defined under the pre-1979 version of 42 U.S.C. § 415(b) (which are not updated) rather than the "average indexed current earnings" that are used under the current version of the statute (which are updated). Thus, Congress directed the use of the version of 42 U.S.C. § 415(b) that does not involve the use of updated wages. Had Congress intended the use of an updated wage, it could have had 42 U.S.C. § 424a(a)(8)(A) reference the "average indexed current

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<sup>5</sup> However, "average indexed current earnings" are updated in the sense that a worker's wages are updated by comparing the national average wage index for the second calendar year preceding the worker's disability with the national average wage index for the year in which a given wage was earned. 42 U.S.C. § 415(b)(3)(A). Thus, wages are not updated to bring them to their "present day" value, but to bring them to a value two years prior to the date that the worker became disabled. For example, suppose a worker earned \$15,000 in 1975 and was found to be disabled effective 1984. The worker's 1975 wages would be updated by comparing the national wage index in 1982 (two years before the date of disability) with the national wage index in 1975 (the date the wage was earned). *See* 42 U.S.C. § 415(b)(3)(A). The worker's 1975 wages would not be updated to their "present day" value, however. *See id.*

earnings” that are contained in the current version of 42 U.S.C. § 415(b), rather having 42 U.S.C. § 424a(a)(8)(A) reference the “average monthly wage” that are contained in the pre-1979 version of the statute. It did not.

Congress did provide for a redetermination process that updates a worker’s social security benefits by recalculating the worker’s average current earnings, but it did not provide for updating a worker’s wages when calculating the worker’s average current earnings as part of the initial offset determination. 42 U.S.C. § 424a(f). Birgen argues that since subsection (f) provides for redeterminations of a worker’s average current earnings figure in a way that involves a form of updating the worker’s wages, such updating should also be done when doing the initial calculation of a worker’s average current earnings. App’s Br. at 21-22. It is true that, under subsection (f), a worker’s wages are subject to redetermination and that this process involves updating the worker’s wages. However, far from supporting Birgen’s argument, the fact that the portion of the statute governing redeterminations provides for a form of updating, while the portion of the statute providing for the initial offset calculation does not, provides further support for the conclusion that a

worker's wages are not updated to present day value when the offset is initially calculated.<sup>6</sup>

Where the Legislature has expressly provided for an outcome in one context, but it did not provide for the same outcome in other contexts, the proper inference is that the Legislature intentionally excluded the other contexts from that rule. *State v. Sommerville*, 111 Wn.2d 524, 535, 760 P.2d 932 (1988) (explaining that, under the principle of expression unius est exclusion alterius, a statute's express inclusion of certain conditions precludes a court from finding that other conditions were implicitly included).

Given that Congress provided for updating a worker's wages as part of the redetermination process under 42 U.S.C. § 424a(f), while it in no way implied that such updating is required when calculating the worker's initial offset amount under 42 U.S.C. § 424a(a), this Court can only reasonably conclude that Congress intentionally did not provide for

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<sup>6</sup>The type of "updating" that the redetermination provides for does not bring a worker's previously earned wages up to their present day value. 42 U.S.C. § 424a(f)(2) provides:

In making the redetermination required by paragraph (1), the individual's average current earnings...shall be deemed the product of:

(A) His average current earnings as initially determined under subsection (a) of this section; and

(B) The ratio of (i) the national average wage index (as defined in section 409(k)(1) of this title) for the calendar year before the year in which such redetermination is made to (ii) the national average wage index (as so defined) for the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a prior period of disability).

the use of updated wages when calculating a worker's initial offset amount. *Sommerville*, 111 Wn.2d at 535. Congress's enactment of 42 U.S.C. § 424a(f) shows that it was well aware of how to provide for updating wages in situations where it wanted such updating to occur. Had Congress intended for similar updating to be used when calculating the initial social security offset, it could have easily used similar language in 42 U.S.C. § 424a(a). *See Guillen v. Contreras*, 169 Wn.2d 769, 776-77, 238 P.3d 1168 (2010) (explaining that where the Legislature uses one form of language in one instance, and different language in another instance, a court infers that the Legislature intended for the different language to result in different results). Since Congress provided for updated wages as part of the redetermination process but did not provide for them when calculating the offset, its failure to provide for updating when calculating the initial offset amount must be seen as intentional. *See id.*; 42 U.S.C. § 424a(a), (f).

Congress did not intend to import the redetermination process into the calculation of the initial wage determination as shown by its express language. Birgen argues that the same policy considerations that apply to the redetermination process also apply to the initial offset calculation, and, therefore, it does not make sense to provide for updating in one context while not providing for it in the other. App's Br. at 21-22. However, a



court should not, under the guise of statutory interpretation, substitute its policy views for that of the Legislature (or, here, Congress). Whether 42 U.S.C. § 424a(a) should be amended to provide for the use of updated wages, as 42 U.S.C. § 424a(f) does, is an argument best directed to Congress, not the courts.

**3. The Industrial Insurance Act, Like The Social Security Act, Provides For Adjustments To A Worker's Benefits To Account For Inflation But Does Not Provide For Updating The Worker's Past Wages To Their Present Value**

The Industrial Insurance Act, like the Social Security Act, does not provide for the use of updated wages when calculating a worker's wages at the time of injury, contrary to Birgen's suggestion. *Contra* App's Br. at 18-19. The Legislature has provided for updating wages in some instances, and, in other instances, the wages are not updated. There is no general policy to use updated wages.

For example, under RCW 51.08.178, a worker's wages are generally calculated based on the worker's wages earned at the time of the worker's injury. However, RCW 51.08.178(2) provides that, in the case of part-time, intermittent, or seasonal workers, the Department may use the worker's wages earned during any consecutive twelve-month period to calculate the worker's wages that reflects the worker's earning power at the time of the injury. RCW 51.08.178(2) does not provide for "updating"

the wage calculation if the twelve-month period that the Department selects for that calculation occurred several years before the injury: rather, it requires the use of the actual wages earned during that time.

Demonstrating that the Legislature knows how to increase benefits to account for inflation, RCW 51.32.075 provides for cost of living adjustments to a worker's benefits. These are based on the change to the average monthly wage in the state that occurred as compared to the average monthly wage on the date that the worker's right to industrial insurance benefits was established. Thus, RCW 51.32.075 allows for adjustments to a worker's benefits once the claim is allowed, but the adjustments do not bring the worker's prior wages up to "present day value" if the wages that are used under the claim were earned before the date of the worker's injury. Birgen suggests that the fact that RCW 51.32.075 allows for a form of updating of benefits supports the idea that his wages should be updated to their present value (App's Br. at 19-20), but, in reality, what RCW 51.32.075 shows is that the Legislature expressly provides for updating when it intends for updating to occur. The Industrial Insurance Act, like the Social Security Act, provides for "updating" to account for inflation that occurs after a worker's right to benefits is established, but it does not provide for updating the *wages* that are used to initially calculate the worker's basic benefit amount, even if

several years elapsed between the date that the worker earned those wages and the date that the worker was found to be entitled to workers' compensation benefits.

The loss of earning power statute, which Birgen also points to as authority for updating, similarly shows that the Legislature knows how to provide for updating. Birgen argues that the courts have concluded that a worker's wages must be updated to their present day value when calculating the amount of a worker's loss of earning power benefits, and that, therefore, his wages must be updated to their present day value when calculating his average current earnings. App's Br. at 18-20 (citing RCW 51.32.090(3); *In re Chester Brown*, No. 88 1326, 1989 WL 164604 (Wash. Bd. of Indus. Ins. Appeals June 29, 1989); *Hunter v. Dep't of Labor & Indus.*, 43 Wn.2d 696, 263 P.2d 586 (1953)).<sup>7</sup> Birgen's argument

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<sup>7</sup> Neither of these cases stand for the proposition Birgen advances. In *Hunter*, the Supreme Court found a loss of earning power when a worker returned to a less-demanding job at a diminished wage, and his employer subsequently provided for a general wage increase to all of its employees, which made the worker's wages equal to his job of injury wages, but which still left his wages below what they would have been had he continued performing his job of injury. *Hunter*, 43 Wn.2d at 698. However, the Court in that case did not provide for "updating" wages to their present day value based on an indexing process, but, rather, noted that the employer had provided an actual wage increase to all of its employees. *Id.* In *Brown*, the Board rejected a worker's request for loss of earning power benefits since the worker had provided no evidence of any actual post-injury wage increases. *Brown*, 1989 WL164604 at \*2-\*3. And, in any event, those cases are distinguishable because each was driven by RCW 51.32.090(3)'s reference to a worker's "present earning power" being "only partially restored," while 42 U.S.C. § 424a does not contain a reference to a worker's "present earning power" or to a similar concept.

fails, as loss of earning power benefits are governed by a statute with language dissimilar to that of 42 U.S.C. § 424a(a)(8).

In the loss of earning power statute, the Legislature has chosen to refer to present day values regarding earning power. RCW 51.32.090(3) provides for loss of earning power benefits when a worker's "*present earning power* is only partially restored." (Emphasis added). The statute provides that, for injuries that occurred after May 7, 1993, the benefits are equal to "80 percent of the actual difference between the worker's present wages and *earning power at the time of the injury*." (Emphasis added). Thus, while RCW 51.32.090(3) refers to a worker's earning power at the time of injury, it provides for benefits if the worker's *present* earning power is only partially restored. A court could reasonably construe RCW 51.32.090(3) to require that the wages earned at the time of injury be adjusted in some fashion to ensure that they capture the worker's "present earning power."

Conversely, 42 U.S.C. § 424a(a)(8)(C) requires the use of the highest wage earned within five years of the date that the worker became disabled. It does not reference "present earning power", nor does it reference a similar concept. A court cannot reasonably interpret 42 U.S.C. § 424a(a)(8)(C)'s reference to the highest wage earned to require the use of an updated wage.

The Industrial Insurance Act, like the Social Security Act, has some statutes that update benefits to account for inflation in some contexts, but it does generally provide for updating wages to present value. Contrary to Birgen's suggestion, reading RCW 51.32.220 and 42 U.S.C. § 424a in conjunction with other provisions of the Industrial Insurance Act simply underscores the point that neither of the statutes that are relevant here allow for the use of updated wages when calculating a worker's average current earnings.

**C. The Liberal Construction Doctrine Does Not Support Ignoring The Plain Language Of A Statute**

RCW 51.32.220 unambiguously requires the Department to calculate a worker's offset based on the amount that the offset would be under 42 U.S.C. § 424a, and 42 U.S.C. § 424a unambiguously requires the Department to use a worker's actual wages to calculate the average current earnings. Birgen attempts to overcome the plain language of those statutes by emphasizing that the Industrial Insurance Act is subject to liberal interpretation and that its statutes must be read in light of the larger purpose of reducing the suffering associated with workplace injuries.<sup>8</sup> App's Br. at 15-18. However, while it is true that the Industrial Insurance

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<sup>8</sup> Although this point is not raised by Birgen, it is the Department's understanding that the Social Security Act, like the Industrial Insurance Act, is subject to liberal construction, where "such a construction is reasonable." *Broussard v. Weinberger*, 499 F.2d 969, 970 (5th Cir. 1974). Here, however, Birgen's interpretation of 42 U.S.C. § 424a is not reasonable.

Act is subject to liberal construction and that one of its purposes is to minimize the loss associated with workplace injuries, it is well-settled that a court cannot use the liberal construction doctrine to support a strained or unrealistic interpretation of the plain language of a statute. *Bird-Johnson v. Dana Corp.*, 119 Wn.2d 423, 427, 833 P.2d 375 (1992); *Senate Republican Comm. v. Pub. Disclosure Comm'n*, 133 Wn.2d 229, 243, 943 P.2d 1358 (1997); *see also Aviation West Corp. v. Dep't of Labor & Indus.*, 138 Wn.2d 413, 432, 980 P.2d 701 (1999) (a court does not, under the guise of statutory construction, distort a statute's meaning in order to make it conform to the court's own views of sound social policy).

The courts have previously rejected similar attempts to use liberal construction to overcome the plain language of the offset statute. In *Allan*, the court rejected an argument that, like Birgen's, attempted to use the liberal construction doctrine to advance an unsupported interpretation of the statutes governing social security offsets. *Allan*, 66 Wn. App. at 418-420. In that case, a worker suffered a workplace injury in 1981 and was initially granted social security benefits in 1983. *Id.* at 416-17. The worker returned to work in 1985, which disqualified her from receiving further social security benefits. *Id.* When the worker again ceased working in 1986, she was again found eligible for social security benefits. *Id.* However, her average current earnings were recalculated, using 1986

as the starting point, which resulted in her average current earnings being set at a much lower rate than they had been set in 1983, and this, in turn, resulted in a larger offset of her industrial insurance benefits. *Allan*, 66 Wn. App. at 418-420.

The worker contended that it was contrary to both the liberal construction doctrine and the basic policies underlying the Industrial Insurance Act to, in effect, punish her for attempting to return to work in 1985. *See id.* at 418. The worker urged the court to conclude that the *Department* should not be allowed to take her attempt to return to work in 1985 into account, even though 42 U.S.C. § 424a unambiguously required the *Social Security Administration* to do so, in light of the policies underlying the Industrial Insurance Act. *See Allan*, 66 Wn. App. at 418, 420.

The *Allan* court rejected the worker's argument, concluding that the plain language of the Industrial Insurance Act and the Social Security Act required the Department to take the worker's attempt at returning to work in 1985 into account. *Allan*, 66 Wn. App. at 418-20. The court reasoned that RCW 51.32.220 requires the Department to follow 42 U.S.C. § 424a when calculating the offset amount, and that the plain language of 42 U.S.C. § 424a required that the 1985 return to work be taken into account. *See id.*

The *Allan* court explained that “while policy considerations may provide a valuable rule of statutory construction in interpreting an ambiguous statute, where the meaning is clear its meaning must be given effect without resort to such a rule.” *Id.* at 418 (citations omitted). The court further explained that, to adopt the worker’s argument in that case, it would have to “read into the statute additional provisions to achieve a desired result” based on her “unfortunate circumstances,” and that this is something the court “will not do.” *Id.* at 420. *Allan* explained that a court may not, under the guise of statutory construction, substitute its view for that of the Legislature. *Id.* at 420-21.

Birgen’s argument that his wages should be updated when calculating his average current earnings, like the worker’s argument in the *Allan* case, is contrary to the plain language of the relevant statutes. *See Allan*, 66 Wn. App. at 418-20. Therefore, neither the liberal construction doctrine nor the policy considerations underlying the Industrial Insurance Act provide support for his contentions. *See id.* Although he couches his arguments as ones resting on notions of statutory construction, he is, in reality, asking this Court to substitute its judgment for that of the Legislature and Congress. This Court should not do so.



## VI. CONCLUSION

Under the plain language of RCW 51.32.220, the Department offsets a worker's industrial insurance benefits based on what the amount of the reduction would be under 42 U.S.C. § 424a. 42 U.S.C. § 424a requires the Department to calculate a worker's average current earnings based on the actual wages earned, without updating those wages to present value. As RCW 51.32.220 and 42 U.S.C. § 424a unambiguously reject his arguments, Birgen's reliance on the liberal construction standard and similar principles is unavailing. The superior court and the Board properly affirmed the Department's offset order in this case, and this Court should affirm.

RESPECTFULLY SUBMITTED this 16 day of July, 2014.

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# Social Security

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## Program Operations Manual System (POMS)

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Effective Dates: 09/13/2012 - Present

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BASIC (09-08)

### DI 52150.010 Average Current Earnings (ACE)

Use the number holder's (NH) average current earnings (ACE) to determine whether disability insurance benefits (DIB) payable to the NH and any entitled auxiliaries will be reduced (i.e., offset) due to the NH's receipt of worker's compensation (WC) and/or public disability benefits (PDB).

The highest of three computation methods is the ACE:

- High-1 ACE,
- High-5 ACE, or
- Average Monthly Wage (AMW).

A. Beginning with benefits payable 01/73, the ACE is the highest of three methods:

---

| "High-1" ACE   | "High-5" ACE   | Average Monthly Wage (AMW)   |
|--|--|--|
| Based on the one calendar year in which the worker's unindexed covered earnings were highest | Based on the five consecutive years after 1950 with the highest unindexed covered earnings | Based on the unindexed covered earnings used to determine the DIB PIA. |
| Selected from the period consisting of the year of current DIB onset and the five            | Computed without regard to the statutory maximum. (i.e., we can use years of               |  |

| "High-1" ACE   | "High-5" ACE  | Average Monthly Wage (AMW) |
|--|---|----------------------------|
| years immediately preceding the year of onset (regardless of whether or not any of these years is within a prior period of DIB)  | over-maximum earnings in the ACE computation. See RS 01401.015 and RS 01404.300 for over-maximum earnings). |                            |
| Computed without regard to the statutory maximum. (i.e., we can use years of over-maximum earnings in the ACE computation. See RS 01401.015 and RS 01404.300 for over-maximum earnings). |   |                            |
| NOTE: The ACE, as used in computing WC/PDB offset, cannot be indexed nor can it be based on indexed earnings.  |   |                            |

For a definition of over-maximum earnings, see RS 01401.015 and the chart of maximum earnings in RS 01404.300. See RS 00605.018 regarding indexed earnings.

## B. Developing earnings for the ACE

Take the following actions to develop earnings for the ACE:

1. Ask the NH to submit proof of unposted earnings. In many instances, the NH's highest year of earnings is in the lag period (i.e., the current year and the preceding year).
2. Review the earnings record for earnings years that are posted at the maximum wages creditable for that year.
3. Review the earnings record to determine if actual earnings could be higher than the amount posted. Pay attention to years with multiple employers. Maximum earnings on the WCDE (COMPUTATIONAL EARNINGS) screen in ICF can be overkeyed with "over maximum" earnings. (RS 01404.300, Maximum Contribution of Social Security Employment Taxes Paid By Employee, contains a chart of the yearly maximum amounts from 1937 on.)

- For any year that could be material to the determination of the highest earning year (High-1) or a year in the high five consecutive years (High-5), obtain proof of the actual earnings amount for that year.
- Use the Detailed Earnings Query (DEQY) to verify over-maximum earnings. For DEQY instructions, see SM 00344.001.
- Beginning in 1994, there is no limit on the Medicare taxable wage amount, so the amount listed on the DEQY as Medicare wages or self-employment income is the actual earnings amount.

NOTE: If the total compensation (TOTAL COMP) amount on the DEQY is higher than the MEDICARE TOTAL amount, use the TOTAL COMP amount to compute the ACE.

4. Obtain proof of earnings for years that may be material to determine the ACE, if prelag earnings (i.e., earnings two or more years prior to the current year) are not posted or if the DEQY posting is questionable.

- W-2 is available: Use the total earnings in item 1 of the W-2. This amount may include compensation that is both covered and non-covered. Assume the entire amount represents covered wages unless there is evidence to the contrary, e.g., the NH indicates receipt of non-covered sick pay.
- W-2 not available: Use any other statement from the employer of wages paid; a certified copy of the Federal or State tax return; or an uncertified copy of the tax return with evidence that the return was filed (e.g., a cancelled check for paid taxes).
- Use Earnings Modernization (EM 2.8) to search for earnings in the Suspense Files. See MSOM EM 012.001 for instructions.

5. If net earnings from self-employment (NESE) are involved:

- Determine the NESE from the NH's tax return. For instructions on computing NESE, see RS 01803.002.
- Use EM 2.8 to complete self-employment scouting. For EM 2.8 instructions, see MSOM EM 016.006. Also, for complete information about developing self-employment income, see RS 01804.000.

6. Use deemed military wages (DMW) in the ACE determination even if the DMW causes the statutory maximum to be exceeded.

NOTE: Do not use railroad earnings in the ACE determination if the NH has 120 RR service months. Effective 01/01/2002, RR earnings are not useable if there are less than 120 RR service months, but at least 60 RR service months after December 31, 1995.

## C. Compute the ACE

In most cases, the High-1 method is the highest ACE. If the NH's highest year of earnings is in the year of onset or one of the five years immediately preceding the year of onset, the High-1 ACE is the highest of the three methods. Therefore, in this case, it is not necessary to manually compute the High-5 or the AMW ACE.

### 1. Computing the ACE

Use the following chart to compute each ACE method. MCS EC and the interactive computation facility (ICF) automatically compute all three methods and select the highest ACE when computing WC/PDB offset.

NOTE: If the MCS EC ACE or ICF ACE must be refigured due to over-maximum earnings, see DI 52150.010D.

| "High-1"   | "High-5"   | AMW   |
|--|--|---|
| Select the highest yearly earnings from the year of current onset and the 5 previous years and | Take the sum of the 5 consecutive years after 1950 with the highest unindexed earnings and | Divide the total unindexed earnings for the computation years (dividend) by number of months in the computation years (divisor) |
| Divide the yearly total by 12 months   | Divide by 60 months  |   |
| Round to the next-lower dollar amount  | Round to the next-lower dollar amount  | Round to the next-lower dollar amount   |

### 2. Example of ACE computation

- Date of onset: 08/05/07
- Entitlement date: 02/08
- 12/2007 PIA: \$543.80
- 300 divisor months

- Total of the highest earnings for 25 years: \$203,416.33

Highest actual earnings amounts (unindexed and after maximum earnings amounts):

2002 \$16,782.16  
 2003 \$16,703.38  
 2004 \$18,915.10  
 2005 \$21,762.44  
 2006 \$29,876.05  
 2007 \$ 8,789.77

| "High-1"   | "High-5"   | AMW                                |
|--|--|------------------------------------|
| High year is 2006:<br>\$29,876.05 divided by<br>12 = 2489.67 | 16,782.16<br>16,703.38<br>18,915.10<br>21,762.44<br><u>29,876.05</u><br>104,039.13 | 203,416.33 divided by 300 = 678.05 |
|  | 104,039.13<br>divided by 60 =<br>1733.98   |                                    |
| 100% ACE = 2489  | 100% ACE =<br>1733   | 100% ACE = 678                     |

Highest of the three methods above is the "High-1" with a 100% ACE of \$2,489.

### 3. Changing the original ACE

The originally established ACE can be changed in the following situations.

#### a. Recalculated ACE

Recalculate the original ACE if additional earnings change the calculation of the original ACE. A recalculated ACE is effective in the first possible month of offset and is treated the same as the original ACE.

#### b. Recomputed ACE

Changes in the statutes caused recomputation of the ACE:

- In February 1968, the first month earnings above the statutory limit could be used in the High-5 computation.

- In January 1973, the first month the High-1 computation is used.

Compute the ACE under the High-5 or AMW method. This may occur if the NH works after onset and the earnings are higher than the earnings previously used in the ACE. The recomputed ACE, based on additional earnings, is effective in January of the year immediately following the last year used in the computation of the new ACE.

## D. Changing the MCS EC or ICF ACE

Earnings posted to the Master Earnings File (MEF) consist only of earnings up to, but not exceeding, the yearly statutory maximum. Both the modernized claim system earnings computation (MCS EC) and ICF compute the ACE using the MEF earnings. There may be instances when MCS EC or ICF do not compute the highest possible ACE.

MCS EC and ICF both include alerts when over-maximum earnings should be considered. In these situations, obtain a detailed earnings query (DEQY) for the years where over-maximum earnings are possible. The "TOTAL COMP" field of the DEQY displays the actual amount earned, even if it exceeds the yearly maximum. Use the "TOTAL COMP" amount(s) from the DEQY to compute the ACE manually or by using ICF.

### 1. Using MCS EC to determine the ACE

MCS EC uses only the posted earnings. When over-maximum earnings are involved:

- Compute the ACE manually or via ICF;
- Answer "Y" to "DO YOU NEED TO MANUALLY ENTER A HIGHER ACE" on the WC/PDB Claim Data (WPCL) screen; and
- Enter the new 100 percent ACE in the block that follows. For coding instructions, see MSOM COMMON 001.003.

Develop lag-year earnings when the alleged lag earnings affect the ACE. In those cases, post the lag earnings amount to the Earnings (EARN) screen in the claim path. For coding instructions, see MSOM MCS 005.028. For development of lag earnings, see RS 01404.005.

If the lag-year earnings amount is over the statutory limit, you must compute the ACE manually. Enter on the WPCL screen.

### 2. Using ICF #31 or #32 to calculate the ACE

Manually enter over-maximum earnings when using ICF #31 or #32 to calculate the ACE.



- On the WC/PDB Offset-General Information (WCGI) enter "Y" in ACE COMP NEEDED. Also enter the number of divisor months used in the PIA computation. NOTE: The number of divisor months is not a number that is displayed on the MBR. If necessary, compute the PIA in order to determine the correct number of divisor months.
- The WC/PDB Offset-Computational Earnings (WCDE) allows earnings to be added or overkeyed. The earnings from that screen are used to determine the ACE.

## E. NH questions the ACE

If the NH questions the ACE, refigure the ACE even if proof of earnings comes from a source other than the NH.

1. Refigure the ACE using actual verified earnings. Compute the ACE by using:
  - ICF #31 or 32 (For ICF instructions, see DI 52165.001);
  - ICF #28; or
  - a manual computation, if necessary. Enter a manual computation in ICF #34 OREO to create an electronic version.
2. If the refigured ACE is higher than determined previously, effectuate the new ACE as follows:
  - Adjudicate using ICF #32 or 34; and
  - Prepare a notice of the new initial determination of the ACE.
3. If the refigured ACE is lower or does not change, treat the NH's inquiry as a request for reconsideration.
  - The FO should obtain an SSA-561 (Request for Reconsideration) and forward with all documentation to the processing center (PC).
  - The PC verifies the ACE computation, takes corrective action as necessary and notifies the NH with the correct appeal notice.

## F. ACE computations for benefits payable before 01/1973

These are rare. Recompute benefits payable prior to 01/73 as follows:

1. For benefits payable beginning 02/68 – 12/72, the ACE is the higher of the:
  - High-5 computed without regard to the statutory maximum; or

- AMW.

2. For benefits payable prior to 02/68, the ACE is the higher of the:

- High-5 using only amounts up to the statutory maximum; or
- AMW.

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*To Link to this section - Use this URL:*

<http://policy.ssa.gov/poms.nsf/lnx/0452150010>

*DI 52150.010 - Average Current Earnings (ACE) - 09/13/2012*

*Batch run: 09/13/2012*

*Rev:09/13/2012*



**C****Effective: July 22, 2007**

West's Revised Code of Washington Annotated Currentness

Title 51. Industrial Insurance (Refs &amp; Annos)

Chapter 51.32. Compensation--Right to and Amount (Refs &amp; Annos)

**→→ 51.32.220. Reduction in total disability compensation--Limitations--Notice--Waiver--Adjustment for retroactive reduction in federal social security disability benefit--Restrictions**

(1) For persons receiving compensation for temporary or permanent total disability pursuant to the provisions of this chapter, such compensation shall be reduced by an amount equal to the benefits payable under the federal old-age, survivors, and disability insurance act as now or hereafter amended not to exceed the amount of the reduction established pursuant to 42 U.S.C. Sec. 424a. However, such reduction shall not apply when the combined compensation provided pursuant to this chapter and the federal old-age, survivors, and disability insurance act is less than the total benefits to which the federal reduction would apply, pursuant to 42 U.S.C. 424a. Where any person described in this section refuses to authorize the release of information concerning the amount of benefits payable under said federal act the department's estimate of said amount shall be deemed to be correct unless and until the actual amount is established and no adjustment shall be made for any period of time covered by any such refusal.

(2) Any reduction under subsection (1) of this section shall be effective the month following the month in which the department or self-insurer is notified by the federal social security administration that the person is receiving disability benefits under the federal old-age, survivors, and disability insurance act: PROVIDED, That in the event of an overpayment of benefits the department or self-insurer may not recover more than the overpayments for the six months immediately preceding the date the department or self-insurer notifies the worker that an overpayment has occurred: PROVIDED FURTHER, That upon determining that there has been an overpayment, the department or self-insurer shall immediately notify the person who received the overpayment that he or she shall be required to make repayment pursuant to this section and RCW 51.32.230.

(3) Recovery of any overpayment must be taken from future temporary or permanent total disability benefits or permanent partial disability benefits provided by this title. In the case of temporary or permanent total disability benefits, the recovery shall not exceed twenty-five percent of the monthly amount due from the department or self-insurer or one-sixth of the total overpayment, whichever is the lesser.

(4) No reduction may be made unless the worker receives notice of the reduction prior to the month in which the reduction is made.

**Westlaw Delivery Summary Report for VINYARD,STEVE**

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(5) In no event shall the reduction reduce total benefits to less than the greater amount the worker may be entitled to under this title or the federal old-age, survivors, and disability insurance act.

(6) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his or her discretion to waive, in whole or in part, the amount of any overpayment where the recovery would be against equity and good conscience.

(7) Subsection (1) of this section applies to:

(a) Workers under the age of sixty-two whose effective entitlement to total disability compensation begins before January 2, 1983;

(b) Workers under the age of sixty-five whose effective entitlement to total disability compensation begins after January 1, 1983; and

(c) Workers who will become sixty-five years of age on or after June 10, 2004.

(8)(a) If the federal social security administration makes a retroactive reduction in the federal social security disability benefit entitlement of a worker for periods of temporary total, temporary partial, or total permanent disability for which the department or self-insurer also reduced the worker's benefit amounts under this section, the department or self-insurer, as the case may be, shall make adjustments in the calculation of benefits and pay the additional benefits to the worker as appropriate. However, the department or self-insurer shall not make changes in the calculation or pay additional benefits unless the worker submits a written request, along with documentation satisfactory to the director of an overpayment assessment by the social security administration, to the department or self-insurer, as the case may be.

(b) Additional benefits paid under this subsection:

(i) Are paid without interest and without regard to whether the worker's claim under this title is closed; and

(ii) Do not affect the status or the date of the claim's closure.

(c) This subsection does not apply to requests on claims for which a determination on the request has been made and is not subject to further appeal.

CREDIT(S)

[2007 c 255 § 1, eff. July 22, 2007; 2005 c 198 § 1, eff. July 24, 2005; 2004 c 92 § 1, eff. June 10, 2004; 1982 c 63 § 19; 1979 ex.s. c 231 § 1; 1979 ex.s. c 151 § 1; 1977 ex.s. c 323 § 19; 1975 1st ex.s. c 286 § 3.]

## HISTORICAL AND STATUTORY NOTES

**Effective dates--Implementation--1982 c 63:** See note following RCW 51.32.095.

**Applicability--1979 ex.s. c 231:** "This 1979 act applies to all cases in which notification of the first reduction in compensation pursuant to RCW 51.32.220 is mailed after June 15, 1979, regardless of when the basis, authority, or cause for such reduction may have arisen. To such extent, this 1979 act applies retrospectively, but in all other respects it applies prospectively." [1979 ex.s. c 231 § 2.]

**Severability--1979 ex.s. c 231:** "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 231 § 3.]

**Applicability--1979 ex.s. c 151:** "This 1979 act applies to all cases in which notification of the first reduction in compensation pursuant to RCW 51.32.220 is mailed after May 10, 1979, regardless of when the basis, authority, or cause for such reduction may have arisen. To such extent, this 1979 act applies retrospectively, but in all other respects it applies prospectively." [1979 ex.s. c 151 § 3.]

**Severability--1979 ex.s. c 151:** "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 151 § 4.]

**Severability--Effective date--1977 ex.s. c 323:** See notes following RCW 51.04.040.

Laws 1977, Ex.Sess., ch. 323, § 19, in subsec. (1), added the third sentence pertaining to refusal to authorize release of information.

Laws 1979, Ex.Sess., ch. 151, § 1, added subsecs. (2) through (6).

Laws 1979, Ex.Sess., ch. 231, § 1, in subsec. (2), inserted reference to RCW 51.32.230; in subsec. (3), in the first sentence, after "future" deleted "monthly"; and inserted "or permanent partial disability benefits"; and, at the beginning of the second sentence, inserted the phrase pertaining to total disability benefits.

Laws 1982, ch. 63, § 19, in subsec. (1), changed the age limit from sixty-two to sixty-five; and added subsec. (7).

Laws 2004, ch. 92, § 1, in subsec. (1), twice substituted "this chapter" for "chapter 51.32. RCW"; in the first sentence, following "persons" deleted "under the age of sixty-five"; in subsec. (6), inserted "or her"; and re-wrote subsec. (7), which formerly read:

“(7) The amendment in subsection (1) of this section by chapter 63, Laws of 1982 raising the age limit during which the reduction shall be made from age sixty-two to age sixty-five shall apply with respect to workers whose effective entitlement to total disability compensation begins after January 1, 1983.”

Laws 2005, ch. 198, § 1 added subsec. (8).

Laws 2007, ch. 255, § 1, in subsec. (8)(c) following “subsection” deleted “applies only to requests for adjustments that are submitted before July 1, 2007, and”; and deleted a former subsec. (8)(d), which had read:

“(d) By December 1, 2006, the department must report to the appropriate committees of the legislature concerning the benefit adjustments authorized in this subsection and must include information about similar benefit adjustments, if any, authorized in other states with social security disability benefit offset requirements. The report must include recommendations on whether additional statutory changes might be warranted in light of the actions of the federal social security administration.”

#### LIBRARY REFERENCES

Workers' Compensation ↪ 934.10, 1044.  
Westlaw Topic No. 413.

#### RESEARCH REFERENCES

##### ALR Library

159 ALR 912, Compensation of Attorneys for Services in Connection With Claim Under Workmen's Compensation Act.

119 ALR 920, Right to Compensation Under Workmen's Compensation Act as Affected by Pension, Insurance, Gratuities, or Other Benefits Not Derived from the Act Itself.

#### UNITED STATES CODE ANNOTATED

Federal old-age, survivors and disability insurance benefits, see 42 U.S.C.A. § 401 et seq.

#### UNITED STATES SUPREME COURT

Due process reduction of benefits for other wage-loss compensation, retroactivity, refunds, see *General Motors Corp. v. Romein*, U.S.Mich.1992, 112 S.Ct. 1105, 503 U.S. 181, 117 L.Ed.2d 328.

Preemption, offset for public safety officers' death benefits, see *Rose v. Arkansas State Police*, 1986, 107 S.Ct. 334, 479 U.S. 1, 93 L.Ed.2d 183, on remand 19 Ark.App. 347, 720 S.W.2d 340.

#### NOTES OF DECISIONS





**C****Effective: June 7, 2006**

West's Revised Code of Washington Annotated Currentness

Title 51. Industrial Insurance (Refs &amp; Annos)

Chapter 51.32. Compensation--Right to and Amount (Refs &amp; Annos)

**→→ 51.32.225. Reduction in total disability compensation--Offset for social security retirement benefits**

(1) For persons receiving compensation for temporary or permanent total disability under this title, the compensation shall be reduced by the department to allow an offset for social security retirement benefits payable under the federal social security, old age survivors, and disability insurance act, 42 U.S.C. This reduction shall not apply to any worker who is receiving permanent total disability benefits prior to July 1, 1986.

(2) Reductions for social security retirement benefits under this section shall comply with the procedures in RCW 51.32.220 (1) through (6) and with any other procedures established by the department to administer this section. For any worker whose entitlement to social security retirement benefits is immediately preceded by an entitlement to social security disability benefits, the offset shall be based on the formulas provided under 42 U.S.C. Sec. 424a. For all other workers entitled to social security retirement benefits, the offset shall be based on procedures established and determined by the department to most closely follow the intent of RCW 51.32.220.

(3) Any reduction in compensation made under chapter 58, Laws of 1986, shall be made before the reduction established in this section.

CREDIT(S)

[2006 c 163 § 1, eff. June 7, 2006; 1986 c 59 § 5.]

## HISTORICAL AND STATUTORY NOTES

**Effective date--1986 c 59 § 5:** See note following RCW 51.32.090.

Laws 2006, ch. 163, § 1, rewrote subsec. (2), which formerly read:

“(2) Reductions for social security retirement benefits under this section shall comply with the procedures in RCW 51.32.220 (1) through (6), except those that relate to computation, and with any other procedures estab-

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lished by the department to administer this section.”

#### LIBRARY REFERENCES

Workers' Compensation ⚡ 934.10.  
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#### RESEARCH REFERENCES

##### ALR Library

119 ALR 920, Right to Compensation Under Workmen's Compensation Act as Affected by Pension, Insurance, Gratuities, or Other Benefits Not Derived from the Act Itself.

##### Treatises and Practice Aids

Modern Workers' Compensation § 207:1, Social Security Offset--Generally.

Modern Workers' Compensation § 207:6, Statutes Governing Workers' Compensation Offsets.

#### NOTES OF DECISIONS

Construction and application 2  
Notice 7  
Preemption 3  
Purpose of law 4  
Receipt of compensation 5  
Review 8  
Rule making 6  
Validity 1

##### 1. Validity

Rational basis review is appropriate for equal protection challenge to statute providing for reduction in workers' compensation for those receiving social security retirement benefits; statute is economic and does not set up suspect class or affect fundamental right. *Harris v. State, Dept. of Labor and Industries* (1993) 120 Wash.2d 461, 843 P.2d 1056, reconsideration denied. Constitutional Law ⚡ 3095

Statute providing for reduction in workers' compensation for those receiving social security retirement benefits is rationally related to legitimate purpose in avoiding duplication of benefits and does not violate state and federal equal protection clauses, even though statute does not apply to private pensions or other sources of benefits. *Harris v. State, Dept. of Labor and Industries* (1993) 120 Wash.2d 461, 843 P.2d 1056, reconsideration denied. Constitutional Law ⚡ 3603; Workers' Compensation ⚡ 30





**Effective:[See Text Amendments]**

United States Code Annotated Currentness

Title 42. The Public Health and Welfare

▣ Chapter 7. Social Security (Refs & Annos)

▣ Subchapter II. Federal Old-Age, Survivors, and Disability Insurance Benefits (Refs & Annos)

→→ § 424a. Reduction of disability benefits

(a) Conditions for reduction; computation

If for any month prior to the month in which an individual attains the age of 65--

(1) such individual is entitled to benefits under section 423 of this title, and

(2) such individual is entitled for such month to--

(A) periodic benefits on account of his or her total or partial disability (whether or not permanent) under a workmen's compensation law or plan of the United States or a State, or

(B) periodic benefits on account of his or her total or partial disability (whether or not permanent) under any other law or plan of the United States, a State, a political subdivision (as that term is used in section 418(b)(2) of this title), or an instrumentality of two or more States (as that term is used in section 418(g) of this title), other than (i) benefits payable under Title 38, (ii) benefits payable under a program of assistance which is based on need, (iii) benefits based on service all or substantially all of which was included under an agreement entered into by a State and the Commissioner of Social Security under section 418 of this title, and (iv) benefits under a law or plan of the United States based on service all or substantially all of which is employment as defined in section 410 of this title,

the total of his benefits under section 423 of this title for such month and of any benefits under section 402 of this title for such month based on his wages and self-employment income shall be reduced (but not below zero) by the amount by which the sum of--

(3) such total of benefits under sections 423 and 402 of this title for such month, and

(4) such periodic benefits payable (and actually paid) for such month to such individual under such laws or plans,

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exceeds the higher of--

(5) 80 per centum of his "average current earnings", or

(6) the total of such individual's disability insurance benefits under section 423 of this title for such month and of any monthly insurance benefits under section 402 of this title for such month based on his wages and self-employment income, prior to reduction under this section.

In no case shall the reduction in the total of such benefits under sections 423 and 402 of this title for a month (in a continuous period of months) reduce such total below the sum of--

(7) the total of the benefits under sections 423 and 402 of this title, after reduction under this section, with respect to all persons entitled to benefits on the basis of such individual's wages and self-employment income for such month which were determined for such individual and such persons for the first month for which reduction under this section was made (or which would have been so determined if all of them had been so entitled in such first month), and

(8) any increase in such benefits with respect to such individual and such persons, before reduction under this section, which is made effective for months after the first month for which reduction under this section is made.

For purposes of clause (5), an individual's average current earnings means the largest of (A) the average monthly wage (determined under section 415(b) of this title as in effect prior to January 1979) used for purposes of computing his benefits under section 423 of this title, (B) one-sixtieth of the total of his wages and self-employment income (computed without regard to the limitations specified in sections 409(a)(1) and 411(b)(1) of this title) for the five consecutive calendar years after 1950 for which such wages and self-employment income were highest, or (C) one-twelfth of the total of his wages and self-employment income (computed without regard to the limitations specified in sections 409(a)(1) and 411(b)(1) of this title) for the calendar year in which he had the highest such wages and income during the period consisting of the calendar year in which he became disabled (as defined in section 423(d) of this title) and the five years preceding that year.

(b) Reduction where benefits payable on other than monthly basis

If any periodic benefit for a total or partial disability under a law or plan described in subsection (a)(2) of this section is payable on other than a monthly basis (excluding a benefit payable as a lump sum except to the extent that it is a commutation of, or a substitute for, periodic payments), the reduction under this section shall be made at such time or times and in such amounts as the Commissioner of Social Security finds will approximate as nearly as practicable the reduction prescribed by subsection (a) of this section.

(c) Reductions and deductions under other provisions



Reduction of benefits under this section shall be made after any reduction under subsection (a) of section 403 of this title, but before deductions under such section and under section 422(b) of this title.

(d) Exception

The reduction of benefits required by this section shall not be made if the law or plan described in subsection (a)(2) of this section under which a periodic benefit is payable provides for the reduction thereof when anyone is entitled to benefits under this subchapter on the basis of the wages and self-employment income of an individual entitled to benefits under section 423 of this title, and such law or plan so provided on February 18, 1981.

(e) Conditions for payment

If it appears to the Commissioner of Social Security that an individual may be eligible for periodic benefits under a law or plan which would give rise to reduction under this section, the Commissioner may require, as a condition of certification for payment of any benefits under section 423 of this title to any individual for any month and of any benefits under section 402 of this title for such month based on such individual's wages and self-employment income, that such individual certify (i) whether he has filed or intends to file any claim for such periodic benefits, and (ii) if he has so filed, whether there has been a decision on such claim. The Commissioner of Social Security may, in the absence of evidence to the contrary, rely upon such a certification by such individual that he has not filed and does not intend to file such a claim, or that he has so filed and no final decision thereon has been made, in certifying benefits for payment pursuant to section 405(i) of this title.

(f) Redetermination of reduction

(1) In the second calendar year after the year in which reduction under this section in the total of an individual's benefits under section 423 of this title and any benefits under section 402 of this title based on his wages and self-employment income was first required (in a continuous period of months), and in each third year thereafter, the Commissioner of Social Security shall redetermine the amount of such benefits which are still subject to reduction under this section; but such redetermination shall not result in any decrease in the total amount of benefits payable under this subchapter on the basis of such individual's wages and self-employment income. Such redetermined benefit shall be determined as of, and shall become effective with, the January following the year in which such redetermination was made.

(2) In making the redetermination required by paragraph (1), the individual's average current earnings (as defined in subsection (a) of this section) shall be deemed to be the product of--

(A) his average current earnings as initially determined under subsection (a) of this section; and

(B) the ratio of (i) the national average wage index (as defined in section 409(k)(1) of this title) for the calendar year before the year in which such redetermination is made to (ii) the national average wage index (as so

defined) for the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability).

Any amount determined under this paragraph which is not a multiple of \$1 shall be reduced to the next lower multiple of \$1.

(g) Proportionate reduction; application of excess

Whenever a reduction in the total of benefits for any month based on an individual's wages and self-employment income is made under this section, each benefit, except the disability insurance benefit, shall first be proportionately decreased, and any excess of such reduction over the sum of all such benefits other than the disability insurance benefit shall then be applied to such disability insurance benefit.

(h) Furnishing of information

(1) Notwithstanding any other provision of law, the head of any Federal agency shall provide such information within its possession as the Commissioner of Social Security may require for purposes of making a timely determination of the amount of the reduction, if any, required by this section in benefits payable under this subchapter, or verifying other information necessary in carrying out the provisions of this section.

(2) The Commissioner of Social Security is authorized to enter into agreements with States, political subdivisions, and other organizations that administer a law or plan subject to the provisions of this section, in order to obtain such information as the Commissioner may require to carry out the provisions of this section.

CREDIT(S)

(Aug. 14, 1935, c. 531, Title II, § 224, as added July 30, 1965, Pub.L. 89-97, Title III, § 335, 79 Stat. 406; amended Jan. 2, 1968, Pub.L. 90-248, Title I, § 159(a), 81 Stat. 869; Oct. 30, 1972, Pub.L. 92-603, Title I, § 119(a), (b), 86 Stat. 1352; Jan. 2, 1976, Pub.L. 94-202, § 8(j), 89 Stat. 1140; Dec. 20, 1977, Pub.L. 95-216, Title II, § 205(d), Title III, § 353(c), 91 Stat. 1529, 1553; Aug. 13, 1981, Pub.L. 97-35, Title XXII, § 2208(a), 95 Stat. 839; Apr. 7, 1986, Pub.L. 99-272, Title XII, § 12109(a), 100 Stat. 286; Oct. 21, 1986, Pub.L. 99-509, Title IX, § 9002(c)(2)(F), 100 Stat. 1972; Dec. 19, 1989, Pub.L. 101-239, Title X, § 10208(b)(2)(A), (C), (d)(2)(A)(i), (iii), 103 Stat. 2477, 2478, 2480, 2481; Aug. 15, 1994, Pub.L. 103-296, Title I, § 107(a)(4), Title III, § 321(e)(2)(H), 108 Stat. 1478, 1540.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1965 Acts. Senate Report No. 404 and Conference Report No. 682, see 1965 U.S. Code Cong. and Adm. News, p. 1943.

1968 Acts. Senate Report No. 744 and Conference Report No. 1030, see 1967 U.S. Code Cong. and Adm. News, p. 2834.

1972 Acts. House Report No. 92-231 and Conference Report No. 92-1605, see 1972 U.S. Code Cong. and Adm. News, p. 4989.

1976 Acts. Senate Report No. 94-550, see 1975 U.S. Code Cong. and Adm. News, p. 2347.

1977 Acts. House Report No. 95-702(Parts I and II) and House Conference Report No. 95-837, see 1977 U.S. Code Cong. and Adm. News, p. 4155.

1981 Acts. Senate Report No. 97-139 and House Conference Report No. 97-208, see 1981 U.S. Code Cong. and Adm. News, p. 396.

1986 Acts. Senate Report No. 99-146, House Report No. 99-241(Parts I, II and III), and a Related Report, see 1986 U.S. Code Cong. and Adm. News, p. 42.

House Report No. 99-727, House Conference Report No. 99-1012, and Statement by President, see 1986 U.S. Code Cong. and Adm. News, p. 3607.

1989 Acts. House Report No. 101-247, House Conference Report No. 101-386, and Statement by President, see 1989 U.S. Code Cong. and Adm. News, p. 1906.

1994 Acts. House Report No. 103-506 and House Conference Report No. 103-670, see 1994 U.S. Code Cong. and Adm. News, p. 1494.

#### References in Text

Section 422(b) of this title, referred to in subsec. (c), was repealed by Pub.L. 106-170, Title I, § 101(b)(1)(C), Dec. 17, 1999, 113 Stat. 1873.

#### Amendments

1994 Amendments. Pub.L. 103-296, § 107(a)(4), substituted “Commissioner of Social Security” for “Secretary” whenever appearing in subsecs.: (a)(2)(B)(iii); (b); (e); (f)(1); and (h)(1), (2); and “the Commissioner may require” for “he may require” wherever appearing in subsecs. (e) and (h)(2).

Subsec. (f)(2)(A). Pub.L. 103-296, § 321(e)(2)(H)(i), added “and” at the end of subpar. (A).

Subsec. (f)(2)(B). Pub.L. 103-296, § 321(e)(2)(H)(iii), substituted “the ratio of (i) the national average wage index (as defined in section 409(k)(1) of this title) for the calendar year before the year in which such redetermination is made to (ii) the national average wage index (as so defined) for the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability).” for “the ratio of (i) the deemed average total wages (as defined in section 409(k)(1) of this title) for the calendar year before the year in which such redetermination is made to (ii)(I) the average of the total wages ((as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title) reported to the Secretary of the Treasury or his delegate for calendar year 1977 or, if later, the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability), if such calendar year is before 1991, or (II) the deemed average total wages (as defined in section 409(k)(1) of this title) for the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability), if such calendar year is after 1990; and”.

Subsec. (f)(2)(C). Pub. L. 103-296, § 321(e)(2)(H)(ii), in relation to redetermination of reduction, struck subpar. (C) which read “in any case in which the reduction was first computed before 1978, the ratio of (i) the average of the taxable wages reported to the Secretary for the first calendar quarter of 1977 to (ii) the average of the taxable wages reported to the Secretary for the first calendar quarter of the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability).”

1989 Amendments. Subsec. (a). Pub.L. 101-239, § 10208(d)(2)(A)(iii), substituted “(a)(1)” for “(a)” in last sentence in two places.

Subsec. (f)(2)(B). Pub.L. 101-239, § 10208(b)(2)(A), substituted provisions relating to the deemed average total wages, for provisions relating to average of total wages and computation without regard to specific limitations.

Subsec. (f)(2)(B)(i). Pub.L. 101-239, § 10208(d)(2)(A)(i), substituted “(a)(1)” for “(a)”.

Subsec. (f)(2)(B)(ii). Pub.L. 101-239, § 10208(b)(2)(C), designated existing provisions as subcl. (I) and, as so designated, added references to regulations of the Secretary, to specified limitations, and to calendar years before 1991, and added subcl. (II).

1986 Amendments. Subsec. (a)(2). Pub.L. 99-272 transferred from introductory provision to subpar. (A) “periodic benefits on account of such individual's total or partial disability (whether or not permanent) under”, in that phrase substituted “his or her” for “such individuals”, transferred to subpar. (B) the closing provisions of subsec. (a)(2) beginning with “other than” and ending with “section 410 of this title”, designating such provisions, as so transferred, as cls. (i) to (iv), and added “periodic benefits on account of his or her total or partial disability (whether or not permanent) under” following the subpar. (B) designation.

Subsec. (a)(2)(B). Pub.L. 99-509, substituted “section 418(g)” for “section 418(k)”.

1981 Amendments. Subsec. (a). Pub.L. 97-35, § 2208(a)(2) to (4), in provision preceding par. (1) substituted “age of 65” for “age of 62”, in par. (2) inserted provisions including periodic benefits under any other law or plan of the United States, a State, a political subdivision, or an instrumentality of two or more States and excluding specified benefits and struck out provision requiring that the Secretary receive notice, in a prior month, of the entitlement for such month, and in par. (4) substituted “such laws or plans” for “the workmen's compensation law or plan”.

Subsec. (b). Pub.L. 97-35, § 2208(a)(5), substituted “for a total or partial disability under a law or plan described in subsection (a)(2) of this section” for “under a workmen's compensation law or plan.”

Subsec. (d). Pub.L. 97-35, § 2208(a)(6), substituted “law or plan described in subsection (a)(2) of this section” for “workmen's compensation law or plan” and “section 423 of this title, and such law or plan so provided on February 18, 1981” for “section 423 of this title”.

Subsec. (e). Pub.L. 97-35, § 2208(a)(7), struck out “workmen's compensation” following “periodic benefits under a”.

Subsec. (h). Pub.L. 97-35, § 2208(a)(8), added subsec. (h).

1977 Amendments. Subsec. (a). Pub.L. 95-216, §§ 205(d), 353(c)(1), struck out provisions following par. (8) under which the Secretary, in cases where an individual's wages and self-employment income reported to the Secretary for a calendar year reached the limitations specified in §§ 409(a) and 411(b)(1) of this title, was required to estimate the total of such wages and self-employment income on the basis of such information as might be available to him indicating the extent (if any) by which the wages and self-employment income exceeded limitations, and, effective with respect to monthly benefits under this subchapter payable for months after Dec. 1978, and with respect to lump-sum death payments with respect to death occurring after Dec. 1978, added “(determined under section 415(b) of this title as in effect prior to January 1979)” following “(A) the average monthly wage” in the provisions following par. (8).

Subsec. (f)(2). Pub.L. 95-216, § 353(c)(2), divided existing provisions into subpars. (A) and (B), added subpar. (C), and in subpar. (B) as so redesignated substituted “(i) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a) of this title) reported to the Secretary of the Treasury or his delegate for the calendar year before the year in which such redetermination is made to (ii) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for calendar year 1977 or, if later, the calendar year before the year” for “(i) the average of the taxable wages of all persons for whom taxable wages were reported to the Secretary for the first calendar quarter of the calendar year before the calendar year in which the redetermination is made, to (ii) the average of the taxable wages of such persons reported to the Secretary for the first calendar quarter of the taxable year before the calendar year”.

1976 Amendments. Subsec. (f)(2). Pub.L. 94-202 substituted “calendar year before the calendar year” for

“calendar year” and “taxable year before the calendar year” for “taxable year”.

1972 Amendments. Subsec. (a). Pub.L. 92-603 added cl. (C) in provisions for the determination of an individual's average current earnings so as to introduce into the formula a factor of one-twelfth of the total wages and self-employment income for the calendar year in which he had the highest such wages and income during the year in which he became disabled and the five years preceding that year.

1968 Amendments. Subsec. (a). Pub.L. 90-248 inserted in cl. (B) of first sentence following par. (8) “(computed without regard to the limitations specified in sections 409(a) and 411(b)(1) of this title)” preceding “for the five”, and added last sentence authorizing the Secretary, in certain cases, to estimate the total of wages and self-employment income for purposes of cl. (B) indicating the extent such earnings exceed the limitations in sections 409(a) and 411(b)(1) of this title.

#### Effective and Applicability Provisions

1994 Acts. Amendment by section 107(a)(4) of Pub.L. 103-296 effective Mar. 31, 1995, see section 110 of Pub.L. 103-296, set out as a note under section 401 of this title.

1989 Acts. Amendment by Pub.L. 101-239, § 10208, applicable with respect to computation of average total wage amounts for calendar years after 1990, including transitional rule, see section 10208(c) of Pub.L. 101-239, set out as a note under section 430 of this title.

1986 Acts. Amendment by Pub.L. 99-509 effective with respect to payments due with respect to wages paid after Dec. 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to section 418(e)(2) of this title prior to Oct. 21, 1986, with certain exceptions, see section 9002(d) of Pub.L. 99-509 set out as a note under section 418 of this title.

Section 12109(b) of Pub.L. 99-272 provided that:

“(1) The amendment made by subsection (a)(1) [amending subsec. (a)(2) of this section] shall be effective as though it had been included or reflected in the amendment made by section 2208(a)(3) of the Omnibus Budget Reconciliation Act of 1981. [See Effective Date of 1981 Amendment set out under this section].

“(2) The amendment made by subsection (a)(2) [amending subsec. (a)(2)(B) of this section by substituting ‘all or substantially all of which’ for ‘all or part of which’ in cl. (iv) ] shall apply only with respect to monthly benefits payable on the basis of the wages and self-employment income of individuals who become disabled (within the meaning of section 223(d) of the Social Security Act [section 423(d) of this title] ) after the month in which this Act is enacted [April, 1986].”

1981 Acts. Section 2208(b) of Pub.L. 97-35 provided that: “The amendments made by subsection (a) [amending this section] shall be effective with respect to individuals who first become entitled to benefits under section

223(a) of the Social Security Act [section 423(a) of this title] for months beginning after the month in which this Act is enacted [August, 1981], but only in the case of an individual who became disabled within the meaning of section 223(d) of such Act [section 423(d) of this title] after the sixth month preceding the month in which this Act is enacted [August 1981].”

1977 Acts. Amendment by section 205(d) of Pub.L. 95-216 [adding “(determined under section 415(b) of this title as in effect prior to January 1979)” following “(A) the average monthly wage” in the provisions following par. (8) of subsec. (a) of this section] effective with respect to monthly benefits under this subchapter payable for months after Dec. 1978 and with respect to lump-sum death payments with respect to deaths occurring after Dec. 1978, see section 206 of Pub.L. 95-216, set out as a note under section 402 of this title.

Section 353(c)(1) of Pub.L. 95-216 provided in part that the amendment by section 353(c)(1) of Pub.L. 95-216 [which struck out requirement in the provisions following par. (8) of subsec. (a) of this section that the Secretary estimate the total of wages and self-employment income in those cases where an individual's reported wages and self-employment income for the calendar year reached the limitations specified in sections 409(a) and 411(b)(1) of this title] is effective with respect to the estimates for calendar years beginning after Dec. 31, 1977.

Amendment of subsec. (f)(2) by section 353(c)(2) of Pub.L. 95-216 effective Jan. 1, 1979, see section 353(g) of Pub.L. 95-216, set out as a note under section 418 of this title.

1972 Acts. Section 119(c) of Pub.L. 92-603 provided that: “The amendments made by subsections (a) and (b) [amending subsec. (a) of this section] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1972.”

1968 Acts. Section 159(b) of Pub.L. 90-248 provided that:

“(1) The amendments made by subsection (a) [to subsec. (a) of this section] shall apply only with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after January 1968.

“(2) For purposes of any redetermination which is made under section 224(f) of the Social Security Act [subsec. (f) of this section] in the case of benefits, subject to reduction under section 224 of such Act [this section], where such reduction as first computed was effective with respect to benefits for the month in which this Act is enacted [Jan. 1968] or a prior month, the amendments made by subsection (a) of this section [to subsec. (a) of this section] shall also be deemed to have applied in the initial determination of the ‘average current earnings’ of the individual whose wages and self-employment income are involved.”

1965 Acts. Section 335 of Pub.L. 89-97 made this section effective with respect to benefits under this subchapter for months after Dec. 1965 based on the wages and self-employment income of individuals entitled to benefits, under section 423 of this title whose period of disability (as defined in this subchapter) began after June 1, 1965.

### Prior Provisions

A prior section 224 of Act Aug. 14, 1935, was classified to section 424 of this title and was repealed by Pub.L. 85-840, Title II, § 206, Aug. 28, 1958, 72 Stat. 1025.

### CROSS REFERENCES

Computation of disability annuity under Federal Employees' Retirement System, see 5 USCA § 8452.

Limitations on right to receive compensation for work injuries, see 5 USCA § 8116.

Offset relating to certain benefits under the Social Security Act, civil service retirement, see 5 USCA § 8349.

Reduction of black lung benefits, payments not considered under workmen's compensation law or plan for purposes of this section, see 30 USCA § 922.

Tax returns relating to social security benefits, see 26 USCA § 6050F.

Workmen's compensation benefits substituted for social security benefits, inclusions in gross income, see 26 USCA § 86.

### LAW REVIEW COMMENTARIES

Corporate probation: The Con Edison sentence. Michael B. Gerrard and Deborah Goldberg, 213 N.Y.L.J. 3 (May 26, 1995).

Social security offset of workers' compensation awards against disability payments: A guide through the maze. Kyle J. Saunders and G.E. Saunders, 65 Okla.B.J. 4259 (1994).

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Social Security and Public Welfare ☞ 140.75.

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### RESEARCH REFERENCES

#### ALR Library

165 ALR, Fed. 203, Standard and Sufficiency of Evidence When Evaluating Severity of Claimant's Pain in Social Security Disability Case Under § 3(A)(1) of Social Security Disability Benefits...

92 ALR, Fed. 118, Sua Sponte Reopening by Social Security Appeals Council of Prior Final Administrative Determination by Secretary of Health and Human Services.



24 ALR 5th 766, Uninsured or Underinsured Motorist Insurance: Validity and Construction of Policy Provision Purporting to Reduce Recovery by Amount of Social Security Disability Benefits or Payments Under Similar Disability Benefits...

139 ALR 892, Construction and Application of State Social Security or Unemployment Compensation Act as Affected by Terms of the Federal Act or Judicial or Administrative Rulings Thereunder.

159 ALR 912, Compensation of Attorneys for Services in Connection With Claim Under Workmen's Compensation Act.

119 ALR 920, Right to Compensation Under Workmen's Compensation Act as Affected by Pension, Insurance, Gratuities, or Other Benefits Not Derived from the Act Itself.

101 ALR 1215, Constitutionality of Old Age Pension or Assistance Acts.

#### Encyclopedias

Am. Jur. 2d Social Security and Medicare § 643, Circumstances Requiring Reduction, Deduction, or Nonpayment of Benefits.

Am. Jur. 2d Social Security and Medicare § 678, Circumstances Requiring Reduction, Deduction, or Nonpayment of Benefits--Actions of Insured Person.

Am. Jur. 2d Social Security and Medicare § 1388, What Constitutes Government Pension Subject to Offset Provision--Certain Government Benefits Not Qualifying as Pension.

Am. Jur. 2d Social Security and Medicare § 1403, Benefits Need Not be Based on Same Disability.

Am. Jur. 2d Social Security and Medicare § 1404, Verification of Eligibility for Workers' Compensation or Public Disability Benefits.

Am. Jur. 2d Social Security and Medicare § 1405, Furnishing Information to Social Security Administration.

Am. Jur. 2d Social Security and Medicare § 1407, Federal Workers' Compensation Plans.

Am. Jur. 2d Social Security and Medicare § 1410, Workers' Compensation Benefits Payable in Lump Sum.

Am. Jur. 2d Social Security and Medicare § 1417, Benefits that Do Not Qualify as Public Disability Benefits.

Am. Jur. 2d Social Security and Medicare § 1418, Benefits that Do Not Qualify as Public Disability Benefits--Benefits Based on Covered Employment.

Am. Jur. 2d Social Security and Medicare § 1420, Reverse Offset Provisions of State Workers' Compensation Plans.

Am. Jur. 2d Social Security and Medicare § 1421, Reverse Offset Provisions of State Workers' Compensation Plans--Application of State Reverse Offset Provisions.

Am. Jur. 2d Social Security and Medicare § 1422, Reverse Offset Provisions of State Public Disability Benefit Plans.

Am. Jur. 2d Social Security and Medicare § 1424, Determining Claimant's Average Current Earnings.

Am. Jur. 2d Social Security and Medicare § 1425, Application of Reduction to Benefits Payable on Claimant's Earnings Record.

Am. Jur. 2d Social Security and Medicare § 1433, Social Security Benefit Increases.

Am. Jur. 2d Social Security and Medicare § 1435, Redetermination of Benefits.

Am. Jur. 2d Social Security and Medicare § 1663, Examples of Overpayment.

#### Treatises and Practice Aids

Social Security Law and Practice § 33:5, Examples of Overpayment.

Social Security Law and Practice § 14:46, Circumstances Requiring Reduction, Deduction, or Nonpayment of Benefits.

Social Security Law and Practice § 15:29, Circumstances Requiring Reduction, Deduction, or Nonpayment of Benefits.

Social Security Law and Practice § 26:29, What Constitutes a Government Pension--Government Benefits that Do Not Qualify as a Pension.

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Social Security Law and Practice § 26:45, Verification of Eligibility for Workers' Compensation or Public Disability Benefits.

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Social Security Law and Practice § 26:48, Federal Workers' Compensation Plans.

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Social Security Law and Practice § 26:59, Benefits that Do Not Qualify as Public Disability Benefits--Benefits Based on Covered Employment.

Social Security Law and Practice § 26:61, Reverse Offset Provisions of State Workers' Compensation Plans.

Social Security Law and Practice § 26:62, Reverse Offset Provisions of State Workers' Compensation Plans--Application of State Reverse Offset Provisions.

Social Security Law and Practice § 26:63, Reverse Offset Provisions of State Public Disability Benefit Plans.

Social Security Law and Practice § 26:66, Determining a Claimant's Average Current Earnings.

Social Security Law and Practice § 26:67, Application of Reduction to Benefits Payable on a Claimant's Earnings Record.

Social Security Law and Practice § 26:72, Prorating Lump Sum Payments.

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West's Federal Administrative Practice § 6259, Disability Benefits--Reduction.





Effective:[See Text Amendments]

United States Code Annotated Currentness

Title 42. The Public Health and Welfare

▣ Chapter 7. Social Security (Refs & Annos)

▣ Subchapter II. Federal Old-Age, Survivors, and Disability Insurance Benefits (Refs & Annos)

→→ § 415. Computation of primary insurance amount

For the purposes of this subchapter--

(a) Primary insurance amount

**(1)(A)** The primary insurance amount of an individual shall (except as otherwise provided in this section) be equal to the sum of--

**(i)** 90 percent of the individual's average indexed monthly earnings (determined under subsection (b) of this section) to the extent that such earnings do not exceed the amount established for purposes of this clause by subparagraph (B),

**(ii)** 32 percent of the individual's average indexed monthly earnings to the extent that such earnings exceed the amount established for purposes of clause (i) but do not exceed the amount established for purposes of this clause by subparagraph (B), and

**(iii)** 15 percent of the individual's average indexed monthly earnings to the extent that such earnings exceed the amount established for purposes of clause (ii),

rounded, if not a multiple of \$0.10, to the next lower multiple of \$0.10, and thereafter increased as provided in subsection (i) of this section.

**(B)(i)** For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming eligible for such benefits), in the calendar year 1979, the amount established for purposes of clause (i) and (ii) of subparagraph (A) shall be \$180 and \$1,085, respectively.

**(ii)** For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming eligible for such benefits), in any calendar year after 1979, each of the amounts so established shall equal the product of the corresponding amount established with respect to the calendar year 1979 under clause (i) of this subparagraph and the quotient obtained by dividing--

**(I)** the national average wage index (as defined in section 409(k)(1) of this title) for the second calendar year preceding the calendar year for which the determination is made, by

**(II)** the national average wage index (as so defined) for 1977.

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(iii) Each amount established under clause (ii) for any calendar year shall be rounded to the nearest \$1, except that any amount so established which is a multiple of \$0.50 but not of \$1 shall be rounded to the next higher \$1.

(C)(i) No primary insurance amount computed under subparagraph (A) may be less than an amount equal to \$11.50 multiplied by the individual's years of coverage in excess of 10, or the increased amount determined for purposes of this clause under subsection (i) of this section.

(ii) For purposes of clause (i), the term "years of coverage" with respect to any individual means the number (not exceeding 30) equal to the sum of (I) the number (not exceeding 14 and disregarding any fraction) determined by dividing (a) the total of the wages credited to such individual (including wages deemed to be paid prior to 1951 to such individual under section 417 of this title, compensation under the Railroad Retirement Act of 1937 [45 U.S.C.A. § 228a et seq.] prior to 1951 which is creditable to such individual pursuant to this subchapter, and wages deemed to be paid prior to 1951 to such individual under section 431 of this title) for years after 1936 and before 1951 by (b) \$900, plus (II) the number equal to the number of years after 1950 each of which is a computation base year (within the meaning of subsection (b)(2)(B)(ii) of this section) and in each of which he is credited with wages (including wages deemed to be paid to such individual under section 417 of this title, compensation under the Railroad Retirement Act of 1937 or 1974 [45 U.S.C.A. §§ 228a et seq., 231 et seq.] which is creditable to such individual pursuant to this subchapter, and wages deemed to be paid to such individual under section 429 of this title) and self-employment income of not less than 25 percent (in the case of a year after 1950 and before 1978) of the maximum amount which (pursuant to subsection (e) of this section) may be counted for such year, or 25 percent (in the case of a year after 1977 and before 1991) or 15 percent (in the case of a year after 1990) of the maximum amount which (pursuant to subsection (e) of this section) could be counted for such year if section 430 of this title as in effect immediately prior to December 20, 1977, had remained in effect without change (except that, for purposes of subsection (b) of such section 430 of this title as so in effect, the reference to the contribution and benefit base in paragraph (1) of such subsection (b) shall be deemed a reference to an amount equal to \$45,000, each reference in paragraph (2) of such subsection (b) to the average of the wages of all employees as reported to the Secretary of the Treasury shall be deemed a reference to the national average wage index (as defined in section 409(k)(1) of this title), the reference to a preceding calendar year in paragraph (2)(A) of such subsection (b) shall be deemed a reference to the calendar year before the calendar year in which the determination under subsection (a) of such section 430 of this title is made, and the reference to a calendar year in paragraph (2)(B) of such subsection (b) shall be deemed a reference to 1992).

(D) In each calendar year the Commissioner of Social Security shall publish in the Federal Register, on or before November 1, the formula for computing benefits under this paragraph and for adjusting wages and self-employment income under subsection (b)(3) of this section in the case of an individual who becomes eligible for an old-age insurance benefit, or (if earlier) becomes eligible for a disability insurance benefit or dies, in the following year, and the national average wage index (as defined in section 409(k)(1) of this title) on which that formula is based.

(2)(A) A year shall not be counted as the year of an individual's death or eligibility for purposes of this subsection or subsection (i) of this section in any case where such individual was entitled to a disability insurance benefit for any of the 12 months immediately preceding the month of such death or eligibility (but there shall be counted instead the year of the individual's eligibility for the disability insurance benefit or benefits to which he was entitled during such 12 months).

(B) In the case of an individual who was entitled to a disability insurance benefit for any of the 12 months before the month in which he became entitled to an old-age insurance benefit, became reentitled to a disability insurance benefit, or died, the primary insurance amount for determining any benefit attributable to that entitlement, reentitlement, or

death is the greater of--

(i) the primary insurance amount upon which such disability insurance benefit was based, increased by the amount of each general benefit increase (as defined in subsection (i)(3) of this section), and each increase provided under subsection (i)(2) of this section, that would have applied to such primary insurance amount had the individual remained entitled to such disability insurance benefit until the month in which he became so entitled or reentitled or died, or

(ii) the amount computed under paragraph (1)(C).

(C) In the case of an individual who was entitled to a disability insurance benefit for any month, and with respect to whom a primary insurance amount is required to be computed at any time after the close of the period of the individual's disability (whether because of such individual's subsequent entitlement to old-age insurance benefits or to a disability insurance benefit based upon a subsequent period of disability, or because of such individual's death), the primary insurance amount so computed may in no case be less than the primary insurance amount with respect to which such former disability insurance benefit was most recently determined.

(3)(A) Paragraph (1) applies only to an individual who was not eligible for an old-age insurance benefit prior to January 1979 and who in that or any succeeding month--

(i) becomes eligible for such a benefit,

(ii) becomes eligible for a disability insurance benefit, or

(iii) dies,

and (except for subparagraph (C)(i) thereof) it applies to every such individual except to the extent otherwise provided by paragraph (4).

(B) For purposes of this subchapter, an individual is deemed to be eligible--

(i) for old-age insurance benefits, for months beginning with the month in which he attains age 62, or

(ii) for disability insurance benefits, for months beginning with the month in which his period of disability began as provided under section 416(i)(2)(C) of this title,

except as provided in paragraph (2)(A) in cases where fewer than 12 months have elapsed since the termination of a prior period of disability.

(4) Paragraph (1) (except for subparagraph (C)(i) thereof) does not apply to the computation or recomputation of a primary insurance amount for--

(A) an individual who was eligible for a disability insurance benefit for a month prior to January 1979 unless, prior to the month in which occurs the event described in clause (i), (ii), or (iii) of paragraph (3)(A), there occurs a period of at least 12 consecutive months for which he was not entitled to a disability insurance benefit, or

(B) an individual who had wages or self-employment income credited for one or more years prior to 1979, and who was not eligible for an old-age or disability insurance benefit, and did not die, prior to January 1979, if in the year for which the computation or recomputation would be made the individual's primary insurance amount would be greater if computed or recomputed--



(i) under this subsection as in effect in December 1978, for purposes of old-age insurance benefits in the case of an individual who becomes eligible for such benefits prior to 1984, or

(ii) as provided by subsection (d) of this section, in the case of an individual to whom such section applies.

In determining whether an individual's primary insurance amount would be greater if computed or recomputed as provided in subparagraph (B), (I) the table of benefits in effect in December 1978, as modified by paragraph (6), shall be applied without regard to any increases in that table which may become effective (in accordance with subsection (i)(4) of this section) for years after 1978 (subject to clause (iii) of subsection (i)(2)(A) of this section) and (II) such individual's average monthly wage shall be computed as provided by subsection (b)(4) of this section.

(5)(A) Subject to subparagraphs (B), (C), (D) and (E), for purposes of computing the primary insurance amount (after December 1978) of an individual to whom paragraph (1) does not apply (other than an individual described in paragraph (4)(B)), this section as in effect in December 1978 shall remain in effect, except that, effective for January 1979, the dollar amount specified in paragraph (3) of this subsection shall be increased to \$11.50.

(B)(i) Subject to clauses (ii), (iii), and (iv), and notwithstanding any other provision of law, the primary insurance amount of any individual described in subparagraph (C) shall be, in lieu of the primary insurance amount as computed pursuant to any of the provisions referred to in subparagraph (D), the primary insurance amount computed under subsection (a) of this section as in effect in December 1978, without regard to subsections (b)(4) and (c) of this section as so in effect.

(ii) The computation of a primary insurance amount under this subparagraph shall be subject to section 104(j)(2) of the Social Security Amendments of 1972 (relating to the number of elapsed years under subsection (b) of this section).

(iii) In computing a primary insurance amount under this subparagraph, the dollar amount specified in paragraph (3) of subsection (a) of this section (as in effect in December 1978) shall be increased to \$11.50.

(iv) In the case of an individual to whom subsection (d) of this section applies, the primary insurance amount of such individual shall be the greater of--

(I) the primary insurance amount computed under the preceding clauses of this subparagraph, or

(II) the primary insurance amount computed under subsection (d) of this section.

(C) An individual is described in this subparagraph if--

(i) paragraph (1) does not apply to such individual by reason of such individual's eligibility for an old-age or disability insurance benefit, or the individual's death, prior to 1979, and

(ii) such individual's primary insurance amount computed under this section as in effect immediately before November 5, 1990, would have been computed under the provisions described in subparagraph (D).

(D) The provisions described in this subparagraph are--

(i) the provisions of this subsection as in effect prior to July 30, 1965, if such provisions would preclude the use of wages prior to 1951 in the computation of the primary insurance amount,

(ii) the provisions of section 409 of this title as in effect prior to August 28, 1950, and

(iii) the provisions of subsection (d) of this section as in effect prior to December 20, 1977.

(E) For purposes of this paragraph, the table for determining primary insurance amounts and maximum family benefits contained in this section in December 1978 shall be revised as provided by subsection (i) of this section for each year after 1978.

(6)(A) In applying the table of benefits in effect in December 1978 under this section for purposes of the last sentence of paragraph (4), such table, revised as provided by subsection (i) of this section, as applicable, shall be extended for average monthly wages of less than \$76.00 and primary insurance benefits (as determined under subsection (d) of this section) of less than \$16.20.

(B) The Commissioner of Social Security shall determine and promulgate in regulations the methodology for extending the table under subparagraph (A).

(7)(A) In the case of an individual whose primary insurance amount would be computed under paragraph (1) of this subsection, who--

(i) attains age 62 after 1985 (except where he or she became entitled to a disability insurance benefit before 1986 and remained so entitled in any of the 12 months immediately preceding his or her attainment of age 62), or

(ii) would attain age 62 after 1985 and becomes eligible for a disability insurance benefit after 1985,

and who first becomes eligible after 1985 for a monthly periodic payment (including a payment determined under subparagraph (C), but excluding (I) a payment under the Railroad Retirement Act of 1974 or 1937 [45 U.S.C.A. §§ 231 et seq., 228a et seq.], (II) a payment by a social security system of a foreign country based on an agreement concluded between the United States and such foreign country pursuant to section 433 of this title, and (III) a payment based wholly on service as a member of a uniformed service (as defined in section 410(m) of this title)) which is based in whole or in part upon his or her earnings for service which did not constitute "employment" as defined in section 410 of this title for purposes of this subchapter (hereafter in this paragraph and in subsection (d)(3) of this section referred to as "noncovered service"), the primary insurance amount of that individual during his or her concurrent entitlement to such monthly periodic payment and to old-age or disability insurance benefits shall be computed or recomputed under subparagraph (B).

(B)(i) If paragraph (1) of this subsection would apply to such an individual (except for subparagraph (A) of this paragraph), there shall first be computed an amount equal to the individual's primary insurance amount under paragraph (1) of this subsection, except that for purposes of such computation the percentage of the individual's average indexed monthly earnings established by subparagraph (A)(i) of paragraph (1) shall be the percent specified in clause (ii). There shall then be computed (without regard to this paragraph) a second amount, which shall be equal to the individual's primary insurance amount under paragraph (1) of this subsection, except that such second amount shall be reduced by an amount equal to one-half of the portion of the monthly periodic payment which is attributable to noncovered service performed after 1956 (with such attribution being based on the proportionate number of years of such noncovered service) and to which the individual is entitled (or is deemed to be entitled) for the initial month of his or her concurrent entitlement to such monthly periodic payment and old-age or disability insurance benefits. The individual's primary insurance amount shall be the larger of the two amounts computed under this subparagraph (before the application of subsection (i) of this section) and shall be deemed to be computed under paragraph (1) of this subsection for the purpose of applying other provisions of this subchapter.

(ii) For purposes of clause (i), the percent specified in this clause is--

- (I) 80.0 percent with respect to individuals who become eligible (as defined in paragraph (3)(B)) for old-age insurance benefits (or became eligible as so defined for disability insurance benefits before attaining age 62) in 1986;
- (II) 70.0 percent with respect to individuals who so become eligible in 1987;
- (III) 60.0 percent with respect to individuals who so become eligible in 1988;
- (IV) 50.0 percent with respect to individuals who so become eligible in 1989; and
- (V) 40.0 percent with respect to individuals who so become eligible in 1990 or thereafter.

(C)(i) Any periodic payment which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly payment (as determined by the Commissioner of Social Security), and such equivalent monthly payment shall constitute a monthly periodic payment for purposes of this paragraph.

(ii) In the case of an individual who has elected to receive a periodic payment that has been reduced so as to provide a survivor's benefit to any other individual, the payment shall be deemed to be increased (for purposes of any computation under this paragraph or subsection (d)(3) of this section) by the amount of such reduction.

(iii) For purposes of this paragraph, the term "periodic payment" includes a payment payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(D) This paragraph shall not apply in the case of an individual who has 30 years or more of coverage. In the case of an individual who has more than 20 years of coverage but less than 30 years of coverage (as so defined), the percent specified in the applicable subdivision of subparagraph (B)(ii) shall (if such percent is smaller than the applicable percent specified in the following table) be deemed to be the applicable percent specified in the following table:

| If the number of such individual's years of coverage (as so defined) is: | The applicable percent is: |
|--|----------------------------|
| 29   | 85 percent                 |
| 28   | 80 percent                 |
| 27   | 75 percent                 |
| 26   | 70 percent                 |
| 25   | 65 percent                 |
| 24   | 60 percent                 |
| 23   | 55 percent                 |
| 22   | 50 percent                 |
| 21   | 45 percent.                |

For purposes of this subparagraph, the term "year of coverage" shall have the meaning provided in paragraph (1)(C)(ii), except that the reference to "15 percent" therein shall be deemed to be a reference to "25 percent".

(E) This paragraph shall not apply in the case of an individual whose eligibility for old-age or disability insurance be-

nefits is based on an agreement concluded pursuant to section 433 of this title or an individual who on January 1, 1984--

(i) is an employee performing service to which social security coverage is extended on that date solely by reason of the amendments made by section 101 of the Social Security Amendments of 1983; or

(ii) is an employee of a nonprofit organization which (on December 31, 1983) did not have in effect a waiver certificate under section 3121(k) of the Internal Revenue Code of 1954 and to the employees of which social security coverage is extended on that date solely by reason of the amendments made by section 102 of that Act, unless social security coverage had previously extended to service performed by such individual as an employee of that organization under a waiver certificate which was subsequently (prior to December 31, 1983) terminated.

(b) Average indexed monthly earnings; average monthly wage

(1) An individual's average indexed monthly earnings shall be equal to the quotient obtained by dividing--

(A) the total (after adjustment under paragraph (3)) of his wages paid in and self-employment income credited to his benefit computation years (determined under paragraph (2)), by

(B) the number of months in those years.

(2)(A) The number of an individual's benefit computation years equals the number of elapsed years reduced--

(i) in the case of an individual who is entitled to old-age insurance benefits (except as provided in the second sentence of this subparagraph), or who has died, by 5 years, and

(ii) in the case of an individual who is entitled to disability insurance benefits, by the number of years equal to one-fifth of such individual's elapsed years (disregarding any resulting fractional part of a year), but not by more than 5 years.

Clause (ii), once applicable with respect to any individual, shall continue to apply for purposes of determining such individual's primary insurance amount for purposes of any subsequent eligibility for disability or old-age insurance benefits unless prior to the month in which such eligibility begins there occurs a period of at least 12 consecutive months for which he was not entitled to a disability or an old-age insurance benefit. If an individual described in clause (ii) is living with a child (of such individual or his or her spouse) under the age of 3 in any calendar year which is included in such individual's computation base years, but which is not disregarded pursuant to clause (ii) or to subparagraph (B) (in determining such individual's benefit computation years) by reason of the reduction in the number of such individual's elapsed years under clause (ii), the number by which such elapsed years are reduced under this subparagraph pursuant to clause (ii) shall be increased by one (up to a combined total not exceeding 3) for each such calendar year; except that (1) no calendar year shall be disregarded by reason of this sentence (in determin-

ing such individual's benefit computation years) unless the individual was living with such child substantially throughout the period in which the child was alive and under the age of 3 in such year and the individual had no earnings as described in section 403(f)(5) of this title in such year, (II) the particular calendar years to be disregarded under this sentence (in determining such benefit computation years) shall be those years (not otherwise disregarded under clause (ii)) which, before the application of subsection (f) of this section, meet the conditions of subclause (I), and (III) this sentence shall apply only to the extent that its application would not result in a lower primary insurance amount. The number of an individual's benefit computation years as determined under this subparagraph shall in no case be less than 2.

**(B)** For purposes of this subsection with respect to any individual--

(i) the term "benefit computation years" means those computation base years, equal in number to the number determined under subparagraph (A), for which the total of such individual's wages and self-employment income, after adjustment under paragraph (3), is the largest;

(ii) the term "computation base years" means the calendar years after 1950 and before--

**(I)** in the case of an individual entitled to old-age insurance benefits, the year in which occurred (whether by reason of section 402(j)(1) of this title or otherwise) the first month of that entitlement; or

**(II)** in the case of an individual who has died (without having become entitled to old-age insurance benefits), the year succeeding the year of his death;

except that such term excludes any calendar year entirely included in a period of disability; and

(iii) the term "number of elapsed years" means (except as otherwise provided by section 104(j)(2) of the Social Security Amendments of 1972) the number of calendar years after 1950 (or, if later, the year in which the individual attained age 21) and before the year in which the individual died, or, if it occurred earlier (but after 1960), the year in which he attained age 62; except that such term excludes any calendar year any part of which is included in a period of disability.

**(3)(A)** Except as provided by subparagraph (B), the wages paid in and self-employment income credited to each of an individual's computation base years for purposes of the selection therefrom of benefit computation years under paragraph (2) shall be deemed to be equal to the product of--

(i) the wages and self-employment income paid in or credited to such year (as determined without regard to this subparagraph), and

(ii) the quotient obtained by dividing--

(I) the national average wage index (as defined in section 409(k)(1) of this title) for the second calendar year preceding the earliest of the year of the individual's death, eligibility for an old-age insurance benefit, or eligibility for a disability insurance benefit (except that the year in which the individual dies, or becomes eligible, shall not be considered as such year if the individual was entitled to disability insurance benefits for any month in the 12-month period immediately preceding such death or eligibility, but there shall be counted instead the year of the individual's eligibility for the disability insurance benefit to which he was entitled in such 12-month period), by

(II) the national average wage index (as so defined) for the computation base year for which the determination is made.

(B) Wages paid in or self-employment income credited to an individual's computation base year which--

(i) occurs after the second calendar year specified in subparagraph (A)(ii)(I), or

(ii) is a year treated under subsection (f)(2)(C) of this section as though it were the last year of the period specified in paragraph (2)(B)(ii),

shall be available for use in determining an individual's benefit computation years, but without applying subparagraph (A) of this paragraph.

(4) For purposes of determining the average monthly wage of an individual whose primary insurance amount is computed (after 1978) under subsection (a) or (d) of this section as in effect (except with respect to the table contained therein) in December 1978, by reason of subsection (a)(4)(B) of this section, this subsection as in effect in December 1978 shall remain in effect, except that paragraph (2)(C) (as then in effect) shall be deemed to provide that "computation base years" include only calendar years in the period after 1950 (or 1936, if applicable) and prior to the year in which occurred the first month for which the individual was eligible (as defined in subsection (a)(3)(B) of this section as in effect in January 1979) for an old-age or disability insurance benefit, or, if earlier, the year in which he died. Any calendar year all of which is included in a period of disability shall not be included as a computation base year for such purposes.

(c) Application of prior provisions in certain cases

Subject to the amendments made by section 5117 of the Omnibus Budget Reconciliation Act of 1990, this subsection as in effect in December 1978 shall remain in effect with respect to an individual to whom subsection (a)(1) of this section does not apply by reason of the individual's eligibility for an old-age or disability insurance benefit, or the individual's death, prior to 1979.

(d) Primary insurance amount under 1939 Act

(1) For purposes of column I of the table appearing in subsection (a) of this section, as that subsection was in effect in

December 1977, an individual's primary insurance benefit shall be computed as follows:

(A) The individual's average monthly wage shall be determined as provided in subsection (b) of this section, as in effect in December 1977 (but without regard to paragraph (4) thereof and subject to section 104(j)(2) of the Social Security Amendments of 1972), except that for purposes of paragraphs (2)(C) and (3) of that subsection (as so in effect) 1936 shall be used instead of 1950.

(B) For purposes of subparagraphs (B) and (C) of subsection (b)(2) of this section (as so in effect)--

(i) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual--

(I) shall, in the case of an individual who attained age 21 prior to 1950, be divided by the number of years (hereinafter in this subparagraph referred to as the "divisor") elapsing after the year in which the individual attained age 20, or 1936 if later, and prior to the earlier of the year of death or 1951, except that such divisor shall not include any calendar year entirely included in a period of disability, and in no case shall the divisor be less than one, and

(II) shall, in the case of an individual who died before 1950 and before attaining age 21, be divided by the number of years (hereinafter in this subparagraph referred to as the "divisor") elapsing after the second year prior to the year of death, or 1936 if later, and prior to the year of death, and in no case shall the divisor be less than one; and

(ii) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual who either attained age 21 after 1949 or died after 1949 before attaining age 21, shall be divided by the number of years (hereinafter in this subparagraph referred to as the "divisor") elapsing after 1949 and prior to 1951.

The quotient so obtained shall be deemed to be the individual's wages credited to each of the years which were used in computing the amount of the divisor, except that--

(iii) if the quotient exceeds \$3,000, only \$3,000 shall be deemed to be the individual's wages for each of the years which were used in computing the amount of the divisor, and the remainder of the individual's total wages prior to 1951 (I) if less than \$3,000, shall be deemed credited to the computation base year (as defined in subsection (b)(2) of this section as in effect in December 1977) immediately preceding the earliest year used in computing the amount of the divisor, or (II) if \$3,000 or more, shall be deemed credited, in \$3,000 increments, to the computation base year (as so defined) immediately preceding the earliest year used in computing the amount of the divisor and to each of the computation base years (as so defined) consecutively preceding that year, with any remainder less than \$3,000 being credited to the computation base year (as so defined) immediately preceding the earliest year to which a full \$3,000 increment was credited; and

(iv) no more than \$42,000 may be taken into account, for purposes of this subparagraph, as total wages after 1936

and prior to 1951.

(C) For the purposes of subparagraph (B), "total wages prior to 1951" with respect to an individual means the sum of (i) remuneration credited to such individual prior to 1951 on the records of the Commissioner of Social Security, (ii) wages deemed paid prior to 1951 to such individual under section 417 of this title, (iii) compensation under the Railroad Retirement Act of 1937 [45 U.S.C.A. § 228a et seq.] prior to 1951 creditable to him pursuant to this subchapter, and (iv) wages deemed paid prior to 1951 to such individual under section 431 of this title.

(D) The individual's primary insurance benefit shall be 40 percent of the first \$50 of his average monthly wage as computed under this subsection, plus 10 percent of the next \$200 of his average monthly wage, increased by 1 percent for each increment year. The number of increment years is the number, not more than 14 nor less than 4, that is equal to the individual's total wages prior to 1951 divided by \$1,650 (disregarding any fraction).

(2) The provisions of this subsection shall be applicable only in the case of an individual--

(A) with respect to whom at least one of the quarters elapsing prior to 1951 is a quarter of coverage;

(B) who attained age 22 after 1950 and with respect to whom less than six of the quarters elapsing after 1950 are quarters of coverage, or who attained such age before 1951; and

(C)(i) who becomes entitled to benefits under section 402(a) or 423 of this title or who dies, or

(ii) whose primary insurance amount is required to be recomputed under paragraph (2), (6), or (7) of subsection (f) of this section or under section 431 of this title.

(3) In the case of an individual whose primary insurance amount is not computed under paragraph (1) of subsection (a) of this section by reason of paragraph (4)(B)(ii) of that subsection, who--

(A) attains age 62 after 1985 (except where he or she became entitled to a disability insurance benefit before 1986, and remained so entitled in any of the 12 months immediately preceding his or her attainment of age 62), or

(B) would attain age 62 after 1985 and becomes eligible for a disability insurance benefit after 1985,

and who first becomes eligible after 1985 for a monthly periodic payment (including a payment determined under subsection (a)(7)(C) of this section, but excluding (I) a payment under the Railroad Retirement Act of 1974 or 1937 [45 U.S.C.A. §§ 231 et seq., 228a et seq.], (II) a payment by a social security system of a foreign country based on an agreement concluded between the United States and such foreign country pursuant to section 433 of this title, and (III) a payment based wholly on service as a member of a uniformed service (as defined in section 410(m) of this title)) which is based (in whole or in part) upon his or her earnings in noncovered service, the primary insurance



amount of such individual during his or her concurrent entitlement to such monthly periodic payment and to old-age or disability insurance benefits shall be the primary insurance amount computed or recomputed under this subsection (without regard to this paragraph and before the application of subsection (i) of this section) reduced by an amount equal to the smaller of--

(i) one-half of the primary insurance amount (computed without regard to this paragraph and before the application of subsection (i) of this section), or

(ii) one-half of the portion of the monthly periodic payment (or payment determined under subsection (a)(7)(C) of this section) which is attributable to noncovered service performed after 1956 (with such attribution being based on the proportionate number of years of such noncovered service) and to which that individual is entitled (or is deemed to be entitled) for the initial month of such concurrent entitlement.

This paragraph shall not apply in the case of any individual to whom subsection (a)(7) of this section would not apply by reason of subparagraph (E) or the first sentence of subparagraph (D) thereof.

(e) Certain wages and self-employment income not to be counted

For the purposes of subsections (b) and (d) of this section--

(1) in computing an individual's average indexed monthly earnings or, in the case of an individual whose primary insurance amount is computed under subsection (a) of this section as in effect prior to January 1979, average monthly wage, there shall not be counted the excess over \$3,600 in the case of any calendar year after 1950 and before 1955, the excess over \$4,200 in the case of any calendar year after 1954 and before 1959, the excess over \$4,800 in the case of any calendar year after 1958 and before 1966, the excess over \$6,600 in the case of any calendar year after 1965 and before 1968, the excess over \$7,800 in the case of any calendar year after 1967 and before 1972, the excess over \$9,000 in the case of any calendar year after 1971 and before 1973, the excess over \$10,800 in the case of any calendar year after 1972 and before 1974, the excess over \$13,200 in the case of any calendar year after 1973 and before 1975, and the excess over an amount equal to the contribution and benefit base (as determined under section 430 of this title) in the case of any calendar year after 1974 with respect to which such contribution and benefit base is effective, (before the application, in the case of average indexed monthly earnings, of subsection (b)(3)(A) of this section) of (A) the wages paid to him in such year, plus (B) the self-employment income credited to such year (as determined under section 412 of this title); and

(2) if an individual's average indexed monthly earnings or, in the case of an individual whose primary insurance amount is computed under subsection (a) of this section as in effect prior to January 1979, average monthly wage, computed under subsection (b) of this section or for the purposes of subsection (d) of this section is not a multiple of \$1, it shall be reduced to the next lower multiple of \$1.

(f) Recomputation of benefits

(1) After an individual's primary insurance amount has been determined under this section, there shall be no recomputation of such individual's primary insurance amount except as provided in this subsection or, in the case of a World War II veteran who died prior to July 27, 1954, as provided in section 417(b) of this title.

(2)(A) If an individual has wages or self-employment income for a year after 1978 for any part of which he is entitled to old-age or disability insurance benefits, the Commissioner of Social Security shall, at such time or times and within such period as the Commissioner may by regulation prescribe, recompute the individual's primary insurance amount for that year.

(B) For the purpose of applying subparagraph (A) of subsection (a)(1) of this section to the average indexed monthly earnings of an individual to whom that subsection applies and who receives a recomputation under this paragraph, there shall be used, in lieu of the amounts established by subsection (a)(1)(B) of this section for purposes of clauses (i) and (ii) of subsection (a)(1)(A) of this section, the amounts so established that were (or, in the case of an individual described in subsection (a)(4)(B) of this section, would have been) used in the computation of such individual's primary insurance amount prior to the application of this subsection.

(C) A recomputation of any individual's primary insurance amount under this paragraph shall be made as provided in subsection (a)(1) of this section as though the year with respect to which it is made is the last year of the period specified in subsection (b)(2)(B)(ii) of this section; and subsection (b)(3)(A) of this section shall apply with respect to any such recomputation as it applied in the computation of such individual's primary insurance amount prior to the application of this subsection.

(D) A recomputation under this paragraph with respect to any year shall be effective--

(i) in the case of an individual who did not die in that year, for monthly benefits beginning with benefits for January of the following year; or

(ii) in the case of an individual who died in that year, for monthly benefits beginning with benefits for the month in which he died.

(3) Repealed. Pub.L. 95-216, Title II, § 201(f)(2), Dec. 20, 1977, 91 Stat. 1521

(4) A recomputation shall be effective under this subsection only if it increases the primary insurance amount by at least \$1.

(5) In the case of a man who became entitled to old-age insurance benefits and died before the month in which he attained retirement age (as defined in section 416(l) of this title), the Commissioner of Social Security shall recompute his primary insurance amount as provided in subsection (a) of this section as though he became entitled to old-age insurance benefits in the month in which he died; except that (i) his computation base years referred to in subsection (b)(2) of this section shall include the year in which he died, and (ii) his elapsed years referred to in subsection (b)(3)

of this section shall not include the year in which he died or any year thereafter. Such recomputation of such primary insurance amount shall be effective for and after the month in which he died.

(6) Upon the death after 1967 of an individual entitled to benefits under section 402(a) or section 423 of this title, if any person is entitled to monthly benefits or a lump-sum death payment, on the wages and self-employment income of such individual, the Commissioner of Social Security shall recompute the decedent's primary insurance amount, but only if the decedent during his lifetime was paid compensation which was treated under section 405(o) of this title as remuneration for employment.

(7) This subsection as in effect in December 1978 shall continue to apply to the recomputation of a primary insurance amount computed under subsection (a) or (d) of this section as in effect (without regard to the table in subsection (a) of this section) in that month, and, where appropriate, under subsection (d) as in effect in December 1977, including a primary insurance amount computed under any such subsection whose operation is modified as a result of the amendments made by section 5117 of the Omnibus Budget Reconciliation Act of 1990. For purposes of recomputing a primary insurance amount determined under subsection (a) or (d) of this section (as so in effect) in the case of an individual to whom those subsections apply by reason of subsection (a)(4)(B) of this section as in effect after December 1978, no remuneration shall be taken into account for the year in which the individual initially became eligible for an old-age or disability insurance benefit or died, or for any year thereafter, and (effective January 1982) the recomputation shall be modified by the application of subsection (a)(6) of this section where applicable.

(8) The Commissioner of Social Security shall recompute the primary insurance amounts applicable to beneficiaries whose benefits are based on a primary insurance amount which was computed under subsection (a)(3) of this section effective prior to January 1979, or would have been so computed if the dollar amount specified therein were \$11.50. Such recomputation shall be effective January 1979, and shall include the effect of the increase in the dollar amount provided by subsection (a)(1)(C)(i) of this section. Such primary insurance amount shall be deemed to be provided under such section for purposes of subsection (i) of this section.

(9)(A) In the case of an individual who becomes entitled to a periodic payment determined under subsection (a)(7)(A) of this section (including a payment determined under subsection (a)(7)(C) of this section) in a month subsequent to the first month in which he or she becomes entitled to an old-age or disability insurance benefit, and whose primary insurance amount has been computed without regard to either such subsection or subsection (d)(3) of this section, such individual's primary insurance amount shall be recomputed (notwithstanding paragraph (4) of this subsection), in accordance with either such subsection or subsection (d)(3) of this section, as may be applicable, effective with the first month of his or her concurrent entitlement to such benefit and such periodic payment.

(B) If an individual's primary insurance amount has been computed under subsection (a)(7) or (d)(3) of this section, and it becomes necessary to recompute that primary insurance amount under this subsection--

(i) so as to increase the monthly benefit amount payable with respect to such primary insurance amount (except in the case of the individual's death), such increase shall be determined as though the recomputed primary insurance amount were being computed under subsection (a)(7) or (d)(3) of this section, or

(ii) by reason of the individual's death, such primary insurance amount shall be recomputed without regard to (and as though it had never been computed with regard to) subsection (a)(7) or (d)(3) of this section.

(g) Rounding of benefits

The amount of any monthly benefit computed under section 402 or 423 of this title which (after any reduction under sections 403(a) and 424a of this title and any deduction under section 403(b) of this title, and after any deduction under section 1395s(a)(1) of this title) is not a multiple of \$1 shall be rounded to the next lower multiple of \$1.

(h) Service of certain Public Health Service officers

(1) Notwithstanding the provisions of subchapter III of chapter 83 of Title 5, remuneration paid for service to which the provisions of section 410(l)(1) of this title are applicable and which is performed by an individual as a commissioned officer of the Reserve Corps of the Public Health Service prior to July 1, 1960, shall not be included in computing entitlement to or the amount of any monthly benefit under this subchapter, on the basis of his wages and self-employment income, for any month after June 1960 and prior to the first month with respect to which the Director of the Office of Personnel Management certifies to the Commissioner of Social Security that, by reason of a waiver filed as provided in paragraph (2), no further annuity will be paid to him, his wife, and his children, or, if he has died, to his widow and children, under subchapter III of chapter 83 of Title 5 on the basis of such service.

(2) In the case of a monthly benefit for a month prior to that in which the individual, on whose wages and self-employment income such benefit is based, dies, the waiver must be filed by such individual; and such waiver shall be irrevocable and shall constitute a waiver on behalf of himself, his wife, and his children. If such individual did not file such a waiver before he died, then in the case of a benefit for the month in which he died or any month thereafter, such waiver must be filed by his widow, if any, and by or on behalf of all his children, if any; and such waivers shall be irrevocable. Such a waiver by a child shall be filed by his legal guardian or guardians, or, in the absence thereof, by the person (or persons) who has the child in his care.

(i) Cost-of-living increases in benefits

(1) For purposes of this subsection--

(A) the term "base quarter" means (i) the calendar quarter ending on September 30 in each year after 1982, or (ii) any other calendar quarter in which occurs the effective month of a general benefit increase under this subchapter;

(B) the term "cost-of-living computation quarter" means a base quarter, as defined in subparagraph (A)(i), with respect to which the applicable increase percentage is greater than zero; except that there shall be no cost-of-living computation quarter in any calendar year if in the year prior to such year a law has been enacted providing a general benefit increase under this subchapter or if in such prior year such a general benefit increase becomes effective;

(C) the term “applicable increase percentage” means--

(i) with respect to a base quarter or cost-of-living computation quarter in any calendar year before 1984, or in any calendar year after 1983 and before 1989 for which the OASDI fund ratio is 15.0 percent or more, or in any calendar year after 1988 for which the OASDI fund ratio is 20.0 percent or more, the CPI increase percentage; and

(ii) with respect to a base quarter or cost-of-living computation quarter in any calendar year after 1983 and before 1989 for which the OASDI fund ratio is less than 15.0 percent, or in any calendar year after 1988 for which the OASDI fund ratio is less than 20.0 percent, the CPI increase percentage or the wage increase percentage, whichever (with respect to that quarter) is the lower;

(D) the term “CPI increase percentage”, with respect to a base quarter or cost-of-living computation quarter in any calendar year, means the percentage (rounded to the nearest one-tenth of 1 percent) by which the Consumer Price Index for that quarter (as prepared by the Department of Labor) exceeds such index for the most recent prior calendar quarter which was a base quarter under subparagraph (A)(ii) or, if later, the most recent cost-of-living computation quarter under subparagraph (B);

(E) the term “wage increase percentage”, with respect to a base quarter or cost-of-living computation quarter in any calendar year, means the percentage (rounded to the nearest one-tenth of 1 percent) by which the national average wage index (as defined in section 409(k)(1) of this title) for the year immediately preceding such calendar year exceeds such index for the year immediately preceding the most recent prior calendar year which included a base quarter under subparagraph (A)(ii) or, if later, which included a cost-of-living computation quarter;

(F) the term “OASDI fund ratio”, with respect to any calendar year, means the ratio of--

(i) the combined balance in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund as of the beginning of such year, including the taxes transferred under section 401(a) of this title on the first day of such year and reduced by the outstanding amount of any loan (including interest thereon) theretofore made to either such Fund from the Federal Hospital Insurance Trust Fund under section 401(l) of this title, to

(ii) the total amount which (as estimated by the Commissioner of Social Security) will be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund during such calendar year for all purposes authorized by section 401 of this title (other than payments of interest on, or repayments of, loans from the Federal Hospital Insurance Trust Fund under section 401(l) of this title), but excluding any transfer payments between such trust funds and reducing the amount of any transfers to the Railroad Retirement Account by the amount of any transfers into either such trust fund from that Account; [FN1]

(G) the Consumer Price Index for a base quarter, a cost-of-living computation quarter, or any other calendar quarter shall be the arithmetical mean of such index for the 3 months in such quarter.

**(2)(A)(i)** The Commissioner of Social Security shall determine each year beginning with 1975 (subject to the limitation in paragraph (1)(B)) whether the base quarter (as defined in paragraph (1)(A)(i)) in such year is a cost-of-living computation quarter.

**(ii)** If the Commissioner of Social Security determines that the base quarter in any year is a cost-of-living computation quarter, the Commissioner shall, effective with the month of December of that year as provided in subparagraph (B), increase--

**(I)** the benefit amount to which individuals are entitled for that month under section 427 or 428 of this title,

**(II)** the primary insurance amount of each other individual on which benefit entitlement is based under this subchapter, and

**(III)** the amount of total monthly benefits based on any primary insurance amount which is permitted under section 403 of this title (and such total shall be increased, unless otherwise so increased under another provision of this subchapter, at the same time as such primary insurance amount) or, in the case of a primary insurance amount computed under subsection (a) of this section as in effect (without regard to the table contained therein) prior to January 1979, the amount to which the beneficiaries may be entitled under section 403 of this title as in effect in December 1978, except as provided by section 403(a)(7) and (8) of this title as in effect after December 1978.

The increase shall be derived by multiplying each of the amounts described in subdivisions (I), (II), and (III) (including each of those amounts as previously increased under this subparagraph) by the applicable increase percentage; and any amount so increased that is not a multiple of \$0.10 shall be decreased to the next lower multiple of \$0.10. Any increase under this subsection in a primary insurance amount determined under subparagraph (C)(i) of subsection (a)(1) of this section shall be applied after the initial determination of such primary insurance amount under that subparagraph (with the amount of such increase, in the case of an individual who becomes eligible for old-age or disability insurance benefits or dies in a calendar year after 1979, being determined from the range of possible primary insurance amounts published by the Commissioner of Social Security under the last sentence of subparagraph (D)).

**(iii)** In the case of an individual who becomes eligible for an old-age or disability insurance benefit, or who dies prior to becoming so eligible, in a year in which there occurs an increase provided under clause (ii), the individual's primary insurance amount (without regard to the time of entitlement to that benefit) shall be increased (unless otherwise so increased under another provision of this subchapter and, with respect to a primary insurance amount determined under subsection (a)(1)(C)(i)(I) of this section in the case of an individual to whom that subsection (as in effect in December 1981) applied, subject to the provisions of subsection (a)(1)(C)(i) of this section and clauses (iv) and (v) of this subparagraph (as then in effect)) by the amount of that increase and subsequent applicable increases, but only with respect to benefits payable for months after November of that year.

**(B)** The increase provided by subparagraph (A) with respect to a particular cost-of-living computation quarter shall apply in the case of monthly benefits under this subchapter for months after November of the calendar year in which oc-

curred such cost-of-living computation quarter, and in the case of lump-sum death payments with respect to deaths occurring after November of such calendar year.

**(C)(i)** Whenever the Commissioner of Social Security determines that a base quarter in a calendar year is also a cost-of-living computation quarter, the Commissioner shall notify the House Committee on Ways and Means and the Senate Committee on Finance of such determination within 30 days after the close of such quarter, indicating the amount of the benefit increase to be provided, the Commissioner's estimate of the extent to which the cost of such increase would be met by an increase in the contribution and benefit base under section 430 of this title and the estimated amount of the increase in such base, the actuarial estimates of the effect of such increase, and the actuarial assumptions and methodology used in preparing such estimates.

**(ii)** The Commissioner of Social Security shall determine and promulgate the OASDI fund ratio for the current calendar year on or before November 1 of the current calendar year, based upon the most recent data then available. The Commissioner of Social Security shall include a statement of the fund ratio and the national average wage index (as defined in section 409(k)(1) of this title) and a statement of the effect such ratio and the level of such index may have upon benefit increases under this subsection in any notification made under clause (i) and any determination published under subparagraph (D).

**(D)** If the Commissioner of Social Security determines that a base quarter in a calendar year is also a cost-of-living computation quarter, the Commissioner shall publish in the Federal Register within 45 days after the close of such quarter a determination that a benefit increase is resultantly required and the percentage thereof. The Commissioner shall also publish in the Federal Register at that time (i) a revision of the range of the primary insurance amounts which are possible after the application of this subsection based on the dollar amount specified in subparagraph (C)(i) of subsection (a)(1) of this section (with such revised primary insurance amounts constituting the increased amounts determined for purposes of such subparagraph (C)(i) under this subsection), or specified in subsection (a)(3) of this section as in effect prior to 1979, and (ii) a revision of the range of maximum family benefits which correspond to such primary insurance amounts (with such maximum benefits being effective notwithstanding section 403(a) of this title except for paragraph (3)(B) thereof (or paragraph (2) thereof as in effect prior to 1979)). Notwithstanding the preceding sentence, such revision of maximum family benefits shall be subject to paragraph (6) of section 403(a) of this title (as added by section 101(a)(3) of the Social Security Disability Amendments of 1980).

**(3)** As used in this subsection, the term "general benefit increase under this subchapter" means an increase (other than an increase under this subsection) in all primary insurance amounts on which monthly insurance benefits under this subchapter are based.

**(4)** This subsection as in effect in December 1978, and as amended by sections 111(a)(6), 111(b)(2), and 112 of the Social Security Amendments of 1983 and by section 9001 of the Omnibus Budget Reconciliation Act of 1986, shall continue to apply to subsections (a) and (d) of this section, as then in effect and as amended by section 5117 of the Omnibus Budget Reconciliation Act of 1990, for purposes of computing the primary insurance amount of an individual to whom subsection (a) of this section, as in effect after December 1978, does not apply (including an individual to whom subsection (a) of this section does not apply in any year by reason of paragraph (4)(B) of that subsection (but the application of this subsection in such cases shall be modified by the application of subdivision (I) in the last sentence of

paragraph (4) of that subsection)), except that for this purpose, in applying paragraphs (2)(A)(ii), (2)(D)(iv), and (2)(D)(v) of this subsection as in effect in December 1978, the phrase "increased to the next higher multiple of \$0.10" shall be deemed to read "decreased to the next lower multiple of \$0.10". For purposes of computing primary insurance amounts and maximum family benefits (other than primary insurance amounts and maximum family benefits for individuals to whom such paragraph (4)(B) applies), the Commissioner of Social Security shall revise the table of benefits contained in subsection (a) of this section, as in effect in December 1978, in accordance with the requirements of paragraph (2)(D) of this subsection as then in effect, except that the requirement in such paragraph (2)(D) that the Commissioner of Social Security publish such revision of the table of benefits in the Federal Register shall not apply.

**(5)(A) If--**

(i) with respect to any calendar year the "applicable increase percentage" was determined under clause (ii) of paragraph (1)(C) rather than under clause (i) of such paragraph, and the increase becoming effective under paragraph (2) in such year was accordingly determined on the basis of the wage increase percentage rather than the CPI increase percentage (or there was no such increase becoming effective under paragraph (2) in that year because there was no wage increase percentage greater than zero), and

(ii) for any subsequent calendar year in which an increase under paragraph (2) becomes effective the OASDI fund ratio is greater than 32.0 percent,

then each of the amounts described in subdivisions (I), (II), and (III) of paragraph (2)(A)(ii), as increased under paragraph (2) effective with the month of December in such subsequent calendar year, shall be further increased (effective with such month) by an additional percentage, which shall be determined under subparagraph (B) and shall apply as provided in subparagraph (C). Any amount so increased that is not a multiple of \$0.10 shall be decreased to the next lower multiple of \$0.10.

**(B)** The applicable additional percentage by which the amounts described in subdivisions (I), (II), and (III) of paragraph (2)(A)(ii) are to be further increased under subparagraph (A) in the subsequent calendar year involved shall be the amount derived by--

(i) subtracting (I) the compounded percentage benefit increases that were actually paid under paragraph (2) and this paragraph from (II) the compounded percentage benefit increases that would have been paid if all increases under paragraph (2) had been made on the basis of the CPI increase percentage,

(ii) dividing the difference by the sum of the compounded percentage in clause (i)(I) and 100 percent, and

(iii) multiplying such quotient by 100 so as to yield such applicable additional percentage (which shall be rounded to the nearest one-tenth of 1 percent),

with the compounded increases referred to in clause (i) being measured--



(iv) in the case of amounts described in subdivision (I) of paragraph (2)(A)(ii), over the period beginning with the calendar year in which monthly benefits described in such subdivision were first increased on the basis of the wage increase percentage and ending with the year before such subsequent calendar year, and

(v) in the case of amounts described in subdivisions (II) and (III) of paragraph (2)(A)(ii), over the period beginning with the calendar year in which the individual whose primary insurance amount is increased under such subdivision (II) became eligible (as defined in subsection (a)(3)(B) of this section) for the old-age or disability insurance benefit that is being increased under this subsection, or died before becoming so eligible, and ending with the year before such subsequent calendar year;

except that if the Commissioner of Social Security determines in any case that the application (in accordance with subparagraph (C)) of the additional percentage as computed under the preceding provisions of this subparagraph would cause the OASDI fund ratio to fall below 32.0 percent in the calendar year immediately following such subsequent year, the Commissioner shall reduce such applicable additional percentage to the extent necessary to ensure that the OASDI fund ratio will remain at or above 32.0 percent through the end of such following year.

(C) Any applicable additional percentage increase in an amount described in subdivision (I), (II), or (III) of paragraph (2)(A)(ii), made under this paragraph in any calendar year, shall thereafter be treated for all the purposes of this chapter as a part of the increase made in such amount under paragraph (2) for that year.

#### CREDIT(S)

(Aug. 14, 1935, c. 531, Title II, § 215, as added Aug. 28, 1950, c. 809, Title I, § 104(a), 64 Stat. 506; amended July 18, 1952, c. 945, §§ 2(a), (b)(1), 3(c), 6(a), (b), 66 Stat. 767, 768, 770, 776; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Sept. 1, 1954, c. 1206, Title I, §§ 102(a)-(d), (e)(1)-(4), 104(d), 106(c), 68 Stat. 1062, 1078, 1079; Aug. 1, 1956, c. 836, Title I, §§ 103(c)(4), (5), 109(a), 115(a) to (c), 70 Stat. 818, 830, 832, 833; Aug. 28, 1958, Pub.L. 85-840, Title I, §§ 101(a)-(d), 102(d), Title II, 205(m), 72 Stat. 1013, 1020, 1025; Apr. 8, 1960, Pub.L. 86-415, § 7, 74 Stat. 35; Sept. 13, 1960, Pub.L. 86-778, Title I, § 103(j)(2)(C), Title II, § 211(n), Title III, §§ 303(a)-(e), 304(a), 74 Stat. 937, 958, 960, 966; June 30, 1961, Pub.L. 87-64, Title I, §§ 101(a), 102(d), 75 Stat. 131, 135; July 30, 1965, Pub.L. 89-97, Title III, §§ 301(a), (b), 302(a)-(d), 303(e), 304(k), 320(a)(4), 79 Stat. 361, 363-365, 367, 370, 393; Jan. 2, 1968, Pub.L. 90-248, Title I, §§ 101(a), (c), (d), 108(a)(4), 155(a)(1)-(6), Title IV, § 403(b), 81 Stat. 824, 827, 834, 864, 865, 931; Dec. 30, 1969, Pub.L. 91-172, Title X, § 1002(a), (c), (d), 83 Stat. 737, 740; Mar. 17, 1971, Pub.L. 92-5, Title II, §§ 201(a), (c), (d), 203(a)(4), 85 Stat. 6, 9, 10; July 1, 1972, Pub.L. 92-336, Title II, §§ 201(a), (c)-(f), 202(a)(1), (3), 203(a)(4), 86 Stat. 406, 410-412, 416, 418; Oct. 30, 1972, Pub.L. 92-603, Title I, §§ 101(a), (c)-(e), 104(b), 134, 142(b), (c), 144(a)(1), 86 Stat. 1333, 1334, 1340, 1362, 1368, 1369; July 9, 1973, Pub.L. 93-66, Title II, § 203(a)(4), 87 Stat. 153; Dec. 31, 1973, Pub.L. 93-233, §§ 1(h)(1), 2(a), (d), 3(a)-(h), 5(a)(4), 87 Stat. 948, 952, 953; Dec. 20, 1977, Pub.L. 95-216, Title I, § 103(d), Title II, § 201, 91 Stat. 1514, 1519; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; June 9, 1980, Pub.L. 96-265, Title I, §§ 101(b)(3), (4), 102(a), 94 Stat. 442, 443; Oct. 19, 1980, Pub.L. 96-473, § 6(d), 94 Stat. 2265; Aug. 13, 1981, Pub.L. 97-35, Title XXII, §§ 2201(a), (b)(1)-(9), (c)(1)-(5), 2206(a), (b)(5)-(7), 95 Stat. 830, 831, 838; Dec. 29, 1981, Pub.L. 97-123, § 2(a)-(d), 95 Stat. 1660; Apr. 20, 1983, Pub.L. 98-21, Title I, §§ 111(a)(1)-(3), (6), (b)(1), (2), (c), 112(a)-(d), 113(a)-(c), Title II, § 201(c)(1)(C), 97 Stat. 72-76, 78, 109; Apr. 20, 1983, Pub.L. 98-21, Title II, § 201(c)(1), as amended July 18, 1984, Pub.L. 98-369, Title VI, § 2662(c)(1), 98 Stat. 1159; July 18, 1984, Pub.L. 98-369, Title VI, §§ 2661(k), 2663(a)(10)(A)-(C), (D)(ii), 98 Stat. 1157,

1158, 1164; Apr. 7, 1986, Pub.L. 99-272, Title XII, § 12105, 100 Stat. 286; Oct. 21, 1986, Pub.L. 99-509, Title IX, § 9001(a), (b), 100 Stat. 1969, 1970; Oct. 22, 1986, Pub.L. 99-514, Title XVIII, § 1883(a)(7), 100 Stat. 2916; Nov. 10, 1988, Pub.L. 100-647, Title VIII, §§ 8003(a), 8011(a), (b), 102 Stat. 3780, 3789; Dec. 19, 1989, Pub.L. 101-239, Title X, § 10208(b)(1), (2)(A), (B), (3), (4), (d)(2)(A)(i), 103 Stat. 2477, 2478, 2480; Nov. 5, 1990, Pub.L. 101-508, Title V, §§ 5117(a)(1)-(3)(A), (C)-(E), 5122, 104 Stat. 1388-274, 1388-275, 1388-276, 1388-277, 1388-283; Aug. 15, 1994, Pub.L. 103-296, Title I, § 107(a)(4), Title III, §§ 307(a),(b), 308(b), (c), 321(a)(16), (17), (e)(2)(B)-(G), (g)(1)(C), 108 Stat. 1478, 1522, 1523, 1536, 1539, 1543.)

[FN1] So in original. Probably should be followed by “and”.

## HISTORICAL AND STATUTORY NOTES

### Revision Notes and Legislative Reports

1950 Acts. Senate Report No. 1669 and Conference Report No. 2771, see 1950 U.S. Code Cong. Service, p. 3287.

1952 Acts. Senate Report No. 1806 and Conference Report No. 2491, see 1952 U.S. Code Cong. and Adm. News, p. 2363.

1954 Acts. Senate Report No. 1987 and Conference Report No. 2679, see 1954 U.S. Code Cong. and Adm. News, p. 3710.

1956 Acts. Senate Report No. 2133 and Conference Report No. 2936, see 1956 U.S. Code Cong. and Adm. News, p. 3877.

1958 Acts. Senate Report No. 2388, see 1958 U.S. Code Cong. and Adm. News, p. 4218.

1960 Acts. House Report No. 1091, see 1960 U.S. Code Cong. and Adm. News, p. 1834.

Senate Report No. 1856 and Conference Report No. 2165, see 1960 U.S. Code Cong. and Adm. News, p. 3608.

1961 Acts. Senate Report No. 425 and Conference Report No. 611, see 1961 U.S. Code Cong. and Adm. News, p. 1855.

1965 Acts. Senate Report No. 404 and Conference Report No. 682, see 1965 U.S. Code Cong. and Adm. News, p. 1943.

1968 Acts. Senate Report No. 744 and Conference Report No. 1030, see 1967 U.S. Code Cong. and Adm. News, p. 2834.

1969 Acts. House Report No. 91-413, Senate Report No. 91-552, and Conference Report No. 91-782, see 1969 U.S. Code Cong. and Adm. News, p. 1645.

1971 Acts. Senate Report No. 92-28 and Conference Report No. 92-42, see 1971 U.S. Code Cong. and Adm. News, p. 957.

1972 Acts. House Report No. 92-231 and Conference Report No. 92-1605, see 1972 U.S. Code Cong. and Adm. News, p. 4989.

1973 Acts. Senate Report No. 93-240 and Conference Report No. 93-365, see 1973 U.S. Code Cong. and Adm. News, p. 1607.

House Report No. 93-627, see 1973 U.S. Code Cong. and Adm. News, p. 3177.

1977 Acts. House Report No. 95-702(Parts I and II) and House Conference Report No. 95-837, see 1977 U.S. Code Cong. and Adm. News, p. 4155.

1980 Acts. Senate Report No. 96-408 and House Conference Report No. 96-944, see 1980 U.S. Code Cong. and Adm. News, p. 1277.

Senate Report No. 96-987, see 1980 U.S. Code Cong. and Adm. News, p. 4787.

1981 Acts. Senate Report No. 97-139 and House Conference Report No. 97-208, see 1981 U.S. Code Cong. and Adm. News, p. 396.

House Conference Report No. 97-409, see 1981 U.S. Code Cong. and Adm. News, p. 2681.

1983 Acts. Senate Report No. 98-23, House Report No. 98-25, and House Conference Report No. 98-47, see 1983 U.S. Code Cong. and Adm. News, p. 143.

1984 Acts. House Report No. 98-432(Part II) and House Conference Report No. 98-861, see 1984 U.S. Code Cong. and Adm. News, p. 697.

1986 Acts. Senate Report No. 99-146, House Report No. 99-241(Parts I, II and III), and a Related Report, see 1986 U.S. Code Cong. and Adm. News, p. 42.

House Report No. 99-727, House Conference Report No. 99-1012, and Statement by President, see 1986 U.S. Code Cong. and Adm. News, p. 3607.

House Conference Report No. 99-841 and Statement by President, see 1986 U.S. Code Cong. and Adm. News, p. 4075.

1988 Acts. Senate Report No. 100-445 and House Conference Report No. 100-1104, see 1988 U.S. Code Cong. and Adm. News, p. 4515.

1989 Acts. House Report No. 101-247, House Conference Report No. 101-386, and Statement by President, see 1989 U.S. Code Cong. and Adm. News, p. 1906.

1990 Acts. House Report No. 101-881 and House Conference Report No. 101-964, see 1990 U.S. Code Cong. and Adm. News, p. 2017.

1994 Acts. House Report No. 103-506 and House Conference Report No. 103-670, see 1994 U.S. Code Cong. and Adm. News, p. 1494.

#### References in Text

The Railroad Retirement Act of 1937, referred in subsecs. (a)(1)(C)(ii), (7)(A), (d)(1)(C), (3), is Act Aug. 29, 1935, c. 812, 49 Stat. 867, as amended generally. See paragraph immediately following for Railroad Retirement Act of 1974.

The Railroad Retirement Act of 1974, referred to in subsecs. (a)(1)(C)(ii), (7)(A), (d)(3), is Title I of Pub.L. 93-445, Oct. 16, 1974, 88 Stat. 1305, and is classified generally to subchapter IV (section 231 et seq.) of chapter 9 of Title 45, Railroads. Such Title I completely amended and revised the Railroad Retirement Act of 1937 (approved June 24, 1937, c. 382, 50 Stat. 307), and as thus amended and revised, the 1937 Act was redesignated the Railroad Retirement Act of 1974. Previously, the 1937 Act had completely amended and revised the Railroad Retirement Act of 1935 (approved Aug. 29, 1935, c. 812, 49 Stat. 967). Section 201 of the 1937 Act provided that the 1935 Act, as in force prior to amendment by the 1937 Act, may be cited as the Railroad Retirement Act of 1935; and that the 1935 Act, as amended by the 1937 Act may be cited as the Railroad Retirement Act of 1937. The Railroad Retirement Acts of 1935 and 1937 were classified to subchapter II (section 215 et seq.) and subchapter III (section 228a et seq.), respectively, of chapter 9 of Title 45.

Section 104(j)(2) of the Social Security Amendments of 1972, referred to in subsecs. (a)(5)(B)(ii), (b)(2)(B)(iii), (d)(1)(A), means section 104(j)(2) of Pub.L. 92-603, Oct. 30, 1972, 86 Stat. 1329, which is set out as a note under section 414 of this title.

Section 101 of the Social Security Amendments of 1983, referred to in subsec. (a)(7)(E)(i), is section 101 of Pub.L. 98-21, Title I, Apr. 20, 1983, 97 Stat. 67, which amended sections 409 and 410 of this title and section 3121 of Title 26, Internal Revenue Code, and enacted provisions set out as notes under section 410 of this title and section 3121 of Title 26.

Section 3121(k) of the Internal Revenue Code of 1954, referred to in subsec. (a)(7)(E)(ii), was classified to 26 U.S.C.A. § 3121(k), and was repealed by Pub.L. 98-21, Title I, § 102(b)(2), Apr. 20, 1983, 97 Stat. 71.

Section 102 of that Act, referred to in subsec. (a)(7)(E)(ii), is section 102 of Pub.L. 98-21, Title I, Apr. 20, 1983, 97 Stat.

70, which amended section 410 of this title and section 3121 of Title 26 and enacted provisions set out as notes under section 414 of this title and section 3121 of Title 26.

Section 5117 of the Omnibus Budget Reconciliation Act of 1990, referred to in subsecs. (c), (f)(7), (i)(4), means section 5117 of Pub.L. 101-508, Nov. 5, 1990, 104 Stat. 1388-277, which in addition to amending this section, amended sections 403, 413 and 417 of this title. For complete classification of this Act to the Code, see Tables.

The 1939 Act, referred to in subsec. (d), probably means Act Aug. 10, 1939, c. 666, 53 Stat. 1360, known as the Social Security Act Amendments of 1939, which enacted sections 901a, 1306 and 1307 of this title, amended sections 302, 303, 306, 401, 402 to 409, 502, 503, 602, 603, 606, 701, 702, 703, 711, 712, 713, 714, 721, 801, 1011, 1202, 1203, 1206, 1301, of this title, section 642 of Title 7, Agriculture, section 1464 of Title 12, Banks and Banking, section 1601 of former Title 26, Internal Revenue Code of 1939, section 45b of Title 29, Labor, and enacted provisions set out as notes under section 363 of Title 45, Railroads. For complete classification of this Act to the Code, see Tables.

Section 101(a)(3) of the Social Security Disability Amendments of 1980, referred to in subsec. (i)(2)(D), is section 101(a)(3) of Pub.L. 96-265, Title I, June 9, 1980, 94 Stat. 442, which enacted section 403(a)(6) of this title.

The amendments by sections 111(a)(6), 111(b)(2), and 112 of the Social Security Amendments of 1983, referred to in subsec. (i)(4), are the amendments of subsec. (i)(1), (2), and (5) of this section by sections 111(a)(6), 111(b)(2), and 112 of Pub.L. 98-21, which amended subsec. (i) of this section and enacted provisions set out as notes under this section. For descriptions of those amendments see 1983 Amendment note under this section.

Section 9001 of the Omnibus Budget Reconciliation Act of 1986, referred to in subsec. (i)(4), is section 9001 of Pub.L. 99-509, Title IX, Oct. 21, 1986, 100 Stat. 1969, which amended 42 U.S.C.A. §§ 415 and 1395r and enacted provisions set out as a note below.

#### Codifications

Quotation mark at the beginning of the directory language of section 5117(a)(3)(E)(iii) of Pub.L. 101-508, amending subsec. (f)(9)(B) of this section, was deleted as the probable intent of Congress.

Section 201(c) of Pub.L. 98-21, set out in the credit of this section, was amended by section 2662(c)(1) of Pub.L. 98-369 to correct an error in the directory language of Pub.L. 98-21 under which the article "the" had been left out in the direction to strike out references to the age of 65.

#### Amendments

1994 Amendments. Pub.L. 103-296, § 107(a)(4), substituted "Commissioner of Social Security" for "Secretary" wherever appearing in subsecs.: (a)(1)(D), (6)(B), (7)(C)(i); (d)(1)(C)(i); (f)(2)(A), (5), (6), (8); (h)(1); and (i)(1)(F)(ii), (2)(A)(i), (ii), (C)(i), (ii), (D), (4), (5)(B); and substituted in subsec.: (f)(2)(A), "the Commissioner may by regulation

prescribe” for “he may by regulation prescribe”; (i)(2)(A)(ii), “the Commissioner shall” for “he shall”; (i)(2)(C)(i), “the Commissioner shall notify” for “he shall notify” and “the Commissioner's estimate” for “his estimate”; (i)(2)(D), “the Commissioner shall publish” for “he shall publish” and “The Commissioner shall also publish” for “He shall also publish”; and (i)(5)(B), “the Commissioner shall reduce” for “he shall reduce”.

Subsec. (a)(1)(B)(ii). Pub.L. 103-296, § 321(e)(2)(B)(i), (ii), substituted: in subcl. (I), “national average wage index” for “deemed average total wages”; and in subcl. (II), “the national average wage index (as so defined) for 1977” for “the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title) reported to the Secretary of the Treasury or his delegate for the calendar year 1977”.

Subsec. (a)(1)(C)(ii). Pub.L. 103-296, § 321(e)(2)(C), (g)(1)(C), substituted in the parenthetical exception provision “national average wage index” for “deemed average total wages” and substituted parenthetical exception provision covering adjustment of contribution and benefit base applicable in determining years of coverage for purposes of special minimum primary insurance amount for provision reading “(except that, for purposes of subsection (b)(2)(A) of such section 430 as so in effect, the reference therein to the average of the wages of all employees as reported to the Secretary of the Treasury for any calendar year shall be deemed a reference to the national average wage index (within the meaning of section 409(k)(1) of this title) for such calendar year)”.

Subsec. (a)(1)(D). Pub.L. 103-296, § 321(e)(2)(D)(i)-(iii), substituted “each calendar year” for “each calendar year after 1978” and “the national average wage index (as defined in section 409(k)(1) of this title)” for “the average of the total wages (as described in subparagraph (B)(ii)(I))” and struck the sentence “With the initial publication required by this subparagraph, the Secretary shall also publish in the Federal Register the average of the total wages (as so described) for each calendar year after 1950.”.

Subsec. (a)(5)(B)(i). Pub.L. 103-296, § 321(a)(16), substituted “subsections” for “subsection” preceding “(b)(4) and (c)”.

Subsec. (a)(7)(A). Pub.L. 103-296, §§ 307(a)(1), 308(b), in parenthetical text, designated as “(I)” existing text and added provisions respecting “(II)” and “(III)”.

Subsec. (a)(7)(E). Pub.L. 103-296, § 307(a)(2), inserted after “in the case of an individual” the following: “whose eligibility for old-age or disability insurance benefits is based on an agreement concluded pursuant to section 233 or an individual.”.

Subsec. (b)(3)(A)(ii)(I), (II). Pub.L. 103-296, § 321(e)(2)(E), substituted “national average wage index” for “deemed average total wages”.

Subsec. (d)(3). Pub.L. 103-296, §§ 307(b), 308(b), in parenthetical text, designated as “(I)” existing text and added provisions respecting “(II)” and “(III)”.

Subsec. (f)(7). Pub.L. 103-296, § 321(a)(17), inserted a period after "1990".

Subsec. (i)(1). Pub.L. 103-296, § 321(e)(2)(F)(i), (ii), substituted in subpar. (E) "national average wage index (as defined in section 409 (k)(1) of this title" for "SSA average wage index"; and struck subpar. (G) defining the term "SSA average wage index" and redesignated subpar. (H) as (G).

Subsec. (i)(2)(C)(ii). Pub.L. 103-296, § 321(e)(2)(G), substituted "The Secretary shall determine and promulgate the OASDI fund ratio for the current calendar year on or before November 1, of the current calendar year, based upon the most recent data then available. The Secretary shall include a statement of the fund ratio and the national average wage index ( as defined in section 409(k)(1) of this title) and a statement of the effect of such ratio and the level of such index may have upon benefit increases under this subsection in any notification made under clause (i) and any determination published under subparagraph (D)." for "The Secretary shall determine and promulgate the OASDI fund ratio for the current calendar year and the SSA wage index for the preceding calendar year before November 1 of the current calendar year, based upon the most recent data then available, and shall include a statement of such fund ratio and wage index (and of the effect such ratio and the level of such index may have upon benefit increases under this subsection) in any notification made under clause (i) and any determination published under subparagraph (D)."

1990 Amendments. Subsec. (a)(1)(C)(ii). Pub.L. 101-508, § 5122(a), substituted "of not less than 25 percent (in the case of a year after 1950 and before 1978) of the maximum amount which (pursuant to subsection (e) of this section) may be counted for such year, or 25 percent (in the case of a year after 1977 and before 1991) or 15 percent (in the case of a year after 1990) of the maximum amount which (pursuant to subsection (e) of this section) could be counted for such year if" for "of not less than 25 percent of the maximum amount which, pursuant to subsection (e) of this section, may be counted for such year, or of not less than 25 percent of the maximum amount which could be so counted for such year (in the case of a year after 1977) if".

Subsec. (a)(5)(A). Pub.L. 101-508, § 5117(a)(1)(A), (B), substituted "(A) Subject to subparagraphs (B), (C), (D), and (E), for purposes of" for "For purposes of" and struck out provision that the table for determining primary insurance amounts and maximum family benefits contained in this section in December 1978 be revised as provided by subsec. (i) of this section for each year after 1978. Such provisions were reenacted as subpar. (E) of subsec. (a)(5).

Subsec. (a)(5)(B) to (E). Pub.L. 101-508, § 5117(a)(1)(C), added subpars. (B) to (E).

Subsec. (a)(7)(A). Pub.L. 101-508, § 5117(a)(3)(E)(ii), substituted "subsection (d)(3)" for "subsection (d)(5)".

Subsec. (a)(7)(C)(ii). Pub.L. 101-508, § 5117(a)(3)(E)(iii), substituted "subsection (d)(3)" for "subsection (d)(5)".

Subsec. (a)(7)(D). Pub.L. 101-508, § 5122(b), struck out "(as defined in paragraph (1)(C)(ii))" after "more of coverage" and added provision defining the term "year of coverage" for purposes of this subparagraph.

Subsec. (c). Pub.L. 101-508, § 5117(a)(3)(C), substituted "Subject to the amendments made by section 5117 of the Om-

nibus Budget Reconciliation Act of 1990, this” for “This”.

Subsec. (d)(1)(A). Pub.L. 101-508, § 5117(a)(2)(A)(i), inserted “and subject to section 104(j)(2) of the Social Security Amendments of 1972” after “thereof”.

Subsec. (d)(1)(B). Pub.L. 101-508, § 5117(a)(2)(A)(ii), in cl. (i) struck out “who attained age 21 after 1936 and prior to 1950 shall be divided by the number of years (hereinafter in this subparagraph referred to as the “divisor”) elapsing after the year in which the individual attained age 20 and prior to 1951; and” and added subcls. (I) and (II) and in cl. (ii) substituted “who either attained age 21 after 1949 or died after 1949 before attaining age 21,” for “who attained age 21 after 1949”.

Subsec. (d)(1)(B)(iii). Pub.L. 101-508, § 5117(a)(2)(B), inserted reference to the computation base year.

Subsec. (d)(2)(B). Pub.L. 101-508, § 5117(a)(2)(C)(i), struck out “except as provided in paragraph (3),” after “(B)”.

Subsec. (d)(2)(C). Pub.L. 101-508, § 5117(a)(2)(C)(ii), in cl. (i) substituted “or who dies” for “after January 2, 1968”, struck out former cl. (ii), which provided that this subsection apply only in the case of an individual who dies after such date without being entitled to benefits under section 402(a) or 423 of this title, redesignated former cl. (iii) as (ii) and, in cl. (ii) as so redesignated, substituted “paragraph (2), (6), or (7) of subsection (f) of this section or under section 431 of this title” for “subsection (f)(2) or (6) of this section or section 431 of this title”.

Subsec. (d)(3). Pub.L. 101-508, § 5117(a)(3)(E)(i), redesignated former par. (5) as (3). Former par. (3) was struck out.

Pub.L. 101-508, § 5117(a)(2)(C)(iii), struck out par. (3), which provided that provisions of this subsection as in effect prior to Jan. 2, 1968, shall be applicable in the case of an individual who had a period of disability which began prior to 1951, but only if the primary insurance amount resulting therefrom is higher than the primary insurance amount resulting from the application of this section, as amended by the Social Security Amendments of 1967, and section 420 of this title.

Subsec. (d)(4). Pub.L. 101-508, § 5117(a)(2)(C)(iii), struck out par. (4), which provided that provisions of this subsection as in effect in December 1977 shall be applicable to individuals who become eligible for old-age or disability insurance benefits or die prior to 1978.

Subsec. (d)(5). Pub.L. 101-508, § 5117(a)(3)(E)(i), redesignated former par. (5) as (3).

Subsec. (f)(7). Pub.L. 101-508, § 5117(a)(3)(D), inserted “, including a primary insurance amount computed under any such subsection whose operation is modified as a result of the amendments made by section 5117 of the Omnibus Budget Reconciliation Act of 1990” after “December 1977”.



Subsec. (f)(9)(A). Pub.L. 101-508, § 5117(a)(3)(E)(ii), substituted “subsection (d)(3)” for “subsection (d)(5)” wherever appearing.

Subsec. (f)(9)(B). Pub.L. 101-508, § 5117(a)(3)(E)(iii), substituted “or (d)(3)” for “or (d)(5)” wherever appearing.

Subsec. (i)(4). Pub.L. 101-508, § 5117(a)(3), inserted “and as amended by section 5117 of the Omnibus Budget Reconciliation Act of 1990” after “as then in effect”.

1989 Amendments. Subsec. (a)(1)(B)(ii)(I). Pub.L. 101-239, § 10208(b)(2)(A), substituted provisions relating to the deemed average total wages, for provisions relating to average of total wages and computation without regard to specific limitations.

Pub.L. 101-239, § 10208(d)(2)(A)(i), substituted “(a)(1)” for “(a)”.

Subsec. (a)(1)(B)(ii)(II). Pub.L. 101-239, § 10208(b)(2)(B), added references to regulations of the Secretary and specified limitations.

Subsec. (a)(1)(C)(ii). Pub.L. 101-239, § 10208(b)(4), added provisions relating to deemed average total wage.

Subsec. (b)(3)(A)(ii)(I). Pub.L. 101-239, § 10208(b)(1)(C), struck out “(after 1976)” following “calendar year”.

Subsec. (b)(3)(A)(ii)(I), (II). Pub.L. 101-239, § 10208(b)(1)(A), (B), substituted provisions relating to the deemed average total wages, for provisions relating to average of total wages as defined and computed.

Pub.L. 101-239, § 10208(d)(2)(A)(i), substituted “(a)(1)” for “(a)”.

Subsec. (i)(1)(G). Pub.L. 101-239, § 10208(b)(3), substituted provisions relating to amount determined for calendar year, for provisions relating to average of total wages.

1988 Amendments. Subsec. (a)(7)(A). Pub.L. 100-647, § 8011(a)(1), struck out “with respect to the initial month in which the individual becomes eligible for such benefits” after “computed or recomputed under subparagraph (B)” in the provisions following cl. (ii).

Subsec. (a)(7)(B)(i). Pub.L. 100-647, § 8011(a)(2), substituted “concurrent entitlement to such monthly periodic payment and old-age or disability insurance benefits” for “eligibility for old-age or disability insurance benefits”.

Subsec. (a)(7)(C)(iii). Pub.L. 100-647, § 8011(a)(3), redesignated cl. (iv) as (iii) and struck out former cl. (iii) which had read: “If an individual to whom subparagraph (A) applies is eligible for a periodic payment beginning with a month that

is subsequent to the month in which he or she becomes eligible for old-age or disability insurance benefits, the amount of that payment (for purposes of subparagraph (B)) shall be deemed to be the amount to which he or she is, or is deemed to be, entitled (subject to clauses (i), (ii), and (iv) of this subparagraph) in such subsequent month.”

Subsec. (a)(7)(D). Pub.L. 100-647, § 8003(a), substituted “In the case of an individual who has more than 20 years of coverage but less than 30 years of coverage (as so defined), the percent specified in the applicable subdivision of subparagraph (B)(ii) shall (if such percent is smaller than the applicable percent specified in the following table) be deemed to be the applicable percent specified in the following table:” for “In the case of an individual who has more than 25 years of coverage but less than 30 years of coverage (as so defined), the percent specified in the applicable subdivision of subparagraph (B)(ii) shall (if such percent is smaller than the percent specified in whichever of the following clauses applies) be deemed to be--” in the provisions preceding the table, and, for the table, substituted a table showing years of coverage (from 29 to 21) and related percentages (from 85 percent to 45 percent) for prior table showing years of coverage (from 29 to 26) and related percentages (from 80 percent to 50 percent).

Subsec. (d)(5)(ii). Pub.L. 100-647, § 8011(b), substituted “such concurrent entitlement” for “his or her eligibility for old-age or disability insurance benefits”.

1986 Amendments. Subsec. (i)(1)(B). Pub.L. 99-509, § 9001(a), substituted “with respect to which the applicable increase percentage is greater than zero” for “with respect to which the applicable increase percentage is 3 percent or more”.

Pub.L. 99-509, § 9001(b)(2)(A), amended subpar. (B), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by striking out “, by not less than 3 per centum,” after “Department of Labor exceeds”.

Subsec. (i)(2)(C). Pub.L. 99-509, § 9001(b)(1)(A), struck out cl. (i) requiring the Secretary to report to Congress whenever the level of the Consumer Price Index exceeds 2.5 percent or more the level of such index for the most recent quarter, or if later, the most recent cost-of-living computation quarter, and renumbered cls. (ii) and (iii) as (i) and (ii), respectively.

Pub.L. 99-509, § 9001(b)(2)(B), amended subpar. (C), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by striking out cl. (i) which read as follows: “Whenever the level of the Consumer Price Index as published for any month exceeds by 2.5 percent or more the level of such index for the most recent base quarter (as defined in paragraph (1)(A)(ii)) or, if later, the most recent cost-of-living computation quarter, the Secretary shall (within 5 days after such publication) report the amount of such excess to the House Committee on Ways and Means and the Senate Committee on Finance”, and by striking out the cl. (ii) designation.

Subsec. (i)(4). Pub.L. 99-509, § 9001(b)(1)(B), added the reference to section 9001 of the Omnibus Budget Reconciliation Act of 1986.

Pub.L. 99-272, § 12105, substituted “the Secretary shall revise the table of benefits contained in subsection (a) of this section, as in effect in December 1978, in accordance with the requirements of paragraph (2)(D) of this subsection as then in effect, except that the requirement in such paragraph (2)(D) that the Secretary publish such revision of the table of benefits in the Federal Register shall not apply” for “the Secretary shall publish in the Federal Register revisions of the table of benefits contained in subsection (a) of this section, as in effect in December 1978, as required by paragraph (2)(D) of this subsection as then in effect”.

Subsec. (i)(5)(A)(i). Pub.L. 99-509, § 9001(b)(1)(C), substituted “because there was no wage increase percentage greater than zero” for “because the wage increase percentage was less than 3 percent”.

1984 Amendments. Subsec. (a)(1)(B)(i). Pub.L. 98-369, § 2663(a)(10)(A)(i), substituted “for such benefits” for “of such benefits”.

Subsec. (a)(1)(B)(iii). Pub.L. 98-369, § 2663(a)(10)(A)(ii), substituted “amount” for “amounts”.

Subsec. (a)(1)(C)(ii). Pub.L. 98-369, § 2663(a)(10)(A)(iii), substituted “section 217” for “scetion 217”.

Subsec. (a)(4)(B). Pub.L. 98-369, § 2663(a)(10)(B), directed that the left margin of subpar. (B) be indented so as to be in alignment with the left margin of subpar. (A) and that cls. (i) and (ii) of subpar. (B) be further indented as appropriate.

Subsec. (a)(7)(B)(ii)(I). Pub.L. 98-369, § 2661(k)(1), substituted “who become eligible (as defined in paragraph (3)(B)) for old-age insurance benefits (or became eligible as so defined for disability insurance benefits before attaining age 62)” for “who initially become eligible for old-age or disability insurance benefits”.

Subsec. (a)(7)(C)(ii). Pub.L. 98-369, § 2661(k)(2), substituted “survivor's” for “survivors”.

Subsec. (f)(2)(A). Pub.L. 98-369, § 2663(a)(10)(C), substituted “primary insurance amount” for “primary insurance account”.

Subsec. (f)(9)(B)(i). Pub.L. 98-369, § 2661(k)(3), substituted “as though the recomputed primary insurance amount were being computed under subsection (a)(7) or (d)(5)” for “as though such primary insurance amount had initially been computed without regard to subsection (a)(7) or (d)(5)”.

Subsec. (h)(1). Pub.L. 98-369, § 2663(a)(10)(D)(ii), substituted “Director of the Office of Personnel Management” for “Civil Service Commission”.

Subsec. (i)(5)(A). Pub.L. 98-369, § 2661(k)(4), added: “Any amount so increased that is not a multiple of \$0.10 shall be decreased to the next lowest multiple of \$0.10.”

Subsec. (i)(5)(B)(iii). Pub.L. 98-369, § 2661(k)(5)(A), substituted “so as to yield such applicable additional percentage (which shall be rounded to the nearest one-tenth of 1 percent),” for “and rounding to the nearest one-tenth of 1 percent.”

Subsec. (i)(5)(B)(iv). Pub.L. 98-369, § 2661(k)(5)(B), substituted “ending with the year before such subsequent calendar year” for “ending with such subsequent calendar year”.

Subsec. (i)(5)(B)(v). Pub.L. 98-369, § 2661(k)(5)(B), substituted “ending with the year before such subsequent calendar year” for “ending with such subsequent calendar year”.

Pub.L. 98-369, § 2661(k)(5)(C), substituted “became eligible (as defined in subsection (a)(3)(B) of this section) for the old-age or disability insurance benefit that is being increased under this subsection” for “initially became eligible for an old-age or disability insurance benefit”.

1983 Amendments. Subsec. (a)(7). Pub.L. 98-21, § 113(a), added par. (7).

Subsec. (d)(5). Pub.L. 98-21, § 113(b), added par. (5).

Subsec. (f)(5). Pub.L. 98-21, § 201(c)(1)(C), substituted “retirement age (as defined in section 416(l) of this title)” for “age 65”.

Subsec. (f)(9). Pub.L. 98-21, § 113(c), added par. (9).

Subsec. (i)(1)(A). Pub.L. 98-21, § 111(b)(1), substituted “September 30” for “March 31” and “1982” for “1974”.

Pub.L. 98-21, § 111(b)(2), amended subpar. (A), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by substituting “September 30” for “March 31” and “1982” for “1974”.

Subsec. (i)(1)(B). Pub.L. 98-21, § 112(a)(1), substituted “with respect to which the applicable increase percentage is 3 percent or more” for “in which the Consumer Price Index prepared by the Department of Labor exceeds, by not less than 3 per centum, such Index in the later of (i) the last prior cost-of-living computation quarter which was established under this subparagraph, or (ii) the most recent calendar quarter in which occurred the effective month of a general benefit increase under this subchapter”.

Subsec. (i)(1)(C). Pub.L. 98-21, § 112(a)(2), (4), added subpar. (C). Former subpar. (C) was redesignated (H).

Subsec. (i)(1)(D) to (G). Pub.L. 98-21, § 112(a)(2), (4), added subpars. (D) to (G).

Subsec. (i)(1)(H). Pub.L. 98-21, § 112(a)(3), redesignated former subpar. (C) as (H).

Subsec. (i)(2)(A)(ii). Pub.L. 98-21, § 112(b), in the provisions immediately following subcl. (III), substituted “by the applicable increase percentage” for “by the same percentage (rounded to the nearest one-tenth of 1 percent) as the percentage by which the Consumer Price Index for that cost-of-living computation quarter exceeds such index for the most recent prior calendar quarter which was a base quarter under paragraph (1)(A)(ii), or, if later, the most recent cost-of-living computation quarter under paragraph (1)(B)”.

Pub.L. 98-21, § 111(a)(1), (6), substituted “December” for “June” in the provisions preceding subcl. (I), and made same substitution in corresponding provisions as in effect in Dec. 1978, and as applied in certain cases under the provisions of this chapter as in effect after Dec. 1978.

Subsec. (i)(2)(A)(iii). Pub.L. 98-21, § 111(a)(2), substituted “November” for “May”.

Subsec. (i)(2)(B). Pub.L. 98-21, § 111(a)(3), (6), substituted “November” for “May” in two places, and made same substitution in corresponding provisions as in effect in Dec. 1978, and as applied in certain cases under the provisions of this chapter as in effect after Dec. 1978.

Subsec. (i)(2)(C)(iii). Pub.L. 98-21, § 112(d)(1), added cl. (iii).

Subsec. (i)(4). Pub.L. 98-21, § 111(c), inserted reference to the amendments made by sections 111(a)(6) and 111(b)(2) of the Social Security Amendments of 1983.

Pub.L. 98-21, § 112(d)(2), inserted reference to the amendments made by section 112 of the Social Security Amendments of 1983.

Subsec. (i)(5). Pub.L. 98-21, § 112(c), added par. (5).

1981 Amendments. Subsec. (a)(1)(A). Pub.L. 97-35, § 2206(b)(5), substituted in provision following cl. (iii) “rounded, if not a multiple of \$0.10, to the next lower multiple of \$0.10,” for “rounded in accordance with subsection (g) of this section”.

Subsec. (a)(1)(C)(i). Pub.L. 97-35, § 2201(a), struck out provisions that the primary insurance amount computed under subpar. (A) not be less than the dollar amount set forth on the first line of column IV in the table of benefits contained, or deemed to be contained in, this subsection as in effect in December 1978, rounded, if not a multiple of \$1, to the next higher multiple of \$1 and that no increase under subsec. (i) of this section, except as provided in subsec. (i)(2)(A) of this section, apply to the dollar amount so specified.

Subsec. (a)(1)(C)(ii). Pub.L. 97-35, § 2201(b)(1), substituted “For the purposes of clause (i)” for “For the purposes of

clause (i)(II)".

Subsec. (a)(3)(A). Pub.L. 97-35, § 2201(b)(2), substituted "subparagraph (C)(i)" for "subparagraph (C)(i)(II)".

Subsec. (a)(4). Pub.L. 97-35, § 2201(b)(3), (c)(2), substituted in provision preceding subpar. (A) "subparagraph (C)(i)" for "subparagraph (C)(i)(II)" and in provision following subpar. (B) ", as modified by paragraph (6)" and struck out "but without regard to clauses (iv) and (v) thereof" following "subsection (i)(2)(A) of this section".

Subsec. (a)(5). Pub.L. 97-123, § 2(a)(1), struck out ", and the table for determining primary insurance amounts and maximum family benefits contained in this section in December 1978 shall be modified as specified in paragraph (6)", and substituted "December 1978 shall be revised" for "December 1978, modified by the application of paragraph (6), shall be revised".

Pub.L. 97-35, § 2201(c)(3), inserted ", and the table for determining primary insurance amounts and maximum family benefits contained in this section in December 1978 shall be modified as specified in paragraph (6)" and substituted "December 1978, modified by the application of paragraph (6), shall be revised" for "December 1978 shall be revised".

Subsec. (a)(6). Pub.L. 97-123, § 2(a)(2), substituted in subpar. (A) "In applying the table of benefits in effect in December 1978 under this section for purposes of the last sentence of paragraph (4), such table, revised as provided by subsection (i) of this section, as applicable, shall be extended" for "The table of benefits in effect in December 1978 under this section, referred to in paragraph (4) in the matter following subparagraph (B) and in paragraph (5), revised as provided by subsection (i) of this section, as applicable, shall be extended".

Pub.L. 97-35, § 2201(c)(1), added par. (6).

Subsec. (f)(7). Pub.L. 97-123, § 2(b), added provisions that effective January 1982, the recomputation shall be modified by the application of subsec. (a)(6) of this section where applicable, and struck out provision that the recomputation shall be modified by the application of subsec. (a)(6) of this section, where applicable.

Pub.L. 97-35, § 2201(c)(4), inserted provision that the recomputation be modified by the application of subsec. (a)(6) of this section, where applicable.

Subsec. (f)(8). Pub.L. 97-35, § 2201(b)(4), substituted "subsection (a)(1)(C)(i) of this section" for "subsection (a)(1)(C)(i)(II) of this section".

Subsec. (g). Pub.L. 97-35, § 2206(a), struck out "any primary insurance amount and the amount of" following "The amount of" and substituted "(after any reduction under sections 403(a) and 424 of this title, and any deduction under section 403(b) of this title, and after any deduction under section 1395s(a)(1) of this title) is not a multiple of \$1 shall be rounded to the next lower multiple of \$1" for "(after reduction under section 403(a) of this title and deductions under section 403(b) of this title) is not a multiple of \$0.10 shall be raised to the next higher multiple of \$0.10".

Subsec. (i)(2)(A)(ii). Pub.L. 97-35, §§ 2201(b)(5), (6), 2206(b)(6), in subcl. (II) struck out “(including a primary insurance amount determined under subsection (a)(1)(C)(i)(I) of this section, but subject to the provisions of such subsection (a)(1)(C)(i) of this section and clauses (iv) and (v) of this subparagraph)” following “under this subchapter” and in provision following subcl. (III) substituted “subparagraph (C)(i)” for “subparagraph (C)(i)(II)”.

Pub.L. 97-35, § 2206(b)(6), substituted in provision following subcl. (III) “decreased to the next lower” for “increased to the next higher”.

Subsec. (i)(2)(A)(iii). Pub.L. 97-123, § 2(c), inserted “and, with respect to a primary insurance amount determined under subsection (a)(1)(C)(i)(I) of this section in the case of an individual to whom that subsection (as in effect in December 1981) applied, subject to the provisions of subsection (a)(1)(C)(i) of this section and clauses (iv) and (v) of this subparagraph (as then in effect)” following “provision of this subchapter”.

Pub.L. 97-35, § 2201(b)(7), struck out “and, with respect to a primary insurance amount determined under subsection (a)(1)(C)(i)(I) of this section, subject to the provisions of subsection (a)(1)(C)(i) of this section and clauses (iv) and (v) of this subparagraph” following “provision of this subchapter”.

Subsec. (i)(2)(A)(iv). Pub.L. 97-35, § 2201(b)(8), struck out cl. (iv), which related to increases in the primary insurance amount for individuals entitled to old-age insurance benefits, individuals entitled to insurance benefits under section 402(e) and (f) of this title, increases that would otherwise apply except for provisions of this clause, and increases occurring in a later year not applicable to the primary insurance amount on account of provisions of this clause.

Subsec. (i)(2)(A)(v). Pub.L. 97-35, § 2201(b)(8), struck out cl. (v), which provided, that notwithstanding cl. (iv), no primary insurance amount be less than that provided under subsec. (a)(1) of this section without regard to subpar. (C)(i)(I) thereof, as subsequently increased by applicable increases under this section.

Subsec. (i)(2)(D). Pub.L. 97-35, § 2201(b)(9), substituted “subparagraph (C)(i)” for “subparagraph (C)(i)(II)” in two places.

Subsec. (i)(4). Pub.L. 97-123, § 2(d), struck out “, modified by the application of subsec. (a)(6) of this section,” wherever appearing.

Pub.L. 97-35, § 2201(c)(5), inserted “, modified by the application of subsec. (a)(6) of this section,” wherever appearing.

Pub.L. 97-35, § 2206(b)(7), inserted “except that for this purpose, in applying paragraphs (2)(A)(ii), (2)(D)(iv), and (2)(D)(v) of this subsection as in effect in December 1978, the phrase ‘increased to the next higher multiple of \$0.10’ shall be deemed to read ‘decreased to the next lower multiple of \$0.10’ ”.

1980 Amendments. Subsec. (a)(4)(B). Pub.L. 96-473 substituted “recomputation” for “recommendation”.

Subsec. (b)(2)(A). Pub.L. 96-265, § 102(a), designated existing provisions as cl. (i), inserted in cl. (i), as so designated, a provision limiting its applicability to individuals who are entitled to old-age insurance benefits (except as provided in the second sentence of this subparagraph) or who have died, and added cl. (ii) and the provisions following cl. (ii).

Subsec. (i)(2)(A)(ii)(III). Pub.L. 96-265, § 101(b)(3), substituted "section 403(a)(7) and (8)" for "section 403(a)(6) and (7)".

Subsec. (i)(2)(D). Pub.L. 96-265, § 101(b)(4), added sentence providing that revision of maximum family benefits shall be subject to paragraph (6) of section 403(a) of this title (as added by section 101(a)(3) of the Social Security Disability Amendments of 1980).

1977 Amendments. Subsec. (a). Pub.L. 95-216, § 201(a), completely revamped the provisions under which the primary insurance amount of an individual is determined by substituting provisions which employ a formula using percentages of different portions of the individual's average indexed monthly earnings for provisions under which the primary insurance amount of an insured individual was determined through references to a five-column table covering primary insurance amounts and maximum family benefits.

Subsec. (b). Pub.L. 95-216, § 201(b), substituted provisions setting up a formula for determining an individual's average indexed monthly earnings using benefit computation years, computation base years, and elapsed years as factors in the determination, for provisions that had set a formula for determining an individual's average monthly wage.

Subsec. (c). Pub.L. 95-216, § 201(c), substituted provisions that this subsection as in effect in Dec. 1978, will remain in effect with respect to an individual to whom subsec. (a)(1) of this section does not apply by reason of the individual's eligibility for an old-age or disability insurance benefit, or the individual's death, prior to 1979, for provisions under which, for the purposes of column II of the latest table that had appeared in (or was deemed to have appeared in) subsec. (a) of this section, an individual's primary insurance amount was to be computed on the basis of the law in effect prior to the month in which the latest such table had become effective, but with a limitation that this subsection was to be applicable only in the case of an individual who had become entitled to benefits under section 402(a) or section 423 of this title, or who had died, before such effective month.

Subsec. (d)(1)(A). Pub.L. 95-216, § 201(d)(1), added provisions in subsec. (d)(1)(A) and the preceding introductory provision directing that the existing references to subsecs. (a) and (b) of this section be deemed reference to such subsecs. (a) and (b) as they were in effect in Dec. 1977.

Subsec. (d)(1)(B). Pub.L. 95-216, § 201(d)(1), made a parenthetical insertion which limited the existing references to subpars. (B) and (C) of subsec. (b)(2) of this section to those provisions as they had been in effect in Dec. 1977, and introduced a simplified method, using the concept of a divisor and a quotient, for computing the primary insurance amounts of workers age 21 after 1936 and before 1951 when wages before 1951 are included in the computations.

Subsec. (d)(1)(D). Pub.L. 95-216, § 201(d)(2), substituted "40 percent" for "45.6 per centum" and "plus 10 percent of the next \$200 of his average monthly wage, increased by 1 percent for each increment year" for "plus 11.4 per centum of the



next \$200 of such average monthly wage” in the existing provisions and added provisions that the number of increment years in the number, not more than 14 nor less than 4, that is equal to the individual's total wages prior to 1951 divided by \$1,650 (disregarding any fraction).

Subsec. (d)(3). Pub.L. 95-216, § 201(d)(3), struck out requirement that when wages prior to 1951 are included in computing the average monthly wages of an individual who attains age 21 after 1936 and prior to 1951, the present law computation provisions in effect before the Social Security Amendments of 1967 must be used.

Subsec. (d)(4). Pub.L. 95-216, § 201(d)(4), added par. (4).

Subsec. (e)(1). Pub.L. 95-216, § 201(e), substituted “average indexed monthly earnings or, in the case of an individual whose primary insurance amount is computed under subsection (a) of this section as in effect prior to January 1979, average monthly wage” for “average monthly wage” and “(before the application, in the case of average indexed monthly earnings, of subsection (b)(3)(A) of this section) of (A) the wages paid to him in such year” for “of (A) the wages paid to him in such year”.

Subsec. (e)(2). Pub.L. 95-216, § 201(e), substituted “average indexed monthly earnings or, in the case of an individual whose primary insurance amount is computed under subsection (a) of this section as in effect prior to January 1979, average monthly wage”.

Subsec. (f)(2). Pub.L. 95-216, § 201(f)(1), generally expanded the provisions for recomputing primary insurance amounts for individuals with wages or self-employment income for years after 1978 for any part of which the individuals are entitled to old-age or disability insurance benefits.

Subsec. (f)(3). Pub.L. 95-216, § 201(f)(2), struck out subsec. (f)(3), which had provided for the recomputation of primary insurance amounts for workers who had self-employment income in 1952 and who had applied for benefits or died prior to 1961.

Subsec. (f)(4). Pub.L. 95-216, § 201(f)(3), substituted “A recomputation shall be effective under this subsection only if it increases the primary insurance amount by at least \$1” for “Any recomputation under this subsection shall be effective only if such recomputation results in a higher primary insurance amount”.

Subsec. (f)(7), (8). Pub.L. 95-216, § 201(f)(4), added pars. (7) and (8).

Subsec. (i)(2)(A)(ii). Pub.L. 95-216, § 201(g)(1), specified that an automatic benefit increase effective for June of a year in which the Secretary determines that a cost-of-living computation quarter, which triggers such an increase, has occurred will apply to benefits of those entitled to special payments under sections 427 and 428 of this title, to the primary insurance amounts on which beneficiaries are entitled including the frozen minimum primary insurance amounts and special minimum primary insurance amounts, and to the maximum family benefits at the same time as the primary insurance amounts on which they are based, where a primary insurance amount was computed under the law in effect in December

1978 will be increased at the same time as the primary insurance amounts, except as provided in section 403(a)(6) and (7) of this title.

Subsec. (i)(2)(A)(iii) to (v). Pub.L. 95-216, § 201(g)(2), added cls. (iii), (iv), and (v).

Subsec. (i)(2)(D). Pub.L. 95-216, § 201(g)(3), substituted provisions directing publication in the Federal Register of revisions of the range of primary insurance amounts and of the range of maximum family benefits for provisions that had directed publication of the revision of the table of benefits formerly set out in subsec. (a) and had set out the method of determining the revision of the table.

Subsec. (i)(2)(D)(v). Pub.L. 95-216, § 103(d), in cl. (v) substituted "is equal to, or exceeds by less than \$5, one-twelfth of the new contribution and benefit base" for "is equal to one-twelfth of the new contribution and benefit base" and "plus 20 percent of the excess of the second figure in the last line of column III as extended under the preceding sentence over such second figure for the calendar year in which the table of benefits is revised" for "plus 20 percent of one-twelfth of the excess of the new contribution and benefit base for the calendar year following the calendar year in which such table of benefits is revised (as determined under section 430 of this title) over such base for the calendar year in which the table of benefits is revised" in the third sentence.

Subsec. (i)(4). Pub.L. 95-216, § 201(g)(4), added par. (4).

1973 Amendments. Subsec. (a). Pub.L. 93-233, § 2(a), in revising the benefits table: in column II, substituted "Primary insurance amount effective for September 1972" for "Primary insurance amount under 1971 Act" and increased benefit amounts to \$84.50-\$404.50 from \$70.40-\$295.40; in column III, increased benefit amounts to \$76 to \$1,096-\$1,100 from \$76 to \$996-\$1,000; in column IV, increased benefit amounts to \$93.80-\$469.00 from \$84.50-\$404.50; and in column V, increased benefit amounts to \$140.80-\$820.80 from \$126.80-\$707.90.

Subsec. (a)(3). Pub.L. 93-233, § 1(h)(1), substituted "\$9.00" for "\$8.50".

Subsec. (e)(1). Pub.L. 93-233, § 5(a)(4), substituted "\$13,200" for "\$12,600".

Pub.L. 93-66 substituted "\$12,600" for "\$12,000".

Subsec. (i)(1)(A)(i). Pub.L. 93-233, § 3(a), substituted "calendar quarter ending on March 31 in each year after 1974" for "calendar quarter ending on June 30 in each year after 1972".

Subsec. (i)(1)(B)(ii). Pub.L. 93-233, § 3(b), substituted in the exception provision "if in the year prior to such year a law has been enacted providing a general benefit increase under this subchapter or if in such prior year such a general benefit increase becomes effective" for "in which a law has been enacted providing a general benefit increase under this subchapter or in which such a benefit increase becomes effective".

Subsec. (i)(2)(A)(i). Pub.L. 93-233, § 3(c), substituted "1975" for "1974" and struck out "and to subparagraph (E) of this paragraph" following "paragraph (1)(B)" in the parenthetical text.

Subsec. (i)(2)(A)(ii). Pub.L. 93-233, § 3(d)(1)-(3), substituted "the base quarter in any year" and "June of such year" for "such base quarter" and "January of the next calendar year" and struck out "(subject to subparagraph (E) )" preceding "as provided in subparagraph (B)", respectively.

Subsec. (i)(2)(B). Pub.L. 93-233, § 3(e), substituted "May" for "December" in two instances and struck out "(subject to subparagraph (E) )" following "shall apply".

Subsec. (i)(2)(C)(ii). Pub.L. 93-233, § 3(f), substituted "within 30 days after the close of such quarter" for "on or before August 15 of such calendar year".

Subsec. (i)(2)(D). Pub.L. 93-233, § 3(g), substituted "within 45 days after the close of such quarter" for "on or before November 1 of such calendar year".

Subsec. (i)(2)(E). Pub.L. 93-233, § 3(h), struck out subpar. (E) providing that "Notwithstanding a determination by the Secretary under subparagraph (A) that a base quarter in any calendar year is a cost-of-living computation quarter (and notwithstanding any notification or publication thereof under subparagraph (C) or (D) ), no increase in benefits shall take effect pursuant thereto, and such quarter shall be deemed not to be a cost-of-living computation quarter, if during the calendar year in which such determination is made a law providing a general benefit increase under this subchapter is enacted or becomes effective."

1972 Amendments. Subsec. (a). Pub.L. 92-336, § 201(a), revised the benefits table by substituting "Primary insurance amount under 1971 Act" for "Primary insurance amount under 1969 Act" and \$70.40-\$295.40 for \$64.00 or less-\$250.70 in column II, adding \$751-\$996 under minimum average monthly wage subcolumn of column III, adding \$755-\$1000 under maximum average monthly wage subcolumn of column III, substituting \$84.50-\$404.50 for \$70.40-\$295.40 in column IV, and \$126.80-\$707.90 for \$105.60-\$517.00 in column V.

Pub.L. 92-336, § 201(c), added "The primary insurance amount of an insured individual shall be determined as follows:" following "(a)", redesignated introductory material and pars. (1) to (3) as par. (1) and subpars. (A) to (C) respectively, and as so redesignated, in par. (1) added provision relating to exception in par. (2) and in subpars. (A) to (C) made changes in phraseology, and redesignated par. (4) as par. (2) and as so redesignated, added provisions relating to determination of primary insurance amount where individual was entitled to disability insurance benefits under section 423 of this title.

Pub.L. 92-336, § 202(a)(3)(A), added "(or, if larger, the amount in column IV of the latest table deemed to be such table under subsection (i)(2)(D) )" following "the following table" in par. (1)(A), and "(whether enacted by another law or deemed to be such table under subsection (i)(2)(D) )" following "effective month of a new table" in par. (2).

Subsec. (a)(1). Pub.L. 92-603, § 101(a)(1), inserted reference to paragraph (3) in the provisions preceding subpar. (A).

Subsec. (a)(2). Pub.L. 92-603, § 101(c), designated existing provisions as subpar. (A), in subpar. (A) as so designated inserted “(whether enacted by another law or deemed to be such table under subsection (i)(2)(D) of this section)”, and added subpar. (B).

Subsec. (a)(3). Pub.L. 92-603, § 101(a)(2), added subsec. (a)(3) and provisions following such subsec. (a)(3) covering the individual's “years of coverage” for purposes of subsec. (a)(3).

Pub.L. 92-603, § 144(a)(1), substituted in column II “254.40” for “251.40” and in column III “696” for “699”.

Subsec. (b)(3). Pub.L. 92-603, § 104(b), struck out provisions setting a separate age computation point for women and reduced from age 65 to age 62 the age computation point for men.

Subsec. (b)(4). Pub.L. 92-336, § 201(d), substituted “August 1972” for “December 1970” in two places.

Pub.L. 92-336, § 202(a)(3)(B), substituted provisions relating to an individual who becomes entitled to benefits in or after the month in which a new table that appears in (or is deemed by subsec. (i)(2)(D) to appear in) subsec. (a) becomes effective for provisions relating to an individual who becomes entitled to benefits after August 1972 in subpar. (A), substituted provisions relating to an individual who dies in or after the month in which such table becomes effective for provisions relating to an individual who dies after August 1972 in subpar. (B), and added subpar. (C).

Subsec. (c). Pub.L. 92-336, § 201(e), substituted “September 1972” for “March 17, 1971” in two places, and “month” for “date”.

Pub.L. 92-336, § 202(a)(3)(C), substituted provisions relating to the computation of an individual's primary insurance amount based on the law in effect prior to the month in which the latest table appearing in (or is deemed to be appearing in) subsec. (a) of this section becomes effective, for provisions relating to the computation of an individual's primary insurance amount based on the law in effect prior to September 1972 in subpar. (1), and substituted “, or who died, before such effective month” for “before September 1972, or who died before such month” in subpar. (2).

Subsec. (d)(1)(C)(iv). Pub.L. 92-603, § 142(b), added cl. (iv).

Subsec. (d)(2). Pub.L. 92-603, §§ 134(b), 142(c), added references to subsec. (f)(6) of this section and section 431 of this title.

Subsec. (e)(1). Pub.L. 92-336, § 203(a)(4), added provisions eliminating from the computation of an individual's average monthly wage excess amounts in calendar years after 1971 and before 1975, and excess over amounts equal to the contribution and benefit base in the case of any calendar year after 1974 with respect to which such contribution and benefit

base is effective.

Subsec. (f)(2). Pub.L. 92-603, §§ 101(d), 134(a)(1), inserted reference to subsec. (a)(3) of this section in the provisions preceding subpar. (A) and in subpar. (B) struck out provision relating to any individual whose increase in his primary insurance amount is attributable to compensation which, upon his death, is treated as remuneration for employment under section 405(o) of this title.

Pub.L. 92-336, § 201(f), substituted "subsection (a)(1)(A) and (C) of this section" for "subsection (a)(1) and (3) of this section".

Subsec. (f)(6). Pub.L. 92-603, § 134(a)(2), added par. (6).

Subsec. (i). Pub.L. 92-336, § 202(a)(1), added subsec. (i).

Subsec. (i)(2)(A)(ii). Pub.L. 92-603, § 101(e), inserted "(but not including a primary insurance amount determined under subsection (a)(3) of this section)" after "under this subchapter".

1971 Amendments. Subsec. (a). Pub.L. 92-5, § 201(a), revised the benefits table by substituting "Primary insurance amount under 1969 Act" for "Primary insurance amount under 1967 Act" and \$64.00 or less--\$250.70 for \$55.40 or less--\$218.00 in column II, adding \$653-\$746 under minimum average monthly wage subcolumn of column III, striking out \$650 and adding \$652-\$750 under maximum average monthly wage subcolumn of column III, substituting \$70.40-\$295.40 for \$64.00-\$250.70 in column IV, and \$105.60-\$517.00 for \$96.00-\$434.40 in column V.

Subsec. (b)(4). Pub.L. 92-5, § 201(c), substituted "December 1970" for "December 1969" in two places.

Subsec. (c). Pub.L. 92-5, § 201(d), substituted "prior to March 17, 1971" for "prior to December 30, 1969" in subpar. 1, and substituted "before March 17, 1971, or who died before such date" for "before January 1970, or who died before such month" in subpar. 2.

Subsec. (e)(1). Pub.L. 92-5, § 203(a)(4), substituted "the excess over \$7,800 in the case of any calendar year after 1967 and before 1972, and the excess over \$9,000 in the case of any calendar year after 1971" for "and the excess over \$7,800 in the case of any calendar year after 1967".

1969 Amendments. Subsec. (a). Pub.L. 91-172, § 1002(a), revised the benefits table to increase the primary insurance amount limits to \$64.00-\$250.70 for people whose average monthly wage is \$76.00 or less for the minimum, and \$650.00 for the maximum, the primary insurance amounts of retired workers on the benefit rolls from \$48.00 or less to \$55.40 at the minimum, and from \$168.00 to \$218.00 at the maximum, and the family benefits limits to \$96.00-434.40 from \$82.50-434.40.

Subsec. (b)(4). Pub.L. 91-172, § 1002(c), substituted references to December 1969 for references to January 1968.

Subsec. (c). Pub.L. 91-172, § 1002(d), substituted "December 30, 1969" for "January 2, 1968" in subpar. (1), and "January 1970" for "February 1968" in subpar. (2).

1968 Amendments. Subsec. (a). Pub.L. 90-248, § 101(a), revised the benefits table to increase the primary insurance amount limits to \$55.00-\$218.00 for people whose average monthly wage is \$74.00 or less for the minimum and \$650.00 for the maximum, the primary insurance amounts of retired workers on the benefit rolls from \$48.00 or less to \$55.00 at the minimum and from \$168.00 to \$189.90 at the maximum, and the family benefit limits to \$82.50-\$434.40 from \$66.00-\$368.00.

Subsec. (b)(4). Pub.L. 90-248, § 101(c)(1), substituted "January 1968" for "December 1965" in subpars. (A) and (B), deleted ", as amended by the Social Security Amendments of 1965;" from end of subpar. (C), and struck out the exception provision that the subsection would not apply to any individual described therein for purposes of monthly benefits for months before January 1966.

Subsec. (b)(5). Pub.L. 90-248, § 101(c)(2), repealed par. (5) which preserved the method in effect before the enactment of the 1965 amendments of computing average monthly earnings for people who became entitled to benefits or a recomputation of benefits before 1966.

Subsec. (c). Pub.L. 90-248, § 101(d), substituted, "1965 Act" for "1958 Act, as modified" in subsection catchline and "on the basis of the law in effect prior to the enactment of the Social Security Amendments of 1967" for "as provided in, and subject to the limitations specified in, (A) this section as in effect prior to July 30, 1965, and (B) the applicable provisions of the Social Security Amendments of 1960" in par. (1) and "the month of February 1968, or who died before such month" for "July 30, 1965 or who died before such date" in par. (2).

Subsec. (d)(1). Pub.L. 90-248, § 155(a)(1), substituted:

**"(d)(1)** For purposes of column I of the table appearing in subsection (a) of this section, an individual's primary insurance benefit shall be computed as follows:

**"(A)** The individual's average monthly wage shall be determined as provided in subsection (b) (but without regard to paragraph (4) thereof) of this section, except that for purposes of paragraph (2)(C) and (3) of such subsection, 1936 shall be used instead of 1950.

**"(B)** For purposes of subparagraphs (B) and (C) of subsection (b)(2) of this section, an individual whose total wages prior to 1951 (as defined in subparagraph (C) of this subsection)--

**"(i)** do not exceed \$27,000 shall be deemed to have been paid such wages in equal parts in nine calendar years after 1936 and prior to 1951;

**"(ii)** exceed \$27,000 and are less than \$42,000 shall be deemed to have been paid (I) \$3,000 in each of such number of calendar years after 1936 and prior to 1951 as is equal to the integer derived by dividing such total wages by

\$3,000, and (II) the excess of such total wages over the product of \$3,000 times such integer, in an additional calendar year in such period; or

“(iii) are at least \$42,000 shall be deemed to have been paid \$3,000 in each of the fourteen calendar years after 1936 and prior to 1951.

“(C) For the purposes of subparagraph (B) of this paragraph, ‘total wages prior to 1951’ with respect to an individual means the sum of (i) remuneration credited to such individual prior to 1951 on the records of the Secretary, (ii) wages deemed paid prior to 1951 to such individual under section 417 of this title, and (iii) compensation under the Railroad Retirement Act of 1937 prior to 1951 creditable to him pursuant to this subchapter.

“(D) The individual's primary insurance benefit shall be 45.6 per centum of the first \$50 of his average monthly wage as computed under this subsection, plus 11.4 per centum of the next \$200 of such average monthly wage.” for

“(d)(1) For the purposes of column I of the table appearing in subsection (a) of this section, an individual's primary insurance benefit shall be computed as provided in this subchapter as in effect prior to August 28, 1950, except that--

“(A) In the computation of such benefit, such individual's average monthly wage shall (in lieu of being determined under section 409(f) of this title as in effect prior to August 28, 1950) be determined as provided in subsection (b) of this section (but without regard to paragraphs (4) and (5) thereof), except that for the purposes of paragraphs (2)(C) and (3) of subsection (b) of this section, 1936, shall be used instead of 1950.

“(B) For purposes of such computation, the date he became entitled to old-age insurance benefits shall be deemed to be the date he became entitled to primary insurance benefits.

“(C) The 1 per centum addition provided for in section 409(e)(2) of this title as in effect prior to August 28, 1950 shall be applicable only with respect to calendar years prior to 1951, except that any wages paid in any year prior to such year all of which was included in a period of disability shall not be counted.

“(D) The provisions of subsection (e) of this section shall be applicable to such computation.”

Subsec. (d)(2)(B), (C). Pub.L. 90-248, § 155(a)(2), eliminated former subpar. (B), redesignated former subpar. (C) as (B), inserted exception phrase at beginning of subpar. (B), and added subpar. (C).

Subsec. (d)(3). Pub.L. 90-248, § 155(a)(3), substituted:

“(3) The provisions of this subsection as in effect prior to January 2, 1968 shall be applicable in the case of an individual--

“(A) who attained age 21 after 1936 and prior to 1951, or

“(B) who had a period of disability which began prior to 1951, but only if the primary insurance amount resulting therefrom is higher than the primary insurance amount resulting from the application of this section (as amended by the Social Security Amendments of 1967) and section 420 of this title.” for

“(3) The provisions of this subsection as in effect prior to September 13, 1960 shall be applicable in the case of an individual who meets the requirements of subsection (b)(5) of this section (as in effect after September 13, 1965).”

Subsec. (e)(1). Pub.L. 90-248, § 108(a)(4), substituted “the excess over \$6,600 in the case of any calendar year after 1965 and before 1968, and the excess over \$7,800 in the case of any calendar year after 1967” for “and the excess over \$6,600 in the case of any calendar year after 1965”.

Subsec. (f)(2). Pub.L. 90-248, § 155(a)(4), (5), eliminated former subpars. (A) to (D) and text preceding (A) by substituting provisions that if an individual has wages or self-employment income for a year after 1965 for any part of which he is entitled to old-age insurance benefits, the Secretary is to recompute his primary insurance amount with respect to each such year, and that such recomputation shall be made as provided in subsec. (a)(1) and (3) as though the year with respect to which such recomputation is made is the last year of the period specified in subsec. (b)(2)(C) for former provisions for a recomputation with respect to each year after Dec. 31, 1964, and for any part of which an individual was entitled to old-age insurance benefits, that such recomputation was to be made as provided in subsec. (a)(1) and (3) if such year was either the year in which he became entitled to such old-age insurance benefits or the preceding year or as provided in subsec. (a)(1) in any other case and that in all cases such recomputation was to be made as though the year with respect to which it was to be made was the last year of the period specified in subsec. (b)(2)(C); and redesignated former subpars. (E) and (F) as (A) and (B), respective.

Subsec. (f)(5). Pub.L. 90-248, § 155(a)(6), added par. (5).

Subsec. (h)(1). Pub.L. 90-248, § 403(b), substituted “subchapter III of chapter 83 of Title 5” for “the Civil Service Retirement Act” in two instances.

1965 Amendments. Subsec. (a). Pub.L. 89-97, § 301(a), revised the benefits table to increase the primary insurance amount limits to \$44-\$168 for people whose average monthly wage is \$67 or less for the minimum and \$550 for the maximum from \$40-\$127 for people whose average monthly wage is \$67 or less for the minimum and \$400 for the maximum (representing an increase of 7-percent for average monthly wages of \$400 or less with minimum increase of \$4); the primary insurance amounts of retired workers on the benefit rolls from \$40 to \$44 at the minimum and from \$127 to \$135.90 at the maximum; and the family benefit limits to \$66-\$368 from \$60-\$254 (determined on basis of new formula and representing minimum increase of \$6).

Subsec. (a)(4). Pub.L. 89-97, §§ 303(e), 304(k), substituted “In the case of an individual who was entitled to a disability insurance benefit for the month before the month in which he died, became entitled to old-age insurance benefits, or attained age 65,” for

“In the case of--

“(A) a woman who was entitled to a disability insurance benefit for the month before the month in which she died or became entitled to old-age insurance benefits, or

“(B) a man who was entitled to a disability insurance benefit for the month before the month in which he died or attained age 65,” and

“the primary insurance amount upon which such disability insurance benefit is based” for “such disability insurance benefit”, respectively.



Subsec. (b)(2)(C). Pub.L. 89-97, § 302(a)(1), excluded from an insured individual's computation base years the year in which he became entitled to benefits and included in his computation base years (for purposes of survivors' benefits) the year in which he died to make an individual's computation base years the calendar years occurring after 1950 and up to the year in which his first month of entitlement to a benefit occurred or the year after the year in which he died.

Subsec. (b)(3)(A) to (C). Pub.L. 89-97, § 302(a)(2), substituted in: clause (A) “, if it occurred earlier but after 1960, the year in which she attained age 62,” for “(if earlier) the first year after 1960 in which she both was fully insured and had attained age 62.”; clause (B) “, if it occurred earlier but after 1960, the year in which he attained age 65” for “(if earlier) the first year after 1960 in which he both was fully insured and had attained age 65”; and clause (C) “the year occurring after 1960 in which he attained (or would attain) age 65” for “the first year after 1960 in which he attained (or would attain) age 65 or (if later) the first year in which he was fully insured”.

Subsec. (b)(4). Pub.L. 89-97, § 302(a)(3), substituted “The provisions of this subsection shall be applicable only in the case of an individual--

“(A) who becomes entitled, after December 1965, to benefits under section 402(a) or section 423 of this title; or

“(B) who dies after December 1965 without being entitled to benefits under section 402(a) or section 423 of this title; or

“(C) whose primary insurance amount is required to be recomputed under subsection (f)(2) of this section, as amended by the Social Security Amendments of 1965;

except that it shall not apply to any such individual for purposes of monthly benefits for months before January 1966.” for

“The provisions of this subsection shall be applicable only in the case of an individual with respect to whom not less than six of the quarters elapsing after 1950 are quarters of coverage, and--

“(A) who becomes entitled to benefits after December 1960 under section [section 402(a) or section 423 of this title]; or

“(B) who dies after December 1960 without being entitled to benefits under section [section 402(a) or section 423 of this title]; or

“(C) who files an application for a recomputation under subsection (f)(2)(A) of this section after December 1960 and is (or would, but for the provisions of subsection (f)(6) of this section, be) entitled to have his primary insurance amount recomputed under subsection (f)(2)(A) of this section; or

“(D) who dies after December 1960 and whose survivors are (or would, but for the provisions of subsection (f)(6) of this section, be) entitled to a recomputation of his primary insurance amount under subsection (f)(4) of this section.”

Subsec. (b)(5). Pub.L. 89-97, § 302(a)(3), substituted “For the purpose of column III of the table appearing in subsection (a) of this section, the provisions of this subsection, as in effect prior to July 30, 1965, shall apply--

“(A) in the case of an individual to whom the provisions of this subsection are not made applicable by paragraph (4),

but who, on or after July 30, 1935, and prior to 1966, met the requirements of this paragraph or paragraph (4), as in effect prior to July 30, 1965, and

“(B) with respect to monthly benefits for months before January 1966, in the case of an individual to whom the provisions of this subsection are made applicable by paragraph (4).” for

“In the case of any individual--

“(A) to whom the provisions of this subsection are not made applicable by paragraph (4), but

“(B)(i) prior to 1961, met the requirements of this paragraph (including subparagraph (E) thereof) as in effect prior to the enactment of the Social Security Amendments of 1960, or (ii) after 1960, meets the conditions of subparagraph (E) of this paragraph as in effect prior to such enactment,

then the provisions of this subsection as in effect prior to such enactment shall apply to such individual for the purposes of column III of the table appearing in subsection (a) of this section.”

Subsec. (c). Pub.L. 89-97, § 301(b), substituted in par. (1)(A) “prior to the enactment of the Social Security Amendments of 1965” and executed in the Code “prior to July 30, 1965” for “prior to the enactment of the Social Security Amendments of 1958” and executed in the Code “prior to August 28, 1958”; in par. (1)(B) “Social Security Amendments of 1960” for “Social Security Amendments of 1954”; in par. (2), formerly designated (2)(A), “before July 30, 1965 or who died before such date” for “or died prior to January 1959”; and deleted par. (2)(B) making the provisions of the subsection applicable only in the case of an individual “to whom the provisions of neither paragraph (4) nor paragraph (5) of subsection (b) of this section are applicable.”

Subsec. (d)(1)(A). Pub.L. 89-97, § 302(b)(1), substituted “(2)(C) and (3)” for “(2)(C)(i) and (3)(A)(i)”, “1936” for “December 31, 1936,” and “1950” for “December 31, 1950”.

Subsec. (d)(3). Pub.L. 89-97, § 302(b)(2), substituted “1965” for “1960” in two instances and struck out at the end of the par. “but without regard to whether such individual has six quarters of coverage after 1950”.

Subsec. (e)(1). Pub.L. 89-97, § 320(a)(4), substituted “the excess over \$4,800 in the case of any calendar year after 1958 and before 1966, and the excess over \$6,600 in the case of any calendar year after 1965” for “and the excess over \$4,800 in the case of any calendar year after 1958”.

Subsec. (e)(3). Pub.L. 89-97, § 302(c), struck out par. (3) which provided that for the purposes of subsecs. (b) and (d) of this section, if an individual had self-employment income in a taxable year which began prior to the calendar year in which he became entitled to old-age insurance benefits and ended after the last day of the month preceding the month in which he became so entitled, his self-employment income in such taxable year should not be counted in determining his benefit computation years, except as provided in subsection (f)(3)(C) of this section.

Subsec. (f)(2). Pub.L. 89-97, § 302(d)(1), substituted provisions for annual automatic recomputation of benefits, taking into account any earnings the person had in or after the year in which he became entitled to benefits, and effective in the

case of a living beneficiary with January of the year following the year in which the earnings were received and in death cases for survivors' benefits beginning with the month of death for former provisions which required an application for the recomputation to include earnings in a year after entitlement and that the person have six quarters of coverage after 1950 to qualify for the recomputation and was not available unless the person had earnings of more than \$1,200 for the year.

Subsec. (f)(3). Pub.L. 89-97, § 302(d)(2), redesignated former par. (5) as (3) and repealed former par. (3) which provided for a recomputation of benefits to include earnings in the year of entitlement to benefits or in the year in which an individual's benefits were recomputed on account of additional earnings and is now covered by the annual automatic recomputation of benefits provision of subsec. (f)(2) of this section.

Subsec. (f)(4). Pub.L. 89-97, § 302(d)(2), redesignated former par. (6) as (4) and repealed former par. (4) which provided for a recomputation of benefits for the purpose of paying benefits to survivors of an individual who died after 1960 and who had been entitled to old-age insurance benefits and is now covered by the annual automatic recomputation of benefits provision of subsec. (f)(2) of this section.

Subsec. (f)(5), (6). Pub.L. 89-97, § 302(d)(2), redesignated former pars. (5) and (6) as (3) and (4), respectively.

Subsec. (f)(7). Pub.L. 89-97, § 302(d)(2), repealed former par. (7) which provided for recomputation at age 65 of the benefits of an individual who became entitled to benefits before that age and is now covered by the annual automatic recomputation of benefits provision of subsec. (f)(2) of this section.

1961 Amendments. Subsec. (a). Pub.L. 87-64, §§ 101(a), 102(d)(1), increased the minimum primary insurance amount from \$33 to \$40, and the minimum family benefit from \$53 to \$60, and in the case of a man, limited the provisions which permit the primary insurance amount to be equal to the disability insurance benefit for the month before the month in which the man became entitled to old-age insurance benefits only if the man first became entitled to old-age insurance benefits at age 65.

Subsec. (b)(3). Pub.L. 87-64, § 102(d)(2), substituted "For purposes of paragraph (2), the number of an individual's elapsed years is the number of calendar years after 1950 (or, if later, the year in which he attained age 21) and before--

"(A) in the case of a woman, the year in which she died or (if earlier) the first year after 1960 in which she both was fully insured and had attained age 62,

"(B) in the case of a man who has died, the year in which he died or (if earlier) the first year after 1960 in which he both was fully insured and had attained age 65, or

"(C) in the case of a man who has not died, the first year after 1960 in which he attained (or would attain) age 65 or (if later) the first year in which he was fully insured"

for the following provisions: "For the purposes of paragraph (2), an individual's 'elapsed years' shall be the number of calendar years--

“(A) after (i) December 31, 1950, or (ii) if later, December 31 of the year in which he attained the age of twenty-one, and

“(B) prior to (i) the year in which he died, or (ii) if earlier, the first year after December 31, 1960, in which he both was fully insured and had attained retirement age.”

Subsec. (f)(7). Pub.L. 87-64, § 102(d)(3), added par. (7).

1960 Amendments. Subsec. (b)(1). Pub.L. 86-778, § 303(a), substituted provisions defining the term “average monthly wage” as the quotient obtained by dividing (A) the total of an individual's wages paid in and self-employment income credited to his benefit computation years, by (B) the number of months in such years, for provisions which defined the term as the quotient obtained by dividing the total of his wages and self-employment income after his starting date and prior to his closing date by the number of months elapsing after such starting date and prior to such closing date, excluding the months in any year prior to the year in which the individual attained the age of 22 if less than two quarters of such prior years were quarters of coverage and the months in any year any part of which was included in a period of disability except the months in the year in which such period of disability began if their inclusion will result in a higher primary insurance amount.

Subsec. (b)(2). Pub.L. 86-778, § 303(a), substituted provisions relating to benefit computation years and to computation base years for provisions which defined an individual's starting date as Dec. 31, 1950, or if later, the last day of the year in which he attains the age of 21, whichever results in the higher primary insurance amount.

Subsec. (b)(3). Pub.L. 86-778, § 303(a), substituted provisions defining an individual's elapsed years for provisions which defined an individual's closing date as the first day of the year in which he died or became entitled to old-age insurance benefits, whichever first occurred, or the first day of the first year in which he both was fully insured and had attained retirement age, whichever results in the higher primary insurance amount.

Subsec. (b)(4). Pub.L. 86-778, § 303(a), substituted provisions prescribing the applicability of subsec. (f) for provisions which required the Secretary to determine the five or fewer calendar years after an individual's starting date and prior to his closing date which, if the months of such years and his wages and self-employment income for such years were excluded in computing his average monthly wage, would produce the highest primary insurance amount, and which required exclusion of such months and such wages and self-employment income for purposes of computing an individual's average monthly wage.

Subsec. (b)(5). Pub.L. 86-778, § 303(a), substituted provisions making subsec. (f) applicable in the case of an individual to whom the provisions of subsec. (f) are not made applicable by par. (4) but prior to 1961, met the requirements of this paragraph as in effect prior to Sept. 13, 1960, or, after 1960, meets the conditions of subpar. (E) of this paragraph as in effect prior to Sept. 13, 1960, for provisions which prescribed the applicability of subsec. (f) of this section. Former provisions of subsec. (b)(5) were covered by subsec. (b)(4) of this section.

Subsec. (c)(2)(B). Pub.L. 86-778, § 303(b), substituted “to whom the provisions of neither paragraph (4) nor paragraph (5) of subsection (b) of this section are applicable” for “to whom the provisions of paragraph (5) of subsection (b) of this

section are not applicable”.

Subsec. (d)(1)(A). Pub.L. 86-778, § 303(c)(1), substituted “be determined as provided in subsection (b) of this section (but without regard to paragraphs (4) and (5) thereof), except that for the purposes of paragraphs (2)(C)(i) and (3)(A)(i) of subsection (b) of this section, December 31, 1936, shall be used instead of December 31, 1950” for “be determined as provided in subsection (b) of this section (but without regard to paragraph (5) thereof), except that his starting date shall be December 31, 1936”.

Subsec. (d)(1)(C). Pub.L. 86-778, § 303(c)(2), substituted “all of which was included” for “any part of which was included”, and eliminated provisions which required the wages paid in the year in which the period of disability began to be counted if the counting of such wages would result in a higher primary insurance amount.

Subsec. (d)(2)(B). Pub.L. 86-778, § 303(c)(3), substituted “paragraph (4) of subsection (b) of this section” for “paragraph (5) of subsection (b) of this section”.

Subsec. (d)(3). Pub.L. 86-778, § 303(c)(4), added par. (3).

Subsec. (e)(3). Pub.L. 86-778, § 303(d)(1), substituted “if an individual has self-employment income in a taxable year which begins prior to the calendar year in which he becomes entitled to old-age insurance benefits and ends after the last day of the month preceding the month in which he becomes so entitled, his self-employment income in such taxable year shall not be counted in determining his benefit computation years” for “if an individual's closing date is determined under paragraph (3)(A) of subsection (b) of this section and he has self-employment income in a taxable year which begins prior to such closing date and ends after the last day of the month preceding the month in which he becomes entitled to old-age insurance benefits, there shall not be counted, in determining his average monthly wage, his self-employment income in such taxable year”.

Subsec. (e)(4). Pub.L. 86-778, § 303(d)(2), eliminated former par. (4), which prohibited, in computing an individual's average monthly wage, the counting of any wages paid such individual in any year any part of which was included in a period of disability, or any self-employment income of such individual credited pursuant to section 412 of this title to any year any part of which was included in a period of disability, unless the months of such year are included as elapsed months pursuant to subsec. (b)(1)(B) of this section.

Subsec. (f)(2)(A). Pub.L. 86-778, § 303(e)(1), substituted “1960” for “1954” in the opening provisions, and “filed such application after such calendar year” for “filed such application no earlier than six months after such calendar year” in cl. (iii).

Subsec. (f)(2)(B). Pub.L. 86-778, § 303(e)(2), substituted provisions requiring a recomputation pursuant to subpar. (A) to be made only as provided in subsec. (a)(1) of this section, if the provisions of subsec. (b) of this section, as amended by Pub.L. 86-778, were applicable to the last previous computation of the individual's primary insurance amount, or as provided in subsec. (a)(1) and (3) of this section in all other cases for provisions which required a recomputation to be made only as provided in subsec. (a) of this section, inserted provisions requiring the computation base years, if cl. (i) of

this subparagraph is applicable to such recomputation, to include only calendar years occurring prior to the year in which he filed his application for such recomputation, and eliminated provisions which prescribed the method of making the recomputation if subsec. (b)(4) of this section were applicable to the previous computation.

Subsec. (f)(3)(A). Pub.L. 86-778, § 303(e)(3), substituted "December 1960" for "August 1954" in two instances, eliminated provisions which related to applications by individuals whose primary insurance amount was recomputed under section 102(e)(5) or 102(f)(2)(B) of the Social Security Amendments of 1954, and substituted "except that such individual's computation base years referred to in subsection (b)(2) of this section shall include the calendar year referred to in the preceding sentence" for "except that his closing date for purposes of subsection (b) of this section shall be the first day of the year following the year in which he became entitled to old-age insurance benefits or in which he filed his application for the last recomputation (to which he was entitled) of his primary insurance amount under any provision of law referred to in clause (ii) or (iii) of the preceding sentence, whichever is later".

Subsec. (f)(3)(B). Pub.L. 86-778, § 303(e)(3), substituted "December 1960" for "August 1954" in three instances, eliminated provisions which related to individuals whose primary insurance amount was recomputed under section 102(e)(5) or section 102(f)(2) of the Social Security Amendments of 1954, and individuals with respect to whom the last previous computation or recomputation of their primary insurance amount was based upon a closing date determined under subpar. (A) or (B) of subsec. (b)(3) of this section, and substituted "except that such individual's computation base years referred to in subsection (b)(2) of this section shall include the calendar year in which he died in the case of an individual who was not entitled to old-age insurance benefits at the time of death or whose primary insurance amount was recomputed under paragraph (4) of this subsection, or in all other cases, the calendar year in which he filed his application for the last previous computation of his primary insurance amount" for "except that his closing date for purposes of subsection (b) of this section shall be the day following the year of death in case he died without becoming entitled to old-age insurance benefits, or, in case he was entitled to old-age insurance benefits, the day following the year in which was filed the application for the last previous computation of his primary insurance amount or in which the individual died, whichever first occurred".

Subsec. (f)(3)(C). Pub.L. 86-778, § 303(e)(3), substituted "In the case of an individual who becomes entitled to old-age insurance benefits in a calendar year after 1960, if such individual has self-employment income in a taxable year which begins prior to such calendar year and ends after the last day of the month preceding the month in which he became so entitled, the Secretary shall recompute such individual's primary insurance amount after the close of such taxable year and shall take into account in determining the individual's benefit computation years only such self-employment income in such taxable year as is credited, pursuant to section 412 of this title, to the year preceding the year in which he became so entitled" for "If an individual's closing date is determined under paragraph (3)(A) of subsection (b) of this section and he has self-employment income in a taxable year which begins prior to such closing date and ends after the last day of the month preceding the month in which he became entitled to old-age insurance benefits, the Secretary shall recompute his primary insurance amount after the close of such taxable year, taking into account only such self-employment income in such taxable year as is, pursuant to section 412 of this title, allocated to calendar quarters prior to such closing date."

Subsec. (f)(4). Pub.L. 86-778, § 303(e)(4), eliminated words "(without the application of clause (iii) thereof)" following "paragraph (2)(A)" in cl. (A), eliminated provisions from the second sentence which required, if the recomputation is permitted by subpar. (A), to include in such recomputation any compensation (described in section 405(o) of this title) paid to him prior to the closing date which would have been applicable under such paragraph, and substituted "which

were considered in the last previous computation of his primary insurance amount and the compensation (described in section 405(o) of this title) paid to him in the years in which such wages were paid or to which such self-employment income was credited” for “which were taken into account in the last previous computation of this primary insurance amount and the compensation (described in section 405(o) of this title) paid to him prior to the closing date applicable to such computation” in the third sentence.

Subsec. (f)(5). Pub.L. 86-778, § 304(a), substituted “then upon application filed by such individual after the close of such taxable year and prior to January 1961 or (if he died without filing such application and such death occurred prior to January 1961)” for “then upon application filed after the close of such taxable year by such individual (or if he died without filing such application)”.

Subsec. (g). Pub.L. 86-778, § 211(n), inserted “and deductions under section 403(b) of this title”.

Subsec. (h). Pub.L. 86-778, § 103(j)(2)(C), substituted “section 410(l)(1) of this title” for “section 410(m)(1) of this title”, in par. (1).

Pub.L. 86-415 added subsec. (h).

1958 Amendments. Subsec. (a). Pub.L. 85-840, § 101(a), amended subsec. (a) generally, and among other changes, substituted a new method for computing the primary insurance amount of an individual for provisions which established the primary insurance amount as either 55% of the first \$110 of an individual's average monthly wage, plus 20% of the next \$240, or the amount determined by use of the conversion table under former subsec. (c) of this section, whichever was larger.

Subsec. (b)(1). Pub.L. 85-840, § 101(b)(1), substituted “For the purposes of column III of the table appearing in subsection (a) of this section, an” for “An”.

Subsec. (b)(5). Pub.L. 85-840, § 101(b)(2), added par. (5).

Subsec. (c). Pub.L. 85-840, § 101(c), amended subsec. (c) generally, and, among other changes, substituted provisions for computation of the primary insurance amount of an individual under the 1954 Act for provisions which related to determinations made by use of the conversion table.

Subsec. (d). Pub.L. 85-840, § 101(d), substituted provisions for computation of the primary insurance benefit under the 1939 Act for provisions which related to determination of the primary insurance benefit and primary insurance amount for purposes of the conversion table in former subsec. (c) of this section.

Subsec. (e). Pub.L. 85-840, § 102(d), substituted “(d) of this section” for “(d)(4) of this section” in the opening provisions and in cl. (2), and inserted “and before 1959, and the excess over \$4,800 in the case of any calendar year after 1958” following “after 1954”, in cl. (1).

Subsec. (g). Pub.L. 85-840, § 205(m), eliminated provisions which related to reduction under section 424 of this title.

1956 Amendments. Subsec. (a)(3). Act Aug. 1, 1956, § 103(c)(4), added par. (3).

Subsec. (b)(1). Act Aug. 1, 1956, § 115(a), excluded from the computation of an individual's average wage the months in any year any part of which was included in a period of disability, except the months in any year in which a period of disability began if their inclusion would result in a higher primary insurance amount.

Subsec. (b)(4). Act Aug. 1, 1956, § 109(a), substituted "five" for "four", and eliminated provisions which required the maximum number of calendar years determined under this clause to be five in the case of any individual who has not less than 20 quarters of coverage.

Subsec. (d)(5). Act Aug. 1, 1956, § 115(b), excluded from the computation all quarters in any year prior to 1951 any part of which was included in a period of disability, except the quarters in the year in which a period of disability began if the inclusion of such quarters would result in a higher primary insurance amount.

Subsec. (e)(4). Act Aug. 1, 1956, § 115(c), excluded any wages paid to an individual in any year any part of which was included in a period of disability, and any self-employment income credited to such year unless the months of such year are included as elapsed months.

Subsec. (g). Act Aug. 1, 1956, § 103(c)(5), inserted references to sections 423 and 424 of this title.

1954 Amendments. Subsec. (a). Act Sept. 1, 1954, § 102(a), provided a new benefit formula, for computing primary insurance amount for certain individuals, of 55 percent of the first \$110 of average monthly wage plus 20 percent of the next \$240 and provided that other individuals have their primary insurance amount computed under subsec. (c) of this section.

Subsec. (b). Act Sept. 1, 1954, § 102(b), provided standard end-of-the-year starting and beginning-of-the-year closing dates, applicable to both wage earners and self-employed individuals, for computation of the average monthly wage, and provided for the exclusion of up to 5 years in which earnings were lowest (or nonexistent) from the average monthly wage computation.

Subsec. (b)(1). Act Sept. 1, 1954, § 106(c)(1), inserted following "quarters of coverage" the words "and any month in any quarter any part of which was included in a period of disability (as defined in section 416(i) of this title) unless such quarter was a quarter of coverage".

Subsec. (c). Act Sept. 1, 1954, § 102(c), provided a new conversion table with increased benefits for individuals already on the rolls and computed the primary insurance amount of certain individuals who come on the rolls after the enactment of the Act.



Subsec. (d). Act Sept. 1, 1954, § 102(d), added provisions for computation of a primary insurance amount for purposes of the conversion table.

Subsec. (d)(5). Act Sept. 1, 1954, § 106(c)(2), added par. (5). Former par. (5), which was added by Act July 18, 1952, § 3(c)(3), ceased to be in effect at the close of June 30, 1953. See Termination Date of 1952 Amendment note set out under section 413 of this title.

Subsec. (d)(6). Act Sept. 1, 1954, § 102(d)(4), added par. (6).

Subsec. (e). Act Sept. 1, 1954, § 104(d), provided that earnings up to \$4,200, in any calendar year after 1954, shall be used in the computation of an individual's average monthly wage.

Subsec. (e)(3). Act Sept. 1, 1954, § 102(e)(1), added par. (3).

Subsec. (e)(4). Act Sept. 1, 1954, § 106(c)(3), added par. (4).

Subsec. (f)(2). Act Sept. 1, 1954, § 102(e)(2), substituted a new test for determining eligibility for a recomputation to take into account additional earnings after entitlement.

Subsec. (f)(3)(A), (B). Act Sept. 1, 1954, § 102(e)(3)(A), amended provisions generally.

Subsec. (f)(3)(C). Act Sept. 1, 1954, § 102(e)(3)(B), added subpar. (C).

Subsec. (f)(4). Act Sept. 1, 1954, § 102(e)(4), provided for the recomputation of the primary insurance on the death after 1954 of an old-age insurance beneficiary, if any person is entitled to monthly survivors benefits or to a lump-sum death payment on the basis of his wages and self-employment income.

1952 Amendments. Subsec. (a)(1). Act July 18, 1952, § 2(b)(1), provided a new benefit formula for the computation of benefits based entirely on wages paid and self-employment income derived after 1950 of 55 percent of the first \$100 of average monthly wage and 15 percent of next \$200, and increased the primary insurance amount.

Subsec. (b)(1). Act July 18, 1952, § 3(c)(1), added "and any month in any quarter any part of which was included in a period of disability (as defined in section 416(i) of this title) unless such quarter was quarter of coverage" following "not a quarter of coverage".

Subsec. (b)(4). Act July 18, 1952, § 3(c)(2), added provisions of subpars. (B) and (C).

Subsec. (c)(1). Act July 18, 1952, § 2(a)(1), inserted a new conversion table with increased amounts.

Subsec. (c)(2). Act July 18, 1952, § 2(a)(2), provided that individuals, whose primary insurance amounts are governed by regulations, shall have the same increase as is provided for individuals governed by the new conversion table.

Subsec. (c)(4). Act July 18, 1952, § 2(a)(3), added par. (4).

Subsec. (d)(5). Act July 18, 1952, § 3(c)(3), added par. (5).

Subsec. (f)(2). Act July 18, 1952, § 6(a), provided that upon application an individual will have his benefit recomputed by the new formula prescribed in subsec. (a)(1) under certain conditions.

Subsec. (f)(5). Act July 18, 1952, § 6(b), added par. (5). Former par. (5) redesignated (6).

Subsec. (f)(6). Act July 18, 1952, § 6(b), redesignated former par. (5) as (6).

#### Effective and Applicability Provisions

1994 Acts. Amendment by section 107(a)(4) of Pub.L. 103-296 effective Mar. 31, 1995, see section 110 of Pub.L. 103-296, set out as a note under section 401 of this title.

Section 307(c) of Pub.L. 103-296 provided that: "The amendments made by this section [amending subsecs. (a) and (d) of this section] shall apply (notwithstanding section 215(f)(1) of the Social Security Act (42 U.S.C. 415(f)(1))) with respect to benefits payable for months after December 1994."

Amendment of subsecs. (a)(7)(A) and (d)(3) by section 308(b) of Pub.L. 103-296, applicable (notwithstanding subsec. (f) of this section) with respect to benefits payable for months after Dec. 1994, see section 308(c) of Pub.L. 103-296, set out as a note under section 402 of this title.

Section 321(g)(3)(A) of Pub.L. 103-296 provided that: "The amendments made by paragraph (1) [amending subsec. (a)(1)(C)(ii) of this section and section 430(b)(1), (2), (d) of this title] shall be effective with respect to the determination of the contribution and benefit base for years after 1994."

1990 Acts. Amendment by Pub.L. 101-508 applicable to computation of primary insurance in cases of entitlement to benefits under section 402 or 423 of this title on the basis of the insured's wages and self employment income for months after an 18 month period following Nov. 1990, except in cases where entitlement, based on wages and self employment income of the insured, accrues the month preceding the initial month of entitlement to benefits under section 402 or 423 of this title, and applicable to primary insurance amounts upon recomputation, if such recomputation is effective for months after the 18 month period after Nov. 1990, see section 5117(a)(4) of Pub.L. 101-508, set out as a note under section 403 of this title.

1989 Acts. Amendment by Pub.L. 101-239 applicable with respect to computation of average total wage amounts for calendar years after 1990, including transitional rule, see section 10208(c) of Pub.L. 101-239, set out as a note under section 430 of this title.

1988 Acts. Section 8003(b) of Pub.L. 100-647 provided that: "The amendments made by subsection (a) [amending subsec. (a)(7)(D) of this section] shall apply to benefits payable for months after December 1988."

Section 8011(c) of Pub.L. 100-647 provided that: "The amendments made by this section [amending subsecs. (a)(7)(A), (B)(i), (C) and (d)(5)(ii) of this section] shall apply to benefits based on applications filed after the month [November] in which this Act is enacted [Nov. 10, 1988]."

1986 Acts. Amendment by Pub.L. 99-514 effective Oct. 22, 1986, see section 1883(f) of Pub.L. 99-514, set out as a note under section 402 of this title.

Section 9001(d) of Pub.L. 99-509 provided that:

"(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and section 1395r of this title] shall apply with respect to cost-of-living increases determined under section 215(i) of the Social Security Act [subsec. (i) of this section] (as currently in effect, and as in effect in December 1978 and applied in certain cases under the provisions of such Act [this chapter] in effect after December 1978) in 1986 and subsequent years.

"(2) The amendments made by paragraphs (1)(A) [amending subsec. (i)(2)(C)(i), (ii)] and (2)(B) [see *Italicized note*] of subsection (b)] shall apply with respect to months after September 1986."

"(3) The amendment made by subsection (c) [amending section 1395r of this title] shall apply with respect to monthly premiums (under section 1839 of the Social Security Act) [section 1395r of this title] for months after December 1986."

Section 12115 of Pub.L. 99-272 provided that: "Except as otherwise specifically provided, the preceding provisions of this subtitle, including the amendments made thereby [amending this section and sections 402, 403, 404, 409, 415, 418, 423, 424a, 907, 909, 910, 1310 and 1383 of this title and sections 86, 871, 932, and 3121 of Title 26, Internal Revenue Code, enacting provisions set out as notes under sections 402, 403, 404, 409, 418, 424a, 907, 909 of this title and section 932 of Title 26, and amending provisions set out as notes under section 1310 of this title, and repealing provisions set out as a note under section 907 of this title], shall take effect on the first day of the month following the month in which this Act is enacted [Apr. 1986]."

1984 Acts. Amendment to subsecs. (a)(7)(B)(ii)(I), (C)(ii), (f), (i)(5) by sections 2661(k), 2662(c)(1) of Pub.L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983 [Pub.L. 98-21], see section 2664(a) of Pub.L. 98-369, set out as a note under section 401 of this title.

Amendment to subsecs. (a)(1), (4), (f)(2), (h)(1) by section 2663(a)(10) of Pub.L. 98-369 effective July 19, 1984, but not to be construed as changing or affecting any right, liability, status or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub.L. 98-369, set out as a note under section 401 of this title.

1983 Acts. Section 111(a)(6) of Pub.L. 98-21 provided in part that the substitution by section 111(a)(6) of Pub.L. 98-21 of "December" for "June" in subsec. (i)(2)(A)(ii) of this section and the substitution of "November" for "May" in subsec. (i)(2)(B) of this section is effective as this section was in effect in December 1978 and as this section is applied in certain cases under the provisions of this chapter as in effect after December 1978.

Amendment of subsec. (i)(2)(A)(ii), (iii), and (B) by section 111(a) of Pub.L. 98-21 applicable with respect to cost-of-living increases determined under subsec. (i) of this section for years after 1982, see section 111(a)(8) of Pub.L. 98-21, set out as a note under section 402 of this title.

Section 111(b)(2) of Pub.L. 98-21 provided in part that the substitution by section 111(b)(2) of Pub.L. 98-21 of "September 30" for "March 31" and "1982" for "1974" in subsec. (i)(1)(A) of this section is effective as this section was in effect in December 1978 and as applied in certain cases under the provisions of this chapter as in effect after December 1978.

Section 111(b)(3) of Pub.L. 98-21 provided that: "The amendments made by this subsection [amending subsec. (i)(1)(A) of this section] shall apply with respect to cost-of-living increases determined under section 215(i) of the Social Security Act [subsec. (i) of this section] for years after 1983."

Section 112(e) of Pub.L. 98-21 provided that: "The amendments made by the preceding provisions of this section [amending subsec. (i) of this section so as to base cost-of-living increases on the lower of either wages or prices when the balance of OASDI funds falls below a specified level] shall apply with respect to monthly benefits under Title II of the Social Security Act [this subchapter] for months after December 1983."

1981 Acts. Section 2(j)(2) to (4) of Pub.L. 97-123 provided that:

"(2) Except as provided in paragraphs (3) and (4), the amendments made by section 2201 of the Omnibus Budget Reconciliation Act of 1981 [enacting section 1382k of this title, amending subsecs. (a)(1)(C)(i), (ii), (3)(A), (4) to (6), (f)(7), (8), (i)(2)(A)(ii) to (v), (D), and (4) of this section and sections 402(m), (q)(4), (10), (w)(1), (5), 403(a)(8), 417(b)(1), and 433(c)(2) of this title] (other than subsection (f) thereof [amending section 402(i) of this title] ), together with the amendments made by the preceding subsections of this section [repealing section 1382k of this title and a provision set out as a note under section 1382k of this title and amending subsecs. (a)(5), (6)(A), (f)(7), (i)(2)(A)(iii), and (4) of this section and sections 402(q)(4) and (10), 403(a)(8), and 417(b)(1) of this title], shall apply with respect to benefits for months after December 1981; and the amendment made by subsection (f) [amending section 402(i) of this title] of such section 2201 shall apply with respect to deaths occurring after December 1981.

"(3) Such amendments shall not apply--

"(A) in the case of an old-age insurance benefit, if the individual who is entitled to such benefit first became eligible (as defined in section 215(a)(3)(B) of the Social Security Act [subsec. (a)(3)(B) of this section] ) for such benefit before January 1982,

"(B) in the case of a disability insurance benefit, if the individual who is entitled to such benefit first became eligible (as so defined) for such benefit before January 1982, or attained age sixty-two before January 1982,

“(C) in the case of a wife's or husband's insurance benefit, or a child's insurance benefit based on the wages and self-employment income of a living individual, if the individual on whose wages and self-employment income such benefit is based is entitled to an old-age or disability insurance benefit with respect to which such amendments do not apply, or

“(D) in the case of a survivors insurance benefit, if the individual on whose wages and self-employment income such benefit is based died before January 1982, or dies in or after January 1982 and at the time of his death is eligible (as so defined) for an old-age or disability insurance benefit with respect to which such amendments do not apply.

“(4) In the case of an individual who is a member of a religious order (within the meaning of section 3121(r)(2) of Title 26, or an autonomous subdivision of such order, whose members are required to take a vow of poverty, and which order or subdivision elected coverage under Title II of the Social Security Act [this subchapter] before the date of the enactment of this Act [Dec. 29, 1981], or who would be such a member except that such individual is considered retired because of old age or total disability, paragraphs (2) and (3) shall apply, except that each reference therein to ‘December 1981’ or ‘January 1982’ shall be considered a reference to ‘December 1991’ or ‘January 1992’, respectively.”

Amendment of subsec. (g) by section 2206(a) of Pub.L. 97-35, and amendment of subsec. (a)(1)(A), (i)(2)(A)(ii), and (i)(4) by section 2206(b)(5)-(7) of Pub.L. 97-35, respectively, applicable only with respect to initial calculations and adjustments of primary insurance amounts and benefit amounts which are attributable to periods after August, 1981, see section 2206(c) of Pub.L. 97-35, set out as a note under 402 of this title.

1980 Acts. Section 102(c) of Pub.L. 96-265 provided that: “The amendments made by this section [amending sections 415(b)(2)(A) and 423 of this title] shall apply only with respect to monthly benefits payable on the basis of the wages and self-employment income of an individual who first becomes entitled to disability insurance benefits on or after July 1, 1980; except that the third sentence of section 215(b)(2)(A) of the Social Security Act (as added by such amendments) [subsec. (b)(2)(A) of this section] shall apply only with respect to monthly benefits payable for months beginning on or after July 1, 1981.”

For effective date of amendment of subsec. (i)(2)(A)(ii)(III) and (D) of this section by Pub.L. 96-265, see section 101(c) of Pub.L. 96-265, set out as a note under section 403 of this title.

Amendment by section 201 of Pub.L. 95-216 effective only with respect to monthly benefits under this subchapter payable for months after December, 1978, and with respect to lump-sum death payments with respect to deaths occurring after December, 1978, except that the amendments made by Section 201(d) of Pub.L. 95-216 [amending subsec. (d) of this section] shall be effective with respect to monthly benefits of an individual who becomes eligible for an old-age or disability insurance benefit, or dies after December, 1977, see section 206 of Pub.L. 95-216, set out as a note under section 402 of this title.

1977 Acts. Amendment by section 103(d) of Pub.L. 95-216 [which amended the second and third sentences of cl. (v) of subsec. (i)(2)(D) ] applicable with respect to remuneration paid or received, and taxable years beginning, after 1977, see section 104 of Pub.L. 95-216, set out as a note under section 1401 of Title 26, Internal Revenue Code.

1973 Acts. Section 1(h)(2) of Pub.L. 93-233 provided that: "The amendment made by paragraph (1) [to subsec. (a)(3) of this section] shall be effective with respect to benefits payable for months after February 1974."

Section 2(c) of Pub.L. 93-233 provided that: "The amendment made by subsections (a) and (b) [revising subsec. (a) benefits table of this section, amending sections 427(a), (b) and 428(b)(1), (2), (c)(3)(A), (B) of this title, and repealing section 202(a)(4) of Pub.L. 92-336. Title II, July 1, 1972, 86 Stat. 416] shall apply with respect to monthly benefits under Title II of the Social Security Act [this subchapter] for months after May 1974, and with respect to lump-sum death payments under section 202(i) of such Act [section 402(i) of this title] in the case of deaths occurring after such month."

Amendment by section 5(a)(4) of Pub.L. 93-233 applicable with respect to calendar years after 1973, see section 5(e) of Pub.L. 93-233, set out as a note under section 409 of this title.

Amendment by Pub.L. 93-66 applicable with respect to calendar years after 1973, see section 203(e) of Pub.L. 93-66, set out as a note under section 409 of this title.

1972 Acts. Section 101(g) of Pub.L. 92-603 provided that: "The amendments made by this section [amending subsections (a), (f), and (i) of this section and section 403(a) of this title] shall apply with respect to monthly insurance benefits under Title II of the Social Security Act [this subchapter] for months after December 1972 (without regard to when the insured individual became entitled to such benefits or when he died) and with respect to lump-sum death payments under such title in the case of deaths occurring after such month."

Amendment of subsec. (b)(3) by section 104(b) of Pub.L. 92-603 applicable only in the case of a man who attains (or would attain) age 62 after December, 1974, with provision for the determination of the number of elapsed years for purposes of subsec. (b)(3) of this section in the case of a man who attains age 62 prior to 1975, see section 104(j) of Pub.L. 92-603, set out as a note under section 414 of this title.

Amendment by section 144(a)(1) of Pub.L. 92-603 effective in like manner as if such amendment had been included in Title II of Pub.L. 92-336, see section 144(b) of Pub.L. 92-603, set out as a note under section 403 of this title.

Section 201(i) of Pub.L. 92-336 provided that: "The amendments made by this section [amending subsections (a), (b)(4), (c) and (f)(2) of this section and section 403(a)(2) of this title] (other than the amendments made by subsections (g) and (h) ) shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after August 1972 and with respect to lump-sum death payments under such title in the case of deaths occurring after such month. The amendments made by subsection (g) [amending sections 427 and 428 of this title] shall apply with respect to monthly benefits under title II of such Act for months after August 1972. The amendments made by subsection (h)(1) [amending section 403(a)(4) of this title] shall apply with respect to monthly benefits under Title II of such Act for months after December 1971."

Section 202(a)(3)(A) to (C) of Pub.L. 92-336, as amended by Pub.L. 93-233, § 2(d), Dec. 31, 1973, 87 Stat. 952, provided in part that amendment of subsections (a)(1)(A), (2), (b)(4), and (c) by section 202(a)(3)(A)(i), (ii), (B), (C), of Pub.L. 92-336 shall be effective June 1, 1974.

Amendment of subsec. (e)(1) by section 203(a)(4) of Pub.L. 92-336 applicable only with respect to calendar years after 1972, see section 203(c) of Pub.L. 92-336, set out as a note under section 409 of this title.

1971 Acts. Section 201(e) of Pub.L. 92-5 provided that: "The amendments made by this section [amending subsecs. (a), (b)(4), and (c) of this section and section 403 of this title] shall apply with respect to monthly benefits under Title II of the Social Security Act [this subchapter] for months after December 1970 and with respect to lump-sum death payments under such title in the case of deaths occurring in and after the month in which this Act is enacted [March, 1971]."

Amendment of subsec. (e)(1) by Pub.L. 92-5 applicable only with respect to calendar years after 1971, see section 203(c) of Pub.L. 92-5, set out as a note under section 409 of this title.

1969 Acts. Section 1002(e) of Pub.L. 91-172 provided that: "The amendments made by this section [amending this section and section 403(a)(2) of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1969 and with respect to lump-sum death payments under such title in the case of deaths occurring after December 1969."

1968 Acts. Section 101(e) of Pub.L. 90-248 provided that: "The amendments made by this section [to subsecs. (a), (b)(4) and (5), and (c) of this section and to section 403(a)(2) of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after January 1968 and with respect to lump-sum death payments under such title [this subchapter] in the case of deaths occurring after January 1968."

Amendment of subsec. (e)(1) by section 108(a)(4) of Pub.L. 90-248 applicable only with respect to calendar years after 1967, see section 108(c) of Pub.L. 90-248, set out as a note under section 409 of this title.

Section 155(a)(7), (9) of Pub.L. 90-248 provided that:

"(7)(A) The amendments made by paragraphs (4) and (5) [to subsec. (f)(2) of this section] shall apply with respect to recomputations made under section 215(f)(2) of the Social Security Act [subsec. (f)(2) of this section] after the date of the enactment of this Act [Jan. 2, 1968].

"(B) The amendment made by paragraph (6) [enacting subsec. (f)(5) of this section] shall apply with respect to individuals who die after the date of enactment of this Act [Jan. 2, 1968].

"(9) The amendment made by paragraphs (1) and (2) [amending subsecs. (d)(1) and (2) of this section] shall not apply with respect to monthly benefits for any month prior to January 1967."

1965 Acts. Section 301(d) of Pub.L. 89-97 provided that: "The amendments made by subsections (a), (b), and (c) of this section [to subsecs. (a) and (c) of this section and section 403(a) of this title] shall apply with respect to monthly benefits under Title II of the Social Security Act [this subchapter] for months after December 1964 and with respect to lump-sum death payments under such title [this subchapter] in the case of deaths occurring in or after the month in which this Act is enacted [July, 1965]."

Section 302(d)(2) of Pub.L. 89-97 provided in part that the repeal of former pars. (3), (4), and (7) of subsec. (f) and the redesignation of pars. (5) and (6) as (3) and (4) of such subsec. (f) shall be effective Jan. 2, 1966.

Section 302(f)(1) to (5) of Pub.L. 89-97 provided that:

“(1) The amendments made by subsection (c) [repealing subsec. (e)(3) of this section] shall apply only to individuals who become entitled to old-age insurance benefits under section 202(a) of the Social Security Act [section 402(a) of this title] after 1965.

“(2) Any individual who would, upon filing an application prior to January 2, 1966, be entitled to a recomputation of his monthly benefit amount for purposes of Title II of the Social Security Act [this subchapter] shall be deemed to have filed such application on the earliest date on which such application could have been filed, or on the day on which this Act is enacted [July 30, 1965], whichever is the later.

“(3) In the case of an individual who died after 1960 and prior to 1966 and who was entitled to old-age insurance benefits under section 202(a) of the Social Security Act [section 402(a) of this title] at the time of his death, the provisions of sections 215(f)(3)(B) and 215(f)(4) of such Act [subsec. (f)(3)(B) and (f)(4) of this section] as in effect before the enactment of this Act [July 30, 1965] shall apply.

“(4) In the case of a man who attains age 65 prior to 1966, or dies before such year, the provisions of section 215(f)(7) of the Social Security Act [subsec. (f)(7) of this section] as in effect before the enactment of this Act [July 30, 1965] shall apply.

“(5) The amendments made by subsection (e) of this section [to section 423(a)(2) of this title] shall apply in the case of individuals who become entitled to disability insurance benefits under section 223 of the Social Security Act [section 423 of this title] after December 1965.”

Section 303(f)(2) of Pub.L. 89-97 provided that: “The amendment made by subsection (e) [to subsec. (a)(4) of this section] shall apply in the case of the primary insurance amounts of individuals who attain age 65 after the date of enactment of this Act [July 30, 1965].”

Amendment of subsec. (a)(4) by section 304 of Pub.L. 89-97 applicable with respect to monthly insurance benefits under this subchapter for and after the second month following July 1965, but only on the basis of applications filed in or after July, 1965, see section 304(o) of Pub.L. 89-97, set out as a note under section 402 of this title.

Amendment by section 320 of Pub.L. 89-97 applicable only with respect to calendar years after 1965, see section 320(c) of Pub.L. 89-97, set out as a note under section 3121 of Title 26, Internal Revenue Code.

1961 Acts. Section 101(b) of Pub.L. 87-64 provided that: “The amendment made by subsection (a) [amending subsec. (a) of this section] shall apply only in the case of monthly insurance benefits under title II of the Social Security Act [this subchapter] for months beginning on or after the effective date of this title [see note under section 402 of this title], and in the case of lump-sum death payments under such title [this subchapter] with respect to deaths on or after such effective date.”



Amendment of subsecs. (a)(4) and (b)(3) by Pub.L. 87-64 applicable with respect to monthly benefits for months beginning on or after Aug. 1, 1961, based on applications filed in or after March, 1961, and with respect to lump-sum death payments under this subchapter in the case of deaths on or after Aug. 1, 1961, see sections 102(f) and 109 of Pub.L. 87-64, set out as notes under section 402 of this title.

1960 Acts. Amendment of subsec. (h)(1) by Pub.L. 86-778 effective Sept. 13, 1960, see a section 103(v)(1) of Pub.L. 86-778, set out as a note under section 402 of this title.

Amendment of subsec. (g) by Pub.L. 86-778 effective in the manner provided in section 211(p) and (q) of Pub.L. 86-778, see section 211(p) to (s) of Pub.L. 86-778, set out as a note under section 403 of this title.

Section 303(d)(1) of Pub.L. 86-778 provided in part that the amendment of subsec. (e)(3) by such section 303(d)(1) of Pub.L. 86-778 shall be effective with respect to individuals who become entitled to benefits under section 402(a) of this title after 1960.

Section 303(d)(2) of Pub.L. 86-778 provided in part that the elimination of par. (4) of subsec. (e) by such section 303(d)(2) shall be effective with respect to individuals who meet any of the subparagraphs of par. (4) of subsec. (b) of this section, as amended by Pub.L. 86-778.

Section 303(e)(1) of Pub.L. 86-778 provided in part that the amendment of subsec. (f)(2)(A) by such section 303(e)(1) of Pub.L. 86-778, which substituted "1960" for "1954" in the opening provisions, and "filed such application after such calendar year" for "filed such application no earlier than six months after such calendar year" in cl. (iii) shall be effective with respect to applications for recomputation under subsec. (f)(2) of this section filed after 1960.

Section 303(e)(4)(B) of Pub.L. 86-778 provided in part that the amendment of subsec. (f)(4) by such section 303(e)(4)(B) of Pub.L. 86-778, which eliminated words "(without the application of clause (iii) thereof)" following "paragraph (2)(A)" in cl. (A), shall be effective in the case of deaths occurring on or after Sept. 13, 1960.

1958 Acts. Section 101(g) of Pub.L. 85-840 provided that: "The amendments made by this section [to subsecs. (a), (b)(1), (b)(5), (c), and (d) of this section, and sections 402(m) and 403(a) of this title] shall be applicable in the case of monthly benefits under Title II of the Social Security Act [this subchapter], for months after December 1958, and in the case of the lump-sum death payments under such title, with respect to deaths occurring after such month."

Amendment of subsec. (g) by section 205(m) of Pub.L. 85-840 applicable with respect to monthly benefits under this subchapter for August 1958 and succeeding months, see section 207(a) of Pub.L. 85-840, set out as a note under section 416 of this title.

1956 Acts. Section 109(b) of Act Aug. 1, 1956 provided that:

"The amendment made by subsection (a) [to subsec. (b)(4) of this section] shall apply in the case of monthly benefits under section 202 of the Social Security Act [section 402 of this title], and the lump-sum death payment under such section,

based on the wages and self-employment income of an individual--

“(1) who becomes entitled to benefits under subsection (a) of such section on the basis of an application filed on or after the date of enactment of this Act [Aug. 1, 1956]; or

“(2) who is (but for the provisions of subsection (f)(6) of section 215 of the Social Security Act [subsec. (f)(6) of this section] ) entitled to a recomputation of his primary insurance amount under subsection (f)(2)(A) of such section 215 [subsec. (f)(2)(A) of this section] based on an application filed on or after the date of enactment of this Act [Aug. 1, 1956]; or

“(3) who dies without becoming entitled to benefits under subsection (a) of such section 202 [section 402(a) of this title] and no individual was entitled to survivor's benefits and no lump-sum death payment was payable under such section 202 [section 402 of this title] on the basis of an application filed prior to such date of enactment [Aug. 1, 1956]; or

“(4) who dies on or after such date of enactment [Aug. 1, 1956] and whose survivors are (but for the provisions of subsection (f)(6) of such section 215 [subsec. (f)(6) of this section] ) entitled to a recomputation of his primary insurance amount under subsection (f)(4)(A) of such section 215 [subsec. (f)(4)(A) of this section]; or

“(5) who dies prior to such date of enactment [Aug. 1, 1956] and (A) whose survivors are (but for the provisions of subsection (f)(6) of such section 215 [subsec. (f)(6) of this section] ) entitled to a recomputation of his primary insurance amount under subsection (f)(4)(A) of such section 215 [subsec. (f)(4)(A) of this section], and (B) on the basis of whose wages and self-employment income no individual was entitled to survivor's benefits under such section 202 [section 402 of this title], and no lump-sum death payment was payable under such section, on the basis of an application filed prior to such date of enactment [Aug. 1, 1956] and no individual was entitled to such a benefit, without the filing of an application for the month in which this Act is enacted [August, 1956] or any month prior thereto.”

Section 115(d) of Act Aug. 1, 1956 provided that: “The amendments made by this section [to subsecs. (b)(1), (d)(5), and (e)(4) of this section] shall apply in the case of an individual (1) who becomes entitled (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title] ) to benefits under section 202(a) of such Act [section 402(a) of this title] after the date of enactment of this Act [Aug. 1, 1956], or (2) who dies without becoming entitled to benefits under such section 202(a) [section 402(a) of this title] and on the basis of whose wages and self-employment income an application for benefits or a lump-sum death payment under section 202 of such Act [section 402 of this title] is filed after the date of enactment of this Act [Aug. 1, 1956], or (3) who becomes entitled to benefits under section 223 of such Act [section 423 of this title], or (4) who files, after the date of enactment of this Act [Aug. 1, 1956], an application for a disability determination which is accepted as an application for purposes of section 216(i) of such Act [section 416(i) of this title].”

1954 Acts. Section 102(f) of Act Sept. 1, 1954, as amended by Pub.L. 86-778, Title III, § 303(k), Sept. 13, 1960, 74 Stat. 966; Pub.L. 89-97, Title III, § 302(f)(7), July 30, 1965, 79 Stat. 366, provided that:

“(1) The amendments [to subsecs. (a), (c), and (d) and to section 403(a) of this title] made by the preceding subsections, other than subsection (b) and paragraphs (1), (2), (3), and (4) of subsection (e), shall (subject to the provisions of paragraph (2) and notwithstanding the provisions of section 215(f)(1) of the Social Security Act [subsec. (f)(1) of this section] ) apply in the case of lump-sum death payments under section 202 of such Act [section 402 of this title] with respect to deaths occurring after, and in the case of monthly benefits under such section for months after, August 1954.

“(2)(A) The amendment [to subsec. (b)(4) of this section] made by subsection (b)(2) shall be applicable only in the case of monthly benefits for months after August 1954, and the lump-sum death payment in the case of death after August 1954, based on the wages and self-employment income of an individual (i) who does not become eligible for benefits under section 202(a) of the Social Security Act [section 402(a) of this title] until after August 1954, or (ii) who dies after August 1954, and without becoming eligible for benefits under such section 202(a) [section 402(a) of this title], or (iii) who is or has been entitled to have his primary insurance amount recomputed under section 215(f)(2) of the Social Security Act, as amended by subsection (e)(2) of this section [subsec. (f)(2) of this section], or under subsection (e)(5)(B) of this section [set out as a note under this section], or (iv) with respect to whom not less than six of the quarters elapsing after June 1953 are quarters of coverage (as defined in such Act), or (v) who files an application for a disability determination which is accepted as an application for purposes of section 216(i) of such Act [section 416(i) of this title], or (vi) who dies after August 1954, and whose survivors are (or would, but for the provisions of section 215(f)(6) of such Act [subsec. (f)(6) of this section], be) entitled to a recomputation of his primary insurance amount under section 215(f)(4)(A) of such Act, as amended by this Act [subsec. (f)(4)(A) of this section]. For purposes of the preceding sentence an individual shall be deemed eligible for benefits under section 202(a) of the Social Security Act [section 402(a) of this title] for any month if he was, or would upon filing application therefor in such month have been, entitled to such benefits for such month.

“(B) [Repealed. Pub.L. 89-97, Title III, § 302(f)(7), July 30, 1965, 79 Stat. 366, eff. Jan. 2, 1966.]

“(3) The amendments [to subsecs. (b)(1) to (3), (e), (f)(3)(B) ] made by subsections (b)(1), (e)(1), and (e)(3)(B) shall be applicable only in the case of monthly benefits based on the wages and self-employment income of an individual who does not become entitled to old-age insurance benefits under section 202(a) of the Social Security Act [section 402(a) of this title] until after August 1954, or who dies after August 1954 without becoming entitled to such benefits, or who files an application after August 1954 and is entitled to a recomputation under paragraph (2) or (4) of section 215(f) of the Social Security Act, as amended by this Act [subsec. (f)(2) or (4) of this section], or who is entitled to a recomputation under paragraph (2)(B) of this subsection, or who is entitled to a recomputation under paragraph (5) of subsection (e) [set out as a note under this section].

“(4) The amendments [to subsec. (f)(2) of this section] made by subsection (e)(2) shall be applicable only in the case of applications for recomputation filed after 1954. The amendment to subsec. (f)(4) made by subsection (e)(4) shall be applicable only in the case of deaths after 1954.

“(5) The amendments [to subsec. (f)(3)(A), (B) of this section] made by subparagraph (A) of subsection (e)(3) shall be applicable only in the case of applications for recomputation filed, or deaths occurring, after August 1954.

“(6) No increase in any benefit by reason of the amendments made by this section (other than subsection (e) ) or by reason of subparagraph (B) of paragraph (2) of this subsection shall be regarded as a recomputation for purposes of section 215(f) of the Social Security Act [subsec. (f) of this section].”

Amendment by section 106(c) of Act Sept. 1, 1954 applicable with respect to monthly benefits under this subchapter for months after June 1955, and with respect to lump-sum death payments under such subchapter in the case of deaths occurring after June 1955; but that no recomputation of benefits by reason of such amendments shall be regarded as a recomputation for purposes of subsec. (f) of this section, see section 106(h) of Act Sept. 1, 1954, set out as a note under section 413 of this title.

1952 Acts. For effective and termination dates of amendment by Act July 18, 1952, see section 3(f) and 3(g) of Act July 18, 1952, set out as a note under section 413 of this title.

Section 2(c)(1), (3) of Act July 18, 1952 provided that: “(1) The amendments made by subsection (a) [to subsec. (c)(1), (2), (4) of this section] shall, subject to the provisions of paragraph (2) of this subsection and notwithstanding the provisions of section 215(f)(1) of the Social Security Act [subsec. (f)(1) of this section], apply in the case of lump-sum death payments under section 202 of such Act [section 402 of this title] with respect to deaths occurring after, and in the case of monthly benefits under such section for any month after, August 1952.

“(3) The amendments made by subsection (b) [to sections 403(a) and 415(a)(1) of this title] shall (notwithstanding the provisions of section 215(f)(1) of the Social Security Act [subsec. (f)(1) of this section] ) apply in the case of lump-sum death payments under section 202 of such Act [section 402 of this title] with respect to deaths occurring after August 1952, and in the case of monthly benefits under such section for months after August 1952.”

1950 Acts. Section applicable (1) in case of monthly benefits for months after August, 1950, and (2) in the case of lump-sum death payments with respect to deaths after August, 1950, see section 104(b) of Act Aug. 28, 1950, set out as a note under section 409 of this title.

#### Termination of Reporting Requirements

For termination of reporting provisions of subsec. (i)(2)(C)(i) of this section, effective May 15, 2000, see Pub.L. 104-66, § 3003, as amended, set out as a note under 31 U.S.C.A. § 1113, and page 99 of House Document No. 103-7.

#### Transfer of Functions

“Director of the Office of Personnel Management” was substituted for “Civil Service Commission” in subsec. (h)(1) pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out in Appendix 1 to Title 5, Government Organization and Employees, which transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organization and Employees. The Secretary and Department of Health, Education and Welfare were redesignated the Secretary and Department of Health and Human Services by section 509(b) of Pub.L. 96-88 which is classified to section 3508(b) of Title 20, Education.

#### Savings Provisions

1960. --Section 303(i) of Pub.L. 86-778 provided that in the case of an application for recomputation under subsec. (f)(2)

of this section, the provisions of subsec. (f)(2) as in effect prior to Sept. 13, 1960, were to apply where the application was filed after 1954 and before 1961, and that in the case of an individual who died after 1954 and before 1961 and who was entitled to an old-age insurance benefit under section 402(a) of this title, the provisions of subsec. (f)(4) as in effect prior to Sept. 13, 1960 were to apply.

1958. --Section 101(i) of Pub.L. 85-840 provided that: "In the case of any individual to whom the provisions of subsection (b)(5) of section 215 of the Social Security Act [subsec. (b)(5) of this section], as amended by this Act, are applicable and on the basis of whose wages and self-employment income benefits are payable for months prior to January 1959, his primary insurance amount for purposes of benefits for such prior months shall, if based on an application for such benefits or for a recomputation of such amount, as the case may be, filed after December 1958, be determined under such section 215 [this section], as in effect prior to the enactment of this Act [Aug. 28, 1958], and, if such individual's primary insurance amount as so determined is larger than the primary insurance amount determined for him under section 215 [this section] as amended by this Act, such larger primary insurance amount (increased to the next higher dollar if it is not a multiple of a dollar) shall, for months after December 1958, be his primary insurance amount for purposes of such section 215 (and of the other provisions) of the Social Security Act [this section] as amended by this Act in lieu of the amount determined without regard to this subsection."

1952. --Subsec. (d) of section 2 of Act July 18, 1952, provided that:

"(1) Where--

"(A) an individual was entitled (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title] ) to an old-age insurance benefit under Title II of such Act [this subchapter] for August 1952;

"(B) two or more other persons were entitled (without the application of such section 202(j)(1) [section 402(j)(1) of this title] ) to monthly benefits under such title [this subchapter] for such month on the basis of the wages and self-employment income of such individual; and

"(C) the total of the benefits to which all persons are entitled under such title [this subchapter] on the basis of such individual's wages and self-employment income for any subsequent month for which he is entitled to an old-age insurance benefit under such title [this subchapter], would (but for the provisions of this paragraph) be reduced by reason of the application of section 203(a) of the Social Security Act, as amended by this Act [section 403(a) of this title],

then the total of benefits, referred to in clause (C), for such subsequent month shall be reduced to whichever of the following is the larger:

"(D) the amount determined pursuant to section 203(a) of the Social Security Act, as amended by this Act [section 403(a) of this title]; or

"(E) the amount determined pursuant to such section, as in effect prior to the enactment of this Act [July 18, 1952], for August 1952 plus the excess of (i) the amount of his old-age insurance benefit for August 1952 computed as if the amendments made by the preceding subsections of this section had been applicable in the case of such benefit for August 1952, over (ii) the amount of his old-age insurance benefit for August 1952.

“(2) No increase in any benefit by reason of the amendments made by this section or by reason of paragraph (2) of subsection (c) of this section shall be regarded as a recomputation for purposes of section 215(f) of the Social Security Act [subsec. (f) of this section].”

#### Termination of Reporting Requirements

Reporting requirement of subsec. (i)(2)(C)(i) of this section excepted from termination under Pub.L. 104-66, § 3003(a)(1), as amended, set out as a note under 31 U.S.C.A. § 1113, see Pub.L. 106-554, § 1(a)(7) [Title III, § 301], set out as a note under 31 U.S.C.A. § 1113.

#### Average Monthly Wage for Certain Individuals Entitled to Monthly Benefits or to Recomputation of Primary Insurance Amount for Months Prior to January 1961

Section 303(j) of Pub.L. 86-778 provided that:

“In the case of an individual whose average monthly wage is computed under the provisions of section 215(b) of the Social Security Act [former provisions of subsec. (b) of this section], as amended by this Act, and--

“(1) who is entitled, by reason of the provisions of section 202(j)(1) or section 223(b) of the Social Security Act [former provisions of section 402(j)(1) or section 423(b) of this title], to a monthly benefit for any month prior to January 1961, or

“(2) who is (or would, but for the fact that such recomputation would not result in a higher primary insurance amount for such individual, be) entitled, by reason of section 215(f) of the Social Security Act [subsec. (f) of this section], to have his primary insurance amount recomputed effective for a month prior to January 1961,

his average monthly wage as determined under the provisions of such section 215(b) [subsec. (b) of this section] shall be his average monthly wage for the purposes of determining his primary insurance amount for such prior month.”

#### “Base Quarter” in Calendar Year 1983

Section 111(d) of Pub.L. 98-21 provided that: “Notwithstanding any provision to the contrary in section 215(i) of the Social Security Act [subsec. (i) of this section], the ‘base quarter’ (as defined in paragraph (1)(A)(i) of such section) in the calendar year 1983 shall be a ‘cost-of-living computation quarter’ within the meaning of paragraph (1)(B) of such section (and shall be deemed to have been determined by the Secretary of Health and Human Services to be a ‘cost-of-living computation quarter’ under paragraph (2)(A) of such section) for all of the purposes of such Act [this chapter] as amended by this section and by other provisions of this Act [Social Security Amendments of 1983], without regard to the extent by which the Consumer Price Index has increased since the last prior cost-of-living computation quarter which was established under such paragraph (1)(B).”

#### Benefits in Certain Cases of Deaths Before September 1950

Section 109 of Act Sept. 1, 1954, as amended by Pub.L. 86-778, Title II, § 204(c), Sept. 13, 1960, 74 Stat. 948, provided that in the case of an individual who died prior to Sept. 1, 1950, and was not a fully insured individual when he died and who had at least six quarters of coverage under this subchapter, such individual was generally to be deemed to have died fully insured, his primary insurance amount was to be deemed to be computed under former provisions of subsec. (a)(2) of this section, the proof of support requirement in former provisions of section 402(h) of this title was not to be applicable where such proof was filed before September, 1956, and that the provisions of this section were to apply to monthly benefits under section 402 of this title for months after August, 1954, and in or prior to September, 1960.

#### Change of Wage Closing Date of Certain Individuals Dead or Eligible in 1952 to First Day of Quarter of Death or Entitlement

Section 6(c) of Act July 18, 1952 provided that: "In the case of an individual who died or became (without the application of section 202(j)(1) of the Social Security Act [former provisions of section 402(j)(1) of this title] ) entitled to old-age insurance benefits in 1952 and with respect to whom not less than six of the quarters elapsing after 1950 and prior to the quarter following the quarter in which he died or became entitled to old-age insurance benefits, whichever first occurred, are quarters of coverage, his wage closing date shall be the first day of such quarter of death or entitlement instead of the day specified in section 215(b)(3) of such Act [former provisions of subsec. (b)(3) of this section], but only if it would result in a higher primary insurance amount for such individual. The terms used in this paragraph shall have the same meaning as when used in title II of the Social Security Act [this subchapter]."

#### Combined Balance in Trust Funds Used in Determining OASDI Fund Ratio With Respect to Calendar Year 1984

Section 112(f) of Pub.L. 98-21, as amended Pub.L. 98-369, Div. B, Title VI, § 2662(b), July 18, 1984, 98 Stat. 1159, provided that: "Notwithstanding anything to the contrary in section 215(i)(1)(F) of the Social Security Act [subsec. (i)(1)(F) of this section] (as added by subsection (a)(4) of this section), the combined balance in the Trust Funds which is to be used in determining the 'OASDI fund ratio' with respect to the calendar year 1984 under such section shall be the estimated combined balance in such Funds as of the close of that year (rather than as of its beginning), including the taxes transferred under section 201(a) of such Act [section 401(a) of this title] on the first day of the year following that year."

#### Commission on the Social Security "Notch" Issue

Pub.L. 102-393, Title VI, § 635, Oct. 6, 1992, 106 Stat. 1777, as amended Pub.L. 103-123, Title VI, § 627, Oct. 28, 1993, 107 Stat. 1266, provided that:

**"(a) Establishment.**--There is established a Commission on the Social Security 'Notch' Issue (in this section referred to as the 'Commission').

**"(b) Membership.**--The Commission shall be composed of 12 members as follows:

**"(1)** 4 members appointed by the President from among officers or employees of the executive branch, private citizens of the United States, or both. Not more than 2 of the members appointed by the President shall be members of the same political party.

“(2) 2 members appointed by the Majority Leader of the United States Senate, in consultation with the Chairman of the Committee on Finance of the United States Senate, from among members of the Senate, private citizens of the United States, or both.

“(3) 2 members appointed by the Minority Leader of the United States Senate, in consultation with the Ranking Member of the Committee on Finance of the United States Senate, from among members of the Senate, private citizens of the United States, or both.

“(4) 2 members appointed by the Speaker of the House of Representatives, in consultation with the Chairman of the Committee on Ways and Means of the House of Representatives, from among members of the House of Representatives, private citizens of the United States, or both.

“(5) 2 members appointed by the Minority Leader of the House of Representatives, in consultation with the Ranking Member of the Committee on Ways and Means of the House of Representatives, from among members of the House of Representatives, private citizens of the United States, or both.

“(c) **Functions of the Commission.--**

“(1) **Study.--**The Commission shall conduct a comprehensive study of what has come to be known as the ‘notch’ issue. The study shall examine the causes of the controversy, whether there are inequities in the treatment of social security beneficiaries born in different years, whether legislative action should be taken, and the effect on social security trust funds of such legislative action.

“(2) **Findings and conclusions.--**The Commission shall transmit a report to the Congress not later than December 31, 1994. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with any recommendations the Commission considers appropriate. Any recommendations which would increase social security expenditures would have to be accompanied by cost estimates and options for financing such recommendations.

“(d) **Chairperson; meetings.--**The President shall designate a Chairperson from among the membership. The Commission shall meet at the call of the Chairperson or a majority of its members.

“(e) **Pay.--**Members of the Commission shall serve without compensation, except that members of the Commission who are private citizens of the United States shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Commission.

“(f) **Staff.--**

“(1) **Staff.--**Subject to rules prescribed by the Commission, the Chairperson may appoint and fix the pay of such personnel as the Chairperson considers appropriate.

“(2) **Staff of Department of Health and Human Services.--**Upon request of the Commission, the Secretary of Health and Human Services may detail, on a reimbursable basis, any of the personnel of the Department of Health and Human Services to the Commission to assist it in carrying out its duties under this section.

“(g) **Obtaining official data.--**The Commission may secure directly from any department or agency of the United States such information as is necessary and appropriate to enable it to carry out this section. Upon request of the Chairperson of the Commission, the head of that department or agency shall, to the extent permitted by law, furnish that information to the Commission.



**“(h) Termination.**--The Commission shall terminate 30 days after transmittal of its report to the Congress.

**“(i) Authorization of appropriations.**--There is authorized to be appropriated \$2,000,000 for purposes of this section, to remain available until expended, but in no event beyond the date of termination provided in subsection (h).”

#### Computation of Average Monthly Wage for Certain Individuals Entitled to Disability Insurance Benefits Prior to 1961

Section 303(g)(2) of Pub.L. 86-778 provided that: “Notwithstanding the amendments made by the preceding subsections of this section [to subsecs. (b), (d)(1), (3), (e)(2), and (f)(2), (4) of this section, former subsecs. (c)(2), (e)(3)(4), and (f)(3) of this section, and section 423(a)(2) of this title], in the case of any individual who was entitled (without regard to the provisions of section 223(b) of the Social Security Act [section 423(b) of this title] ) to a disability insurance benefit under such section 223 [section 423 of this title] for the month before the month in which he became entitled to an old-age insurance benefit under section 202(a) of such Act [section 402(a) of this title], or in which he died, and such disability insurance benefit was based upon a primary insurance amount determined under the provisions of section 215 of the Social Security Act [this section] in effect prior to the enactment of this Act [Sept. 13, 1960], the Secretary shall, in applying the provisions of such section 215(a) [subsec. (a) of this section] (except paragraph (4) thereof) [former provisions of subsec. (a)(4) of this section], for purposes of determining benefits payable under section 202 of such Act [section 402 of this title] on the basis of such individual's wages and self-employment income, determine such individual's average monthly wage under the provisions of section 215 of the Social Security Act [this section] in effect prior to the enactment of this Act [Sept. 13, 1960]. The provisions of this paragraph shall not apply with respect to any such individual, entitled to such old-age insurance benefits, (i) who applies, after 1960, for a recomputation (to which he is entitled) of his primary insurance amount under section 215(f)(2) of such Act [former provisions of subsec. (f)(2) of this section] or (ii) who dies after 1960 and meets the conditions for a recomputation of his primary insurance amount under section 215(f)(4) of such Act [former provisions of subsec. (f)(4) of this section].”

#### Computation of Increased Benefits for Dependents and Survivors on Benefit Rolls for August 1952

Section 2(c)(2) of Act July 18, 1952, as amended by Act Sept. 1, 1954, § 102(g), eff. Sept. 1, 1954, provided that:

**“(A)** In the case of any individual who is (without the application of section 202(j)(1) of the Social Security Act) [former provisions of section 402(j)(1) of this title] entitled to a monthly benefit under subsection (b), (c), (d), (e), (f), (g), or (h) of such section 202 [section 402 of this title], for August 1952, whose benefit for such month is computed through use of a primary insurance amount determined under paragraph (1) or (2) of section 215(c) of such Act [former provisions of subsec. (c) of this section], and who is entitled to such benefit for any succeeding month on the basis of the same wages and self-employment income, the amendments made by this section shall not (subject to the provisions of subparagraph (B) of this paragraph) apply for purposes of computing the amount of such benefit for such succeeding month. The amount of such benefit for such succeeding month shall instead be equal to the larger of (i) 112 1/2 per centum of the amount of such benefit (after the application of sections 203(a) and 215(g) of the Social Security Act [former provisions of sections 403(a) and 415(g) of this title] as in effect prior to the enactment of this Act [July 18, 1952] ) for August 1952, increased, if it is not a multiple of \$0.10, to the next higher multiple of \$0.10, or (ii) the amount of such benefit (after the application of sections 203(a) and 215(g) of the Social Security Act [former provisions of sections 403(a) and 415(g) of this title] as in effect prior to the enactment of this Act [July 18, 1952] ) for August 1952, increased by an amount equal to the product obtained by multiplying \$5 by the fraction applied to the primary insurance amount which

was used in determining such benefit, and further increased, if such product is not a multiple of \$0.10, to the next higher multiple of \$0.10. The provisions of section 203(a) of the Social Security Act, as amended by this section (and, for purposes of such section 203(a) [former provisions of section 403(a) of this title], the provisions of section 215(c)(4) of the Social Security Act, as amended by this section [former subsec. (c)(4) of this section] ), shall apply to such benefit as computed under the preceding sentence of this subparagraph, and the resulting amount, if not a multiple of \$0.10, shall be increased to the next higher multiple of \$0.10.

“(B) The provisions of subparagraph (A) shall cease to apply to the benefit of any individual under title II of the Social Security Act [this subchapter] for any month after August 1954.”

#### Computation of Increased Benefits to Individuals Entitled Thereto for August 1952

Section 6(e) of Act July 18, 1952, provided that: “In case the benefit of any individual for any month after August 1952 is computed under section 2(c)(2)(A) of this Act [set out as a note under this section] through use of a benefit (after the application of sections 203 and 215(g) of the Social Security Act [section 403 and former provisions of section 415(g) of this title] as in effect prior to the enactment of this Act [July 18, 1952] ) for August 1952 which could have been derived from either of two (and not more than two) primary insurance amounts, and such primary insurance amounts differ from each other by not more than \$0.10, then the benefit of such individual for such month of August 1952 shall, for the purposes of the last sentence of such section 2(c)(2)(A) [set out as a note under this section], be deemed to have been derived from the larger of such two primary insurance amounts.”

#### Computation of Primary Insurance Amount for Certain Individuals Who Were Fully Insured and Had Attained Retirement Age Prior to 1961

Section 303(g)(1) of Pub.L. 86-778, as amended by Pub.L. 87-64, Title I, § 103(d), June 30, 1961, 75 Stat. 138; Pub.L. 89-97, Title III, § 302(f)(6), July 30, 1965, 79 Stat. 366; Pub.L. 90-248, Title I, § 155(c), Jan. 2, 1968, 81 Stat. 866; Pub.L. 92-603, Title I, § 104(h), Oct. 30, 1972, 86 Stat. 1341, provided that: “In the case of any individual who both was fully insured and had attained retirement age prior to 1961 and (A) who becomes entitled to old-age insurance benefits after 1960, or (B) who dies after 1960 without being entitled to such benefits, then, notwithstanding the amendments made by the preceding subsections of this section [to subsecs. (b), (d)(1), (3), (e)(2), and (f)(2), (4) of this section, former subsecs. (c)(2), (e)(3), (4), and (f)(3) of this section, and section 423(a)(2) of this title], or the amendments made by the Social Security Amendments of 1965, 1967, 1969, and 1972 (and by Public Law 92-5) [See Tables for classification of Pub.L. 89-97, July 30, 1965, 79 Stat. 286, Pub.L. 90-248, Jan. 2, 1968, 81 Stat. 821, Pub.L. 91-172, Title X, Dec. 30, 1969, 83 Stat. 737, Pub.L. 92-603, Oct. 30, 1972, 86 Stat. 1329, Pub.L. 92-5, Mar. 17, 1971, 85 Stat. 5] the Secretary shall also compute such individual's primary insurance amount on the basis of such individual's average monthly wage determined under the provisions of section 215 of the Social Security Act [this section] in effect prior to the enactment of this Act with a closing date determined under section 215(b)(3)(B) of such Act [former subsec. (b)(3)(B) of this section] as then in effect, but only if such closing date would have been applicable to such computation had this section not been enacted. If the primary insurance amount resulting from the use of such an average monthly wage is higher than the primary insurance amount resulting from the use of an average monthly wage determined pursuant to the provisions of section 215 of the Social Security Act [this section], as amended by the Social Security Amendments of 1960 [Pub.L. 86-778], or (if such individual becomes entitled to old-age insurance benefits after the date of enactment of the Social Security Amendments of 1972 [Oct. 30, 1972], or dies after such date without becoming so entitled) as amended by the

Social Security Amendments of 1972 [Pub.L. 92-603], such higher primary insurance amount shall be the individual's primary insurance amount for purposes of such section 215 [this section]. The terms used in this subsection shall have the meaning assigned to them by title II of the Social Security Act [this subchapter]; except that the terms 'fully insured' and 'retirement age' shall have the meaning assigned to them by such title II [this subchapter] as in effect on September 13, 1960."

#### Computation of Primary Insurance Amount for Persons Entitled to Benefits After January 2 and Before February 1968

Section 155(a)(8) of Pub.L. 90-248 provided that:

"In any case in which--

"(A) any person became entitled to a monthly benefit under section 202 or 223 of the Social Security Act [section 402 or 423 of this title] after the date of enactment of this Act [Jan. 2, 1968] and before February 1968, and

"(B) the primary insurance amount on which the amount of such benefit is based was determined by applying section 215(d) of the Social Security Act [subsec. (d) of this section] as amended by this Act,

such primary insurance amount shall, for purposes of section 215(c) of the Social Security Act [subsec. (c) of this section], as amended by this Act, be deemed to have been computed on the basis of the Social Security Act [this chapter] in effect prior to the enactment of this Act [Jan. 2, 1968]."

#### Computation of Primary Insurance Amount of Individuals Who Died Prior to 1940

Section 205(c) of Pub.L. 86-778 provided that: "The primary insurance amount (for purposes of Title II of the Social Security Act [this subchapter] ) of any individual who died prior to 1940, and who had not less than six quarters of coverage (as defined in section 213 of such Act [section 413 of this title] ), shall be computed under section 215(a)(2) of such Act [former provisions of subsec. (a)(2) of this section]."

[Section 205(c) of Pub.L. 86-778 as applicable only in the case of monthly benefits under this subchapter for months after September, 1960, on the basis of applications filed in or after such month, see section 205(d) of Pub.L. 86-778, set out as an Effective Date of 1960 Amendments.note under section 402 of this title.]

#### Conversion of Disability Insurance Benefits to Old-Age Insurance Benefits

Section 201(f) of Pub.L. 92-5 provided that: "If an individual was entitled to a disability insurance benefit under section 223 of the Social Security Act [section 423 of this title] for December 1970 on the basis of an application filed in or after the month in which this Act is enacted [March, 1971], and became entitled to old-age insurance benefits under section 202(a) of such Act [section 402(a) of this title] for January 1971, then, for purposes of section 215(a)(4) of the Social Security Act [former provisions of subsec. (a)(4) of this section] (if applicable), the amount in column IV of the table appearing in such section 215(c) [probably means section 215(a) which is subsec. (a) of this section] for such individual shall be the amount in such column on the line on which in column II appears his primary insurance amount (as determined under section 215(c) of such Act [subsec. (c) of this section] ) instead of the amount in column IV equal to the

primary insurance amount on which his disability insurance benefit is based.”

Section 1002(f) of Pub.L. 91-172 provided that: “If an individual was entitled to a disability insurance benefit under section 223 of the Social Security Act [section 423 of this title] for December 1969 and became entitled to old-age insurance benefits under section 202(a) of such Act [section 402(a) of this title] for January 1970, or he died in such month, then, for purposes of section 215(a)(4) of the Social Security Act [former provisions of subsec. (a)(4) of this section] (if applicable), the amount in column IV of the table appearing in such section 215(a) [subsec. (a) of this section] for such individual shall be the amount in such column on the line on which in column II appears his primary insurance amount (as determined under section 215(c) of such Act [subsec. (c) of this section] ) instead of the amount in column IV equal to the primary insurance amount on which his disability insurance benefit is based.”

Section 101(f) of Pub.L. 90-248 provided that: “If an individual was entitled to a disability insurance benefit under section 223 of the Social Security Act [section 423 of this title] for the month of January 1968 and became entitled to old-age insurance benefits under section 202(a) of such Act [section 402(a) of this title] for the month of February 1968, or who died in such month, then, for purposes of section 215(a)(4) of the Social Security Act [subsec. (a)(4) of this section] (if applicable) the amount in column IV of the table appearing in such section 215(a) [former provisions of subsec. (a) of this section] for such individual shall be the amount in such column on the line on which in column II appears his primary insurance amount (as determined under section 215(c) of such Act [subsec. (c) of this section] ) instead of the amount in column IV equal to the primary insurance amount on which his disability insurance benefit is based.”

Section 301(e) of Pub.L. 89-97 provided that: “If an individual is entitled to a disability insurance benefit under section 223 of the Social Security Act [section 423 of this title] for December 1964 on the basis of an application filed after enactment of this Act [July 30, 1965] and is entitled to old-age insurance benefits under section 202(a) of such Act [section 402(a) of this title] for January 1965, then, for purposes of section 215(a)(4) of the Social Security Act [former provisions of subsec. (a)(4) of this section] (if applicable) the amount in column IV of the table appearing in such section 215(a) [subsec. (a) of this section] for such individual shall be the amount in such column on the line on which in column II appears his primary insurance amount (as determined under section 215(c) of such Act [subsec. (c) of this section] ) instead of the amount in column IV equal to his disability insurance benefit.”

Section 101(h) of Pub.L. 85-840 provided that: “If an individual was entitled to a disability insurance benefit under section 223 of the Social Security Act [section 423 of this title] for December 1958, and became entitled to old-age insurance benefits under section 202(a) of such Act [section 402(a) of this title], or died, in January 1959, then, for purposes of paragraph (4) of section 215(a) of the Social Security Act [former provisions of subsec. (a)(4) of this section], as amended by this Act, the amount in column IV of the table appearing in such section 215(a) [subsec. (a) of this section] for such individual shall be the amount in such column on the line on which in column II appears his primary insurance amount (as determined under subsection (c) of such section 215 [subsec. (c) of this section] ) instead of the amount in column IV equal to his disability insurance benefit.”

#### Cost-of-Living Increase in Benefits

Section 3(i) of Pub.L. 93-233 provided that; “For purposes of section 203(f)(8) [section 403(f)(8) of this title], so much of section 215(i)(1)(B) [subsec. (i)(1)(B) of this section] as follows the semicolon, and section 230(a) of the Social Security Act [section 430(a) of this title], the increase in benefits provided by section 2 of this Act [revising benefits table of subsec. (a) of this section and amending sections 427(a), (b) and 428(b)(1), (2), (c)(3)(A), (B) of this title] shall be considered an increase under section 215(i) of the Social Security Act [subsec. (i) of this section].”

#### Cost-of-Living Increases; Cost-of-Living Computation Quarter Determinations

Pub.L. 98-604, § 1, Oct. 30, 1984, 98 Stat. 3161, provided: "That (a) in determining whether the base quarter ending on September 30, 1984, is a cost-of-living computation quarter for the purposes of the cost-of-living increases under sections 215(i) and 1617 of the Social Security Act [subsec. (i) of this section and section 1382f of this title], the phrase 'is 3 percent or more' appearing in section 215(i)(1)(B) of such Act [subsec. (i)(1)(B) of this section] shall be deemed to read 'is greater than zero' (and the phrase 'exceeds, by not less than 3 per centum, such Index' appearing in section 215(i)(1)(B) of such Act [subsec. (i)(1)(B) of this section] as in effect in December 1978 shall be deemed to read 'exceeds such Index')."

"(b) For purposes of section 215(i) of such Act [subsec. (i) of this section], the provisions of subsection (a) shall not constitute a 'general benefit increase'."

#### Determination of Primary Insurance Amount of Individuals Who Died After 1939 and Prior to 1951

Section 204(b) of Pub.L. 86-778 provided that: "The primary insurance amount (for purposes of title II of the Social Security Act [this subchapter] ) of any individual who died after 1939 and prior to 1951 shall be determined as provided in section 215(a)(2) of such Act [former provisions of subsec. (a)(2) of this section]."

#### Disregarding OASDI Benefit Increases and Child's Insurance Benefit Payments Beyond Age 18 to Extent Attributable to Retroactive Effective Date of 1965 Amendments

Section 406 of Pub.L. 89-97 authorized a State to disregard, in determining the need for aid or assistance under State plans approved under subchapter I, IV, X, XIV, or XVI of this chapter, any amount paid to an individual under subchapter II of this chapter or the Railroad Retirement Act of 1937, former section 228a et seq. of Title 45, Railroads, by reason of the amendments made by section 326(a) of Pub.L. 89-97 to former sections 228a(q) and 228e(1)(9) of Title 45, for months occurring after December, 1964, and before the third month following July, 1965, in certain instances.

#### Disregarding of Income of OASDI Recipients and Railroad Retirement Recipients in Determining Need for Public Assistance

Section 1007 of Pub.L. 91-172, as amended by Pub.L. 91-306, § 2(b)(1), July 6, 1970, 84 Stat. 408; Pub.L. 91-669, Jan. 11, 1971, 84 Stat. 2038; Pub.L. 92-223 § 5, Dec. 28, 1971, 85 Stat. 810; Pub.L. 92-603, Title III, § 304, Oct. 30, 1972, 86 Stat. 1484, eff. Oct. 30, 1972, provided a minimum aid requirement in addition to the requirements imposed by law as conditions of approval of State plans for aid to individuals under subchapters I, X, XIV, or XVI of this chapter, in the case of any individual found eligible for aid for any month after March, 1970 and before January, 1974 who also received a monthly insurance benefit under this subchapter, and in the case of such an individual who also received a monthly annuity or pension under the Railroad Retirement Acts of 1935 or 1937, set out in former sections 215 et seq. and 228a et seq., respectively, of Title 45, Railroads.

#### Disregarding of Retroactive Payment of OASDI Benefit Increase and of Railroad Retirement Benefit Increase

Section 201(g) of Pub.L. 92-5 provided that: "Notwithstanding the provisions of sections 2(a)(10), 402(a)(7), 1002(a)(8), 1402(a)(8), and 1602(a)(13) and (14) of the Social Security Act [sections 302(a)(10), 602(a)(7), 1202(a)(8), 1352(a)(8), and 1382(a)(13) and (14) of this title], each State, in determining need for aid or assistance under a State plan approved under Title I, X, XIV, or XVI, or part A of Title IV, of such Act [subchapters I, X, XIV, or XVI, or part A of subchapter IV of this chapter], may disregard (and the plan may be deemed to require the State to disregard), in addition to any other amounts which the State is required or permitted to disregard in determining such need, any amount paid to an individual under Title II of such Act [subchapter II of this chapter] (or under the Railroad Retirement Act of 1937 [former section 228a et seq. of Title 45, Railroads] by reason of the first proviso in section 3(e) thereof [former section 228c(e) of Title 45] ), in any month after the month in which this Act is enacted [March, 1971], to the extent that (1) such payment is attributable to the increase in monthly benefits under the old-age survivors, and disability insurance system for January, February, March, or April 1971 resulting from the enactment of this title, and (2) the amount of such increase is paid separately from the rest of the monthly benefit of such individual for January, February, March, or April 1971."

Section 1006 of Title X of Pub.L. 91-172, as amended by Pub.L. 91-306, § 2(a)(1), July 6, 1970, 84 Stat. 407, provided that: "Notwithstanding the provisions of sections 2(a)(10) [section 302(a)(10) of this title], 402(a)(7) [section 602(a)(7) of this title], 1002(a)(8) [section 1202(a)(8) of this title], 1402(a)(8) [section 1352(a)(8) of this title], and 1602(a)(13) and (14) of the Social Security Act [subsecs. (a)(13) and (14) of section 1382 of this title], each State, in determining need for aid or assistance under a State plan approved under Title I, X, XIV, or XVI [subchapters I, X, XIV, or XVI of this chapter], or part A of Title IV, of such Act [part A of subchapter IV of this chapter], shall disregard (and the plan shall be deemed to require the State to disregard), in addition to any other amounts which the State is required or permitted to disregard in determining such need, any amount paid to an individual (1) under title II of such Act [this subchapter] (or under the Railroad Retirement Act of 1937 [former section 228a et seq. of Title 45, Railroads] by reason of the first proviso in section 3(e) thereof [former section 228c(e) of Title 45] ), in any month after December 1969, to the extent that (A) such payment is attributable to the increase in monthly benefits under the old-age, survivors, and disability insurance system for January or February 1970 resulting from the enactment of this title [this chapter], and (B) the amount of such increase is paid separately from the rest of the monthly benefit of such individual for January or February 1970; or (2) as annuity or pension under the Railroad Retirement Act of 1937 or the Railroad Retirement Act of 1935, if such amount is paid in a lump-sum to carry out any retroactive increase in annuities or pensions payable under the Railroad Retirement Act of 1937 or the Railroad Retirement Act of 1935 [former section 215 et seq. of Title 45] brought about by reason of the enactment (after May 30, 1970 and prior to December 31, 1970) of any Act which increases, retroactively, the amount of such annuities or pensions."

#### Increase of Old-Age or Disability Insurance Benefits Following Increase in Primary Insurance Amount or Entitlement to Benefits on Higher Amount

Section 101(f) of Pub.L. 92-603 provided that: "Whenever an insured individual is entitled to benefits for a month which are based on a primary insurance amount under paragraph (1) or paragraph (3) of section 215(a) of the Social Security Act [subsec. (a)(1) or (3) of this section] and for the following month such primary insurance amount is increased or such individual becomes entitled to benefits on a higher primary insurance amount under a different paragraph of such section 215(a) [subsec. (a) of this section], such individual's old-age or disability insurance benefit (beginning with the effective month of the increased primary insurance amount) shall be increased by an amount equal to the difference between the higher primary insurance amount and the primary insurance amount on which such benefit was based for the month prior to such effective month, after the application of section 202(q) of such Act [section 402(q) of this title] where applicable, to such difference."

#### Lag Recomputation Preserved for Certain Individuals Eligible or Dead Prior to September 1954

Section 102(e)(8) of Act Sept. 1, 1954, as amended by Pub.L. 86-778, Title III, § 304(c), Sept. 13, 1960, 74 Stat. 966, provided that: "In the case of an individual who became (without the application of section 202(j)(1) [former provisions of section 402(j)(1) of this title] ) entitled to old-age insurance benefits or died prior to September 1954, the provisions of section 215(f)(3) [former subsec. (f)(3) of this section] as in effect prior to the enactment of this Act [Sept. 1, 1954] shall be applicable as though this Act had not been enacted but only if such individual files the application referred to in subparagraph (A) of such section prior to January 1961 or (if he dies without filing such application) his death occurred prior to January 1961."

#### Recalculation of Primary Insurance Amounts Applicable to Certain Beneficiaries

Section 2201(e) of Pub.L. 97-35, which provided for recalculation of primary insurance amounts for certain beneficiaries and which was formerly set out as a note under this section, was repealed by Pub.L. 97-123, § 2(i), Dec. 29, 1981, 95 Stat. 1661.

#### Recomputation of Primary Insurance Amount in Certain Cases Where Application for Recomputation is Filed On or After September 13, 1960

Section 303(h) of Pub.L. 86-778 provided that:

"In any case where application for recomputation under section 215(f)(3) of the Social Security Act [former subsec. (f)(3) of this section] is filed on or after the date of the enactment of this Act [Sept. 13, 1960] with respect to an individual for whom the last previous computation of the primary insurance amount was based on an application filed prior to 1961, or who died before 1961, the provisions of section 215 of such Act [this section] as in effect prior to the enactment of this Act shall apply except that--

"(1) such recomputation shall be made as provided in section 215(a) of the Social Security Act [subsec. (a) of this section] (as in effect prior to the enactment of this Act) and as though such individual first became entitled to old-age insurance benefits in the month in which he filed his application for such recomputation or died without filing such an application, and his closing date for such purposes shall be as specified in such section 215(f)(3) [former subsec. (f)(3) of this section]; and

"(2) the provisions of section 215(b)(4) of the Social Security Act [former provisions of subsec. (b)(4) of this section] (as in effect prior to the enactment of this Act) shall apply only if they were applicable to the last previous computation of such individual's primary insurance amount, or would have been applicable to such computation if there had been taken into account--

"(A) his wages and self-employment income in the year in which he became entitled to old-age insurance benefits or filed application for the last previous recomputation of his primary insurance amount, where he is living at the time of the application for recomputation under this subsection, or

"(B) his wages and self-employment income in the year in which he died without becoming entitled to old-age insurance benefits, or (if he was entitled to such benefits) the year in which application was filed for the last previous

computation of his primary insurance amount or in which he died, whichever first occurred, where he has died at the time of the application for such recomputation.

If the primary insurance amount of an individual was recomputed under section 215(f)(3) of the Social Security Act [former subsec. (f)(3) of this section] as in effect prior to the enactment of this Act, and such amount would have been larger if the recomputation had been made under such section as modified by this subsection, then the Secretary shall recompute such primary insurance amount under such section as so modified, but only if an application for such recomputation is filed on or after the date of the enactment of this Act [Sept. 13, 1960]. A recomputation under the preceding sentence shall be effective for and after the first month for which the last previous recomputation of such individual's primary insurance amount under such section 215 [this section] was effective, but in no event for any month prior to the twenty-fourth month before the month in which the application for a recomputation is filed under the preceding sentence."

#### Right to Recomputation Under Law Prior to Enactment of Act September 1, 1954

Section 102(e)(5) of Act Sept. 1, 1954, as amended by Pub.L. 86-778, Title III, § 304(b), Sept. 13, 1960, 74 Stat. 966, provided that:

"(A) In the case of any individual who upon filing application therefor before September 1954, would (but for the provisions of section 215(f)(6) of the Social Security Act [former provisions of subsec. (f)(6) of this section].) have been entitled to a recomputation under subparagraph (A) or (B) of section 215(f)(2) of such Act [former provisions of subsec. (f)(2)(A) or (B) of this section] as in effect prior to the enactment of this Act [Sept. 1, 1954], the Secretary shall recompute such individual's primary insurance amount, but only if he files an application therefor or, in case he died before filing such application, an application for monthly manner as for an individual to whom subsection (a)(1) of such section, as in effect prior to the enactment of this Act [Sept. 1, 1954], is applicable; and such recomputation shall take into account only such wages and self-employment income as would be taken into account under section 215(b) of the Social Security Act [section 415(b) of this title] if the month in which the application for recomputation is filed, or if the individual died without filing the application for recomputation, the month in which he died, were deemed to be the month in which he became entitled to old-age insurance benefits. In the case of monthly benefits, such recomputation shall be effective for and after the month in which such application for recomputation is filed or, if the individual has died without filing the application, for and after the month in which the person filing the application for monthly survivor benefits becomes entitled to such benefits.

"(B) In the case of--

"(i) any individual who is entitled to a recomputation under subparagraph (A) of section 215(f)(2) of the Social Security Act [former provisions of subsec. (f)(2)(A) of this section] as in effect prior to the enactment of this Act [Sept. 1, 1954] on the basis of an application filed after August 1954, or who died after such month leaving any survivors entitled to a recomputation under section 215(f)(4) of the Social Security Act [former provisions of subsec. (f)(4) of this section] as in effect prior to the enactment of this Act [Sept. 1, 1954] on the basis of his wages and self-employment income, and whose sixth quarter of coverage after 1950 was acquired after August 1954 or with respect to whom the twelfth month referred to in such subparagraph (A) occurred after such month, and

"(ii) any individual who is entitled to a recomputation under section 215(f)(2)(B) of the Social Security Act [former provisions of subsec. (f)(2)(B) of this section] as in effect prior to the enactment of this Act [Sept. 1, 1954] on the basis



of an application filed after August 1954, or who died after August 1954 leaving any survivors entitled to a recomputation under section 215(f)(4) of the Social Security Act [former provisions of subsec. (f)(4) of this section] as in effect prior to the enactment of this Act [Sept. 1, 1954] on the basis of his wages and self-employment income, and whose sixth quarter of coverage after 1950 was acquired after August 1954 or who did not attain the age of seventy-five prior to September, 1954, the recomputation of his primary insurance amount shall be made in the manner provided in section 215 of the Social Security Act, as amended by this Act [this section], for computation of such amount, except that his closing date, for purposes of subsection (b) of such section 215, shall be determined as though he became entitled to old-age insurance benefits in the month in which he filed such application for or, if he has died, in the month in which he died. In the case of monthly benefits, such recomputation shall be effective for and after the month in which such application for recomputation is filed or, if the individual has died without filing the application, for and after the month in which the person filing the application for monthly survivors benefits becomes entitled to such benefits.

“(C) An individual or, in case of his death, his survivors entitled to a lump-sum death payment or to monthly benefits under section 202 of the Social Security Act [section 402 of this title] on the basis of his wages and self-employment income shall be entitled to a recomputation of his primary insurance amount under section 215(f)(2) or section 215(f)(4) of the Social Security Act [former provisions of subsec. (f)(2), (4) of this section] as in effect prior to the date of enactment of this Act [Sept. 1, 1954] only if (i) he had not less than six quarters of coverage in the period after 1950 and prior to January 1, 1955, and (ii) either the twelfth month referred to in subparagraph (A) of such section 215(f)(2) occurred prior to January 1, 1955, or he attained the age of 75 prior to 1955, and (iii) he meets the other conditions of entitlement to such a recomputation. No individual shall be entitled to a computation under subparagraph (A) or (B) of this paragraph if his primary insurance amount has previously been recomputed under either of such subparagraphs.

“(D) Notwithstanding the provisions of subparagraphs (A), (B), and (C), the primary insurance amount of an individual shall not be recomputed under such provisions unless such individual files the application referred to in subparagraph (A) or (B) prior to January 1961 or, if he dies without filing such application, his death occurred prior to January 1961.”

#### Special Starting and Closing Dates for Certain Individuals for Computation of 1957 Benefit Amounts

Section 110 of Act Aug. 1, 1956 provided that: “In the case of an individual who died or became (without the application of section 202(j)(1) of the Social Security Act [former provisions of section 402(j)(1) of this title] ) entitled to old-age insurance benefits in 1957 and with respect to whom not less than six of the quarters elapsing after 1955 and prior to the quarter following the quarter in which he died or became entitled to old-age insurance benefits, whichever first occurred, are quarters of coverage, his primary insurance amount shall be computed under section 215(a)(1)(A) of such Act [former provisions of subsec. (a)(1)(A) of this section], with a starting date of December 31, 1955, and a closing date of July 1, 1957, but only if it would result in a higher primary insurance amount. For the purposes of section 215(f)(3)(C) of such Act [former subsec. (f)(3)(C) of this section], the determination of an individual's closing date under the preceding sentence shall be considered as a determination of the individual's closing date under section 215(b)(3)(A) of such Act [former provisions of subsec. (b)(3)(A) of this section], and the recomputation provided for by such section 215(f)(3)(C) [former subsec. (f)(3)(C) of this section] shall be made using July 1, 1957, as the closing date, but only if it would result in a higher primary insurance amount. In any such computation on the basis of a July 1, 1957, closing date, the total of his wages and self-employment income after December 31, 1956, shall, if it is in excess of \$2,100, be reduced to such amount.”

#### Special Starting and Closing Dates for Certain Individuals for Computation of 1956 Benefit Amounts

Section 102(e)(6) of Act Sept. 1, 1954 provided that: "In the case of an individual who died or became (without the application of section 202(j)(1) of the Social Security Act [former provisions of section 402(j)(1) of this title] ) entitled to old-age insurance benefits in 1956 and with respect to whom not less than six of the quarters elapsing after 1954 and prior to the quarter following the quarter in which he died or became entitled to old-age insurance benefits, whichever first occurred, are quarters of coverage, his primary insurance amount shall be computed under section 215(a)(1)(A) of such Act, as amended by this Act [former provisions of subsec. (a)(1)(A) of this section], with a starting date of December 31, 1954, and a closing date of July 1, 1956, but only if it would result in a higher primary insurance amount. For the purposes of section 215(f)(3)(C) of such Act [former subsec. (f)(3)(C) of this section], the determination of an individual's closing date under the preceding sentence shall be considered as a determination of the individual's closing date under section 215(b)(3)(A) of such Act [former provisions of subsec. (b)(3)(A) of this section], and the recomputation provided for by such section 215(f)(3)(C) [former subsec. (f)(3)(C) of this section] shall be made using July 1, 1956, as the closing date, but only if it would result in a higher primary insurance amount. In any such computation on the basis of a July 1, 1956 closing date, the total of his wages and self-employment income after December 31, 1955, shall, if it is in excess of \$2,100, be reduced to such amount."

#### Study of Feasibility of Increasing Benefits

Section 404 of Act Sept. 1, 1954 authorized the Secretary of Health, Education, and Welfare [now Secretary of Health and Human Services] to conduct a feasibility study with a view toward increasing the minimum old-age insurance benefit under this subchapter to \$55, \$60, or \$75 per month and required him to report the results of his study to the Congress at the earliest practicable date.

#### Table Modification and Extension; Effective Date; Publication in Federal Register

Section 203(f) of Pub.L. 93-66 provided that effective June 1, 1974, the Secretary of Health, Education, and Welfare [now Secretary of Health and Human Services] would prescribe and publish in the Federal Register all necessary modifications and extensions in the table formerly contained in subsec. (a) of this section.

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Annual adjustment of certain benefit rates, see 38 USCA § 5312.

Annuity supplement, see 5 USCA § 8421.

Computation of OASDI fund ratio, effect of early delivery of benefit checks, see 42 USCA § 909.

Computation or determination of widow's or widower's insurance benefit, see 5 USCA § 8442.

Cost-of-living adjustments,

Generally, see 42 USCA § 1382f.

Computation of annuities, see 45 USCA §§ 231b and 231c.

Eligibility for medical assistance for aged, blind, or disabled individuals, see 42 USCA § 1383c.

Payments to State for operation of supplementation program, see 42 USCA § 1382g.

Qualified plans, see 26 USCA § 415.  
 Off-set relating to certain benefits under Social Security Act, see 5 USCA § 8349.  
 Social Security domestic employment reform and applicable dollar threshold, see 26 USCA § 3121.

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Employment Discrimination Law and Litigation App Y, EEOC Enforcement Guidance: Effect of Representations Made in Applications for Disability Benefits on the Determination of Whether a Person...

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Social Security Law and Practice § 23:4, Derivation of Primary Insurance Amount from Wage Earner's Income.

Social Security Law and Practice § 23:5, Special Rule for Inclusion of Money Paid to Commissioned Officers of Public Health Service.

Social Security Law and Practice § 23:6, Rounding of Benefit Totals.

Social Security Law and Practice § 23:9, Identifying the Benchmark Year.

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Social Security Law and Practice § 24:3, Exemptions from the Reduction Calculation.

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Social Security Law and Practice § 23:16, Dropout Years in Disability Benefit Computations.

Social Security Law and Practice § 23:17, Dropout Years in Disability Benefit Computations--Child-Care Dropout Years.

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Social Security Law and Practice § 23:26, Reference to Table to Find Primary Insurance Amount.

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Social Security Law and Practice § 23:32, Elimination of Manual Computation Methods.

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Social Security Law and Practice § 24:13, Applicability of Cost-Of-Living Increase to Various Benefits.

Social Security Law and Practice § 24:14, Basic Cost-Of-Living Calculation.

Social Security Law and Practice § 24:15, Basic Cost-Of-Living Calculation--Base Quarters Defined.

Social Security Law and Practice § 24:16, Basic Cost-Of-Living Calculation--Computation Quarters Defined.

Social Security Law and Practice § 24:17, Basic Cost-Of-Living Calculation--Applicable Increase Percentage.

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West's Federal Administrative Practice § 6208, Social Security Benefits--Calculating Amount.

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## NOTES OF DECISIONS

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### 1. Constitutionality

Former provision of this section allowing women, who as such have been unfairly hindered from earning as much as



NO. 45692-3-II

**COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON**

PATRICK J. BIRGEN,

Appellant,

v.

WASHINGTON STATE DEPARTMENT  
OF LABOR AND INDUSTRIES,

Respondent.

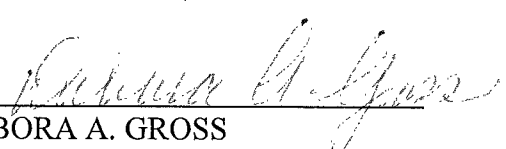
**DECLARATION OF  
SERVICE**

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, declares that on the below date, I mailed the Department's Brief of Respondent and this Declaration of Service to all parties on record as follows:

**Via Email and First Class U.S. Mail, Postage Prepaid, to:**

Dorian Whitford  
Vail Cross & Associates  
PO Box 5707  
Tacoma, WA 98415-0707

DATED this 16 day of July, 2014 at Tumwater, WA.

  
DEBORA A. GROSS  
Legal Assistant 3  
(360) 586-7751

# WASHINGTON STATE ATTORNEY GENERAL

**July 16, 2014 - 11:58 AM**

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