No. 19-199

In the Supreme Court of the United States

MANFREDO M. SALINAS, PETITIONER

v.

UNITED STATES RAILROAD RETIREMENT BOARD

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT

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QUESTION PRESENTED

Whether the United States Railroad Retirement Board's denial of a request to reopen a prior benefits determination is subject to judicial review under 45 U.S.C. 231g and 355(f).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-4a) is not published in the Federal Reporter but is reprinted at 765 Fed. Appx. 79. The decisions of the United States Railroad Retirement Board (Board) (Pet. App. 5a-8a) and the Board's Bureau of Hearings and Appeals (Pet. App. 9a-17a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 17, 2019. On May 20, 2019, Justice Alito extended the time within which to file a petition for a writ of certiorari to and including August 15, 2019, and the petition was filed on that date. The petition for a writ of certiorari was granted on January 10, 2020. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reproduced in the appendix to this brief. App., *infra*, 1a-26a.

STATEMENT

This case involves the availability of judicial review for decisions of the United States Railroad Retirement Board (Board) denying reopening of prior benefits determinations. Petitioner applied for disability benefits in 2006, and the agency denied his claim in an initial determination. Pet. App. 12a. Petitioner filed an untimely motion for reconsideration, which the agency also denied, concluding that petitioner had failed to establish good cause for his late filing. *Ibid.* Nearly a decade later, petitioner moved to reopen the prior benefits denial, see Administrative Record (A.R.) 332, but the Board determined that the case did not warrant reopening under its regulations. Pet. App. 8a. Petitioner subsequently filed a petition for review, and the Fifth Circuit dismissed for lack of jurisdiction on the ground that the relevant statutes limit judicial review to a discrete class of Board determinations, which does not include denials of reopening. *Id.* at 1a-4a.

A. Legal Framework

1. The Board is an "independent agency in the executive branch" composed of three presidentially appointed members. 45 U.S.C. 231f(a). The Board administers two statutes providing separate, but related, systems of benefits for railroad employees.

The first statute—the one directly at issue here—is the Railroad Retirement Act of 1974 (RRA), 45 U.S.C. 231 *et seq.*, which establishes a system of disability and retirement benefits. The RRA covers various categories of former railroad employees, including those "who

have attained retirement age," 45 U.S.C. 231a(a)(1)(i), and those "whose permanent physical or mental condition is such that they are unable to engage in any regular employment." 45 U.S.C. 231a(a)(1)(v). To obtain benefits, an applicant must submit evidence demonstrating his eligibility. See generally 45 U.S.C. 231a(a)(1); 20 C.F.R. Pt. 216. Benefits under the RRA typically take the form of long-term annuities. See 45 U.S.C. 231a.

The second statute is the Railroad Unemployment Insurance Act (RUIA), 45 U.S.C. 351 *et seq.* The RUIA offers per-day benefits for work missed as a result of unemployment or sickness. See generally 45 U.S.C. 352 (2020). Unlike annuities in the RRA context, benefits under the RUIA are short-term, and claimants must reapply every two weeks as long as their unemployment persists. See 20 C.F.R. 325.4(b); see also 45 U.S.C. 352(c)(1)(A) (capping maximum benefit days in a single year at 130).

2. The RUIA and the RRA and their respective implementing regulations set forth largely parallel processes for claim application and exhaustion.

a. The RRA authorizes the Board to delegate the power to make initial benefits determinations to subordinate officials, but guarantees a "right to appeal to the Board" for "any person aggrieved by a decision on his application for an annuity or other benefit." 45 U.S.C. 231f(b)(3). The statute otherwise leaves it to the Board to flesh out the procedures for administrative review, conferring the power to "establish and promulgate rules and regulations to provide for the adjustment of all controversial matters arising in the administration of [the RRA]." 45 U.S.C. 231f(b)(5).

Pursuant to this grant of authority, the Board has adopted regulations specifying a multistep review process. First, an individual seeking benefits must file a claim with the Board demonstrating his eligibility, see 45 U.S.C. 231a(a); 20 C.F.R. Pt. 216, and a claims examiner then issues an "initial decision" on the claim. 20 C.F.R. 260.1(a). A claimant who receives an adverse initial determination may request reconsideration from the Reconsideration Section within 60 days, unless the claimant shows that there is "good cause" to excuse the delay. 20 C.F.R. 260.3(a)-(c). The regulations provide a nonexclusive list of circumstances that establish good cause, such as a serious illness affecting the claimant or the claimant's immediate family member. 20 C.F.R. 260.3(d). If the Reconsideration Section rejects the request, the claimant may seek further review in the Bureau of Hearings and Appeals (Bureau) within 60 days, again unless the claimant shows "good cause." 20 C.F.R. 260.5(a)-(c). Lastly, if the Bureau rules against the claimant, he may then pursue a "final appeal" to the Board. 20 C.F.R. 260.9(a); see 45 U.S.C. 231f(b)(3). Absent good cause, the claimant must file the appeal within 60 days. 20 C.F.R. 260.9(b)-(c).

Although the RRA does not include a provision for reopening of final agency decisions, the Board has provided for reopening by regulation. See 20 C.F.R. 261.1(b). A final decision may "be reopened and revised" by the agency entity that issued the original decision or by "a higher level" of the agency. 20 C.F.R. 261.1(a). A final decision may be reopened within 12 months "for any reason." 20 C.F.R. 261.2(a). Reopening is permissible within four years "if there is new and material evidence or there was adjudicative error not

consistent with the evidence of record at the time of adjudication." 20 C.F.R. 261.2(b). And finally, a decision may be reopened at any time for certain specified reasons, such as if the decision was "obtained by fraud" or "to correct clerical error." 20 C.F.R. 261.2(c)(1) and (7). Ultimately, despite these general rules, the three-member Board retains plenary discretion over reopening. 20 C.F.R. 261.11 ("[T]he Board may direct that any decision, which is otherwise subject to reopening under this part, shall not be reopened or direct that any decision, which is otherwise not subject to reopening under this part, shall be reopened.").

b. A separate set of statutory and regulatory provisions governs administrative review under the RUIA. Like the RRA, the RUIA permits the Board to delegate decision-making power to subordinate officials, but guarantees administrative review of initial benefits decisions and other key substantive determinations, 45 U.S.C. 355(c). Specifically, Section 355(c) requires the Board to provide internal review for four basic categories of decisions: a denial of benefits on the ground that the claimant is not a "qualified employee" or a grant of benefits at less than the proper rate, 45 U.S.C. 355(c)(2); a denial of benefits on any other ground, 45 U.S.C. 355(c)(1); a determination of whether a company qualifies as a covered employer, 45 U.S.C. 355(c)(4); and a grant of benefits when the base-year employer objects for any reason other than that it is not a covered employer, 45 U.S.C. 355(c)(3).[1] Section 355(c) also provides for notice to, and participation by, various

[1] A base-year employer is the company that employed the claimant in the year preceding the benefits claim. See 45 U.S.C. 351(n). Base-year employers are interested parties because a grant of benefits may affect their contribution rate. See 45 U.S.C. 358.

interested parties other than the claimant himself, such as the claimant's base-year employer. 45 U.S.C. 355(b)-(c). And it states that "[a]ny properly interested party notified * * * of his right to participate in the proceedings may obtain a review of any such decision by which he claims to be aggrieved or the determination of any issue therein in the manner provided in subsection (f)." 45 U.S.C. 355(c); see pp. 6-7, *infra* (discussing Section 355(f)).

The RUIA also authorizes the Board to promulgate regulations further delineating the administrative review process. See 45 U.S.C. 355(d) ("The Board shall prescribe regulations governing the filing of cases with and the decision of cases by reviewing bodies, and the review of such decisions."). Pursuant to this grant of authority, the Board has adopted a review scheme that largely parallels the RRA framework and provides multiple internal levels of review, including reconsideration, intermediate appeal, and final appeal. See generally 20 C.F.R. Pt. 320. In addition, although the RUIA does not mention reopening, the Board has also provided for reopening of final RUIA determinations. See generally 20 C.F.R. Pt. 349. As under the RRA, the Board's RUIA regulations specify various circumstances permitting reopening, 20 C.F.R. 349.2, but the decision remains "solely within the discretion of the Board," 20 C.F.R. 349.1(a); see also 20 C.F.R. 349.8 (retaining discretion of three-member Board to direct reopening of any decision).

3. Both the RUIA and the RRA provide for judicial review following exhaustion of administrative remedies. The RUIA establishes the basic framework. Section 355(f) identifies four different categories of parties eligible to seek judicial review: "[a]ny claimant," "any

railway labor organization" satisfying certain criteria, "any base-year employer of the claimant," and "any other party aggrieved by a final decision under subsection (c) of this section." 45 U.S.C. 355(f). Any such party may, after exhausting administrative remedies, "obtain a review of any final decision of the Board by filing a petition for review" in the Court of Appeals for the D.C. Circuit, the Seventh Circuit, or the circuit in which the petitioner resides or maintains his or her principal place of business "within ninety days after the mailing of notice of such decision to the claimant or other party." *Ibid.* On review, "[t]he findings of the Board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive." *Ibid.*

Section 355(g), in turn, governs the "[f]inality of Board decisions" under the RUIA and makes clear that Section 355(f) is the exclusive path to judicial review. 45 U.S.C. 355(g) (emphasis omitted). It provides that the Board's "determination of any claim for benefits or refund, the determination of any other matter pursuant to subsection (c) of this section, and the determination of the Board that the unexpended funds in the account are available for the payment of any claim for benefits or refund" are "binding and conclusive for all purposes and upon all persons," "except as provided in subsection (f)." *Ibid.*; see p. 22 n.4, *infra* (discussing "unexpended funds" clause). And to reinforce the point, it states that such determinations "shall not be subject to review in any manner other than that set forth in subsection (f)." 45 U.S.C. 355(g).

The RRA incorporates the RUIA framework for judicial review, with minor exceptions. Section 231g provides that Board decisions "determining the rights or

liabilities of any person under [the RRA] shall be subject to judicial review in the same manner, subject to the same limitations, and all provisions of law shall apply in the same manner as though the decision were a determination of corresponding rights or liabilities under the" RUIA. 45 U.S.C. 231g. The RRA modifies the RUIA statute of limitations for a particular subset of decisions, stating that the limitations period for "review of a decision with respect to an annuity, supplemental annuity, or lump-sum benefit * * * shall be one year" after notice of the decision is provided to the claimant. *Ibid.*

B. Procedural History

1. Petitioner is a former railroad employee who has filed four applications for disability benefits. Pet. App. 9a-12a. Petitioner filed his first application on March 3, 1992. *Id.* at 11a-12a. The agency issued an initial determination denying the application after petitioner's spouse informed the Board that petitioner had returned to work, finding that he was not disabled for all regular work. *Id.* at 12a. Petitioner did not seek administrative review of that decision. *Ibid.*

On April 20, 1994, petitioner filed a second application. The agency again issued an initial determination denying the claim because petitioner had failed to show that he was disabled such that he could not maintain any regular employment. Pet. App. 12a. Again, petitioner did not seek administrative review of that decision. *Ibid.*

On February 28, 2006, petitioner filed a third application. Pet. App. 12a. On August 28, 2006, a claims examiner denied petitioner's request for a "total and permanent" disability annuity, again on the ground that pe-

titioner had failed to show that he was unable to maintain any regular employment. A.R. 205. Based on medical records, the examiner concluded that petitioner had a "normal range of motion, muscle strength and sensation in [his] shoulders, arms, left hand, legs, knees and feet," though he had "some decreased grip strength in [his] right hand." *Ibid.* The examiner further observed that "[a] psychiatric examination revealed some depression, however, [petitioner] performed well on mental status and concentration testing." *Ibid.* The examiner also denied an occupational disability annuity on the ground that petitioner had not attained the age of 60 or 240 months of service. *Ibid.*

With the assistance of counsel, petitioner submitted an untimely request for reconsideration on November 30, 2006, urging the agency to excuse the late filing due to his limited English proficiency, inability to obtain medical records, and mental-health issues. A.R. 207. The Reconsideration Section denied petitioner's request, explaining that "[l]ate filing is allowed only in situations where good cause for the delay is evident, such as serious illness which prevented the annuitant from contacting the Board, a death or serious illness in the annuitant's immediate family, the destruction of important and relevant records, or the failure to be notified of a decision." A.R. 208. The denial notice informed petitioner that although no further action could be taken on his application for benefits, he could seek reconsideration of the timeliness determination itself within 60 days. *Ibid.* Petitioner did not seek further review. Pet. App. 12a.

In December 2013, petitioner filed a fourth application for disability benefits. Pet. App. 9a. This time, the agency granted the application. *Id.* at 6a. The claims

examiner concluded that petitioner was disabled and unable to maintain regular employment as of October 9, 2010, and was eligible to begin receiving annuity payments as of December 1, 2012. *Id.* at 9a. Petitioner unsuccessfully sought reconsideration of the annuity start date calculated by the claims examiner, and then appealed. *Ibid.* On appeal, in addition to challenging the annuity start date, petitioner sought to reopen the agency's August 28, 2006 denial of his benefits application, arguing that reopening was warranted because he "lacked the mental capacity to understand the procedures for requesting review" of that decision due to "a language barrier, depression, anxiety and agoraphobia." *Id.* at 13a.[2]

On August 26, 2016, the hearings officer affirmed the start date calculated by the claims examiner and declined to reopen the agency's 2006 decision. Pet. App. 9a-17a. Applying the Board's regulations governing reopening, see 20 C.F.R. 261.2, the hearings officer explained that the 2006 decision could not be reopened based on new evidence or administrative error because the decision was more than four years old, see 20 C.F.R. 261.2(b). And the officer further observed that petitioner had not satisfied any of the conditions permitting reopening without regard to the time elapsed. See 20 C.F.R. 261.2(c). Pet. App. 14a.

Petitioner filed a timely appeal to the Board, which affirmed both the annuity start date and the denial of reopening. Pet. App. 5a-8a. As to reopening, the Board "place[d] particular importance on [petitioner's] untimely request for reconsideration," which evidenced

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[2] Petitioner initially sought to reopen the 1992 and 1994 determinations as well, but has since abandoned that request. See Pet. 12-13.

both that he "received the August 28, 2006 denial letter" and that his arguments "that he was unable to understand his appeal rights in 2006 due to limited English proficiency and mental impairments were presented to the RRB in 2006." *Id.* at 8a. The Board noted that the Reconsideration Section "considered these arguments at the time and determined that [petitioner] had not shown good cause for filing an untimely request for reconsideration." *Ibid.* The Board further observed that petitioner did not file any appeal of the reconsideration decision, though his filing of the reconsideration motion itself demonstrated his ability to pursue exhaustion and the reconsideration notice expressly informed him of his right to seek further review. *Ibid.* The Board accordingly concluded that the 2006 decision was not subject to reopening under 20 C.F.R. 261.2. Pet. App. 8a.

2. Petitioner sought judicial review of the Board's reopening denial in the Fifth Circuit, see 45 U.S.C. 355(f) (permitting suit in "the circuit in which the claimant * * * resides"), which dismissed for lack of jurisdiction. Pet. App. 1a-4a. Acknowledging a circuit split on the question of reviewability, the court ruled that it was bound by its decision in *Roberts* v. *United States Railroad Retirement Board*, 346 F.3d 139 (5th Cir. 2003), in which the court had "sided with the majority of circuits" in holding that the Board's refusal to reopen a benefits claim was not subject to review under Sections 231g and 355(f). Pet. App. 3a.

The *Roberts* court explained that the text of Section 355(f) "provide[s] for review in the courts of appeals of 'a final decision under subsection (c),'" and that Section 355(c) in turn is limited to "Board decisions on the merits of a claim for benefits after administrative appeals have been exhausted." 346 F.3d at 140 (quoting

45 U.S.C. 355(f)). Reopening decisions, it noted, do not fall within that category. *Ibid.* The court observed that "[t]here is no provision in the RRA or the RUIA allowing the Board to reopen a prior claim for benefits," and "[l]ikewise there is no provision providing for federal court review of such a decision." *Id.* at 140-141.

Roberts found further support for its holding in *Califano* v. *Sanders*, 430 U.S. 99 (1977), which held that a similar provision authorizing judicial review of any "final decision * * * made after a hearing" by the Social Security Administration, 42 U.S.C. 405(g) (1976), did not permit review of the agency's discretionary refusal to reopen a prior benefits decision. 430 U.S. at 107-108. The *Roberts* court explained that, as in *Sanders*, reopening was available under the RRA and RUIA only as a matter of agency grace pursuant to regulation, and judicial review of reopening denials would "eviscerate" the "statutory limit on the time to appeal decisions on the merits." 346 F.3d at 141.

SUMMARY OF ARGUMENT

Judicial review under the RRA is based on the judicial review provision of the RUIA, 45 U.S.C. 355(f), which permits any "claimant," certain "railway labor organization[s]" or "employer[s]," "or any other party aggrieved by a final decision under subsection (c) of this section" to obtain review of a "final decision" of the Board after exhausting administrative remedies. The RRA, in 45 U.S.C. 231g, imports this framework by providing for judicial review of determinations of "rights or liabilities of any person under [the RRA]" to the same extent as "determination[s] of corresponding rights or liabilities under the [RUIA]." Under this framework, Board decisions denying motions to reopen

prior benefits determinations are not subject to judicial review.

I. The plain text of Section 355(f) forecloses judicial review of reopening decisions. In specifying the parties who may seek judicial review, the provision includes a residual clause covering "any *other* party aggrieved by a final decision under subsection (c)." 45 U.S.C. 355(f) (emphasis added). That language is naturally read to qualify each of the prior list items, with the consequence that only parties aggrieved by a decision under Section 355(c) may seek review. Because reopening decisions do not fall within Section 355(c), they are not subject to judicial review.

The statutory structure confirms this interpretation. Section 355 contemplates a cohesive review scheme: Section 355(c) establishes mandatory exhaustion procedures for a certain category of core substantive agency determinations; Section 355(f) provides for judicial review of those determinations; and Section 355(g) makes Section 355(f) the exclusive path to judicial review for those determinations. See 45 U.S.C. 355(c), (f), and (g). These sub-provisions are thus aligned such that each covers the same basic category of decisions. Petitioner's interpretation, in contrast, would lead to haphazard results. In his view, Section 355(c) encompasses one set of Board determinations, Section 355(f) encompasses a different set, and Section 355(g) encompasses yet a *third* set. There is no indication Congress intended such a scheme.

Petitioner contends that the phrase "aggrieved by a final decision under subsection (c)," 45 U.S.C. 355(f), applies only to the final listed party, rather than all listed parties, and thus does not limit the availability for

other listed parties of judicial review of Board determinations made outside Section 355(c). In support of this construction, he invokes the last-antecedent rule. But this Court has repeatedly held that Congress's use of the word "other" to set off a residual clause evinces its intent for the entire list to be governed by the clause.

Section 231g reinforces the conclusion that reopening decisions are not subject to judicial review. In referencing determinations of "rights or liabilities," Section 231g makes clear that not *all* final determinations by the Board are subject to review under the RUIA and RRA. 45 U.S.C. 231g. Instead, this language is consistent with the proposition that review under Section 355(f) is limited to determinations under Section 355(c), each of which speaks directly to a party's substantive obligations and entitlements under the statute and thus determines "rights or liabilities." *Ibid.* Section 231g's reference to "rights or liabilities" serves to distill and summarize the *kinds* of decisions reviewable under Section 355(f), and make those same kinds of decisions reviewable under Section 231g. A denial of reopening does not determine "rights or liabilities," but is instead a "*refusal* to make a new determination." *Your Home Visiting Nurse Servs., Inc.* v. *Shalala*, 525 U.S. 449, 453 (1999).

Other key structural features of the two statutes further support this conclusion. Neither the RUIA nor the RRA expressly provides for reopening. And when an agency chooses to offer reopening as an additional opportunity beyond the mandatory exhaustion process—which itself culminates in judicial review—there is no good reason to afford the claimant yet *another* opportunity for court review. Doing so would create disincentives for the agency to offer reopening in the first place.

Indeed, in denying review in both *Califano* v. *Sanders*, 430 U.S. 99 (1977), and *Your Home*, this Court emphasized that "[t]he right of a [claimant] to seek reopening exists only by grace of the [agency]." *Your Home*, 525 U.S. at 454; see *Sanders*, 430 U.S. at 108. In addition, permitting judicial review of reopening denials would enable claimants—through the simple mechanism of filing a motion for reopening and then seeking judicial review of the agency's denial—to circumvent the limitations period and the exhaustion requirement imposed by Congress on review of primary benefits determinations.

II. Petitioner's remaining counterarguments lack merit. Petitioner invokes the presumption in favor of judicial review, but in *Sanders*, *Your Home*, and similar decisions addressing reopening, this Court has declined to apply or (in some cases) even to *mention* the presumption. That makes sense, as a claimant seeking reopening will, by definition, have already had access to judicial review upon exhausting the primary claim. Even if the presumption did apply, however, it would be overcome here, where the statutory text and structure amply evidence Congress's intent to foreclose judicial review.

Petitioner also argues that the government's interpretation would foreclose review for a broad range of Board decisions, thus upsetting past practice. But a critical basis for nonreviewability of reopening denials is that the party had a prior opportunity for judicial review of the primary decision, and that analysis would not render unreviewable many (if any) of petitioner's examples. And foreclosing review of garden-variety reopening motions like the one here would not raise any

distinct issue of a rare case in which a denial of reopening might be challenged on constitutional grounds.

Lastly, petitioner argues the Board has taken an inconsistent position on the question presented, citing a Board opinion from 1942 purportedly suggesting that reopening denials were judicially reviewable. That opinion, however, concerned a materially broader review provision that is no longer in effect. The Board has argued for decades that reopening denials are not subject to judicial review, and this Court should affirm that longstanding interpretation of the RRA and RUIA.

ARGUMENT

The RRA and RUIA establish highly reticulated benefits schemes and set forth frameworks governing the filing of an application for benefits, exhaustion of administrative procedures, and judicial review of the agency's final determination. Each statute includes express provisions ensuring thorough agency and judicial review of the key substantive determinations made as part of the primary application process. In recognition of the possibility of agency error and out of solicitude for the population it serves, however, the Board has chosen—as a matter of agency discretion—to offer a reopening mechanism above and beyond the review process for primary benefits determinations. This Court should reject petitioner's attempt to leverage the agency's act of generosity into a second bite at the apple in court.

I. REOPENING DECISIONS ARE NOT SUBJECT TO JUDICIAL REVIEW

The plain text of the RUIA and RRA establishes that Board reopening decisions are not subject to judicial review, and multiple structural features of the two statutes confirm this interpretation.

A. Section 355(f) Is Limited To Final Decisions Under Section 355(c)

By its terms, Section 355(f) limits review to Board determinations made under Section 355(c). This interpretation also harmonizes Section 355's various subsections, rendering the same set of Board decisions subject to exhaustion in Section 355(c), judicial review in Section 355(f), and review exclusivity in Section 355(g). See 45 U.S.C. 355(c), (f), and (g). Petitioner does not contest that reopening decisions fall outside Section 355(c), and they are accordingly not subject to judicial review.

1. The text of Section 355(f) limits judicial review to final decisions under Section 355(c)

The plain text of Section 355(f) of the RUIA authorizes judicial review only for Board determinations made under Section 355(c). 45 U.S.C. 355(c) and (f). Section 355(f) provides, in relevant part:

> Any claimant, or any railway labor organization organized in accordance with the provisions of the Railway Labor Act [45 U.S.C. 151 *et seq.*], of which claimant is a member, or any base-year employer of the claimant, or any other party aggrieved by a final decision under subsection (c) of this section, may, only after all administrative remedies within the Board will have been availed of and exhausted, obtain a review of any final decision of the Board by filing a petition for review within ninety days after the mailing

> of notice of such decision to the claimant or other party, or within such further time as the Board may allow, in [certain courts of appeals]. * * * Upon the filing of such petition the court * * * shall have power to enter a decree affirming, modifying, or reversing the decision of the Board, with or without remanding the cause for rehearing.

45 U.S.C. 355(f).

This provision identifies four sets of parties that may seek review: "[a]ny claimant," a qualifying "railway labor organization," any "base-year employer of the claimant," or "any other party aggrieved by a final decision under subsection (c)." 45 U.S.C. 355(f). By referring to "any *other* party aggrieved by a final decision under subsection (c)," the text makes clear that all of the preceding listed parties share the same critical characteristic, namely, they are "aggrieved by a final decision under" Section 355(c). *Ibid.* The statute thus employs a commonplace structure for delineating the scope of a particular category: it specifically enumerates salient members of that category, and then includes a residual clause to sweep in the remaining members. See, *e.g.*, *Taylor* v. *United States*, 136 S. Ct. 2074, 2079 (2016) (addressing a similar statutory structure); *Paroline* v. *United States*, 572 U.S. 434, 446 (2014) (same).

This interpretation furnishes a coherent reading of the rest of the provision, which specifies a straightforward process by which a party aggrieved by a determination "under subsection (c)" may exhaust administrative procedures and then obtain judicial review of that *same* decision. 45 U.S.C. 355(f). Section 355(f) provides that a party aggrieved by an initial determination

under Section 355(c) must first "exhaust[]" all "administrative remedies within the Board." *Ibid.* The Board then issues a "final decision" and mails "notice of such decision to the claimant or other party"—*i.e.*, the same "claimant" or "other party" mentioned at the outset of the provision, who is aggrieved by a decision "under subsection (c)." *Ibid.* The party may, in turn, "obtain a review" of that final decision by "filing a petition for review within ninety days." *Ibid.* And the court shall "have power to enter a decree affirming, modifying, or reversing the decision." *Ibid.* In short, Section 355(f) consistently refers to the same "decision" and "party" throughout.

Petitioner's reading, in contrast, breaks the link between the provision's various uses of the term "decision" and deletes any aggrievement requirement whatsoever for the first three listed parties. Although petitioner protests (Br. 33) that under his reading, "no mismatch exists between *who* can sue and *what types* of decisions they can challenge," that is sheer *ipse dixit*. Under the logic of his position, "claimant[s]," "railway labor organization[s]," and "base-year employer[s]" may sue to challenge *any* final decision, whether it aggrieves them or not. 45 U.S.C. 355(f). And "any other party aggrieved by a final decision under subsection (c)," *ibid.*, may also presumably sue to challenge any final decision, whether under Section 355(c) or otherwise. Petitioner offers no plausible explanation for why Congress might have intended such a regime. And as explained below, see pp. 23-24, *infra*, petitioner's interpretation also causes dislocations in the statutory framework beyond Section 355(f).

This Court addressed a review provision with a structure parallel to Section 355(f) in *Califano* v. *Sanders*, 430 U.S. 99 (1977). There, the applicant sought judicial review of the Social Security Administration's refusal to reopen its prior decision denying a claim for benefits. *Id.* at 102-104. The relevant statutory provision "authorize[d] federal judicial review of 'any final decision of the Secretary made after a hearing to which [the claimant] was a party.'" *Id.* at 102 (quoting 42 U.S.C. 405(g) (1976)) (brackets in original). The Court found that "[t]his provision clearly limits judicial review to a particular type of agency action, a 'final decision of the Secretary made after a hearing.'" *Id.* at 108. The Court ruled that the statute did not authorize judicial review of reopening decisions because, among other reasons, see pp. 35, 39-40, *infra*, petitions for reopening could "be denied without a hearing" and thus fell outside the category of claims the statute subjected to review. *Sanders*, 430 U.S. at 108. The structure of the relevant statutory provisions here is the same: Section 355(f) authorizes review only as to those determinations under Section 355(c), which do not include reopening decisions. See *BNSF Ry. Co.* v. *Loos*, 139 S. Ct. 893, 898 (2019) (observing that "Congress created both the railroad retirement system and the Social Security system" during the same period, and the programs' "statutory foundations mirror each other").

2. The structure of Section 355 confirms that review is limited to Section 355(c) determinations

Limiting judicial review to those determinations provided for in Section 355(c) respects the interlocking structure of Section 355's various subsections by rendering the same set of Board decisions subject to exhaustion in Section 355(c), judicial review in Section

355(f), and review exclusivity in Section 355(g). Read in this fashion, the three provisions work in tandem to ensure that the most important Board determinations receive thorough agency and judicial review, without requiring the same burdensome processes for any and all Board decisions.

Section 355(c) establishes an exhaustion procedure that requires the Board to afford internal review for key substantive determinations regarding a party's entitlements or obligations under the RUIA, such as benefits denials. 45 U.S.C. 355(c)(1)-(4). Section 355(c) then provides that notice of any final decision made by the Board "shall be communicated to the claimant and to the other interested parties within fifteen days after it is made,"[3] and that "[a]ny properly interested party notified, as hereinabove provided, of his right to participate in the proceedings may obtain a review of any such decision by which he claims to be aggrieved or the determination of any issue therein in the manner provided in subsection (f) of this section." 45 U.S.C. 355(c)(5).

Section 355(c) thus feeds directly into Section 355(f), which permits a party "aggrieved by a final decision under subsection (c) of this section" to obtain review of that decision. 45 U.S.C. 355(f). Section 355(f) requires,

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[3] Section 355(c)(5) provides for notice of decisions under the "preceding three paragraphs," *i.e.*, Section 355(c)(2)-(4). 45 U.S.C. 355(c). Decisions under those provisions are made by the *Board*, whereas decisions under the remaining subsection—Section 355(c)(1)—may be made by an intermediate reviewing body. Section 355(c)(1) determinations are subject to appeal to the Board and become final upon completion of the appeal or expiration of the time limits for taking the appeal. See 20 C.F.R. 320.38; 45 U.S.C. 355(d). Once exhausted, those decisions may be reviewed in court under Section 355(f) along with all other Section 355(c) determinations.

however, that prior to judicial review, "all administrative remedies within the Board"—namely, those contained in Section 355(c) and its implementing regulations—must "have been availed of and exhausted." *Ibid.* An aggrieved party must file a "petition for review within ninety days after the mailing of notice of such decision to the claimant or other party"—again, the same notice required by Section 355(c). *Ibid.*

Finally, Section 355(g) provides that "[f]indings of fact and conclusions of law of the Board in the determination of any claim for benefits or refund, [or] the determination of any other matter pursuant to subsection (c) of this section * * * shall not be subject to review in any manner other than that set forth in subsection (f) of this section." 45 U.S.C. 355(g). As with Section 355(f), see p. 18, *supra*, Section 355(g)'s residual reference to "any *other* matter pursuant to subsection (c)," 45 U.S.C. 355(g) (emphasis added), demonstrates that Congress intended the qualifying phrase "pursuant to subsection (c)" to apply to *both* preceding list items. The provision is thus limited to decisions under Section 355(c), and its reference to "[f]indings of fact and conclusions of law"—but not discretionary determinations—reinforces that it does not encompass reopening denials. *Ibid.* Section 355(g) accordingly confirms that Section 355(c) determinations are reviewable under Section 355(f), and further establishes that Section 355(f) provides the exclusive avenue for review of those determinations.[4]

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[4] As petitioner notes (Br. 35), Section 355(g) also refers to "determination[s] of the Board that the unexpended funds in the account are available for the payment of any claim for benefits or refund under this chapter." 45 U.S.C. 355(g). But the purpose of this reference is simply to insulate such determinations from review by the

In short, the government's interpretation accords the various sub-provisions of Section 355 a logical interrelationship. Taken as a whole, Section 355 contemplates exhaustion of an adverse decision under Section 355(c), followed by exclusive judicial review of that same decision under Section 355(f) and (g). Petitioner's interpretation, in contrast, is haphazard. In his view, Section 355(c) encompasses one set of Board determinations, Section 355(f) encompasses a different set, and Section 355(g) encompasses yet a *third* set. See, *e.g.*, Pet. Br. 35 (arguing that Section 355(g) "covers many decisions that section 355(c) does not"); *id.* at 36 (arguing that the category of Board decisions reviewable under Section 355(f) includes "many final decisions that do not fall within either section 355(c) or section 355(g)"). There is no logic to that purported scheme, and petitioner does not explain why Congress would have adopted such a mismatched framework for exhaustion, judicial review, and review exclusivity.

Petitioner's interpretation would also produce bizarre results. Because in his view the category of reviewable decisions is broader than the category of decisions covered by Section 355(g)'s exclusivity mandate, it would seem that there exists some undefined category of decisions that is reviewable outside the Section 355(f) framework. But even petitioner is unwilling to endorse that result, conceding (Br. 38) that Section 355(f) "appears to be the only means of mounting challenges to

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"Comptroller General," *ibid.*, who would otherwise have authority to review this kind of decision, see, *e.g.*, 31 U.S.C. 3526, 3530. These determinations fall outside Section 355(c) and, as discussed below, nothing in Section 355(g) independently provides for judicial review. See pp. 28-29, *infra*. Thus, as to the category of *judicially reviewable* decisions, Section 355(g) is congruent with Section 355(f).

statutory provisions or regulations," and noting that "[c]ourts have held that section 355(g) prescribes judicial review under section 355(f) as the exclusive channel for judicial review." He thus has no coherent explanation for what function Section 355(g) serves in relation to Section 355(f). On the government's view, in contrast, the two provisions match precisely: for *all* decisions subject to judicial review under the RUIA, Section 355(g) makes Section 355(f) the exclusive avenue for review.

3. Petitioner's counterarguments lack merit

Petitioner's principal response to the above analysis is to invoke (Br. 31) the "last-antecedent rule," according to which "'a limiting clause or phrase should ordinarily be read as modifying only the noun or phrase that it immediately follows.'" *Lockhart* v. *United States*, 136 S. Ct. 958, 962-963 (2016) (ellipsis and citation omitted). He contends (Br. 30-32) that the last-antecedent rule requires construing the phrase "aggrieved by a final decision under subsection (c)" in Section 355(f) to apply only to the fourth listed party—"any other party"—and not the first three listed parties. See 45 U.S.C. 355(f). As petitioner concedes (Br. 31) and this Court has emphasized, however, the rule "can assuredly be overcome by other indicia of meaning." *Lockhart*, 136 S. Ct. at 963 (citation omitted); see Jeremy L. Ross, *A Rule of Last Resort: A History of the Doctrine of the Last Antecedent in the United States Supreme Court*, 39 Sw. L. Rev. 325, 337 (2009) (noting frequent departures from the rule). Here, the statutory text and structure plainly overcome whatever weak inference the rule might otherwise provide.

Petitioner's main source for the last-antecedent rule is *Lockhart*, which interpreted the phrase "aggravated

sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward" and held that the modifier "involving a minor or ward" limited only the third list item ("abusive sexual conduct"), not the first two ("aggravated sexual abuse, sexual abuse"). 136 S. Ct. at 961 (quoting 18 U.S.C. 2252(b)(2)). Unlike the statute at issue in *Lockhart*, however, the final list item here is set off by the word "other." Specifically, Section 355(f) authorizes a "claimant," "railway labor organization," "employer," or "any *other* party aggrieved by a final decision under subsection (c)" to seek judicial review. 45 U.S.C. 355(f) (emphasis added). As a matter of plain English, the word "other" signals that the prior list items share the same specified characteristic as the final list item. To take an example: a grocery store manager who orders "fruit, vegetables, or any other fresh produce" would be dissatisfied to receive prunes or kale chips. In short, all four list items together enumerate different members of a single category—parties "aggrieved by a final decision under subsection (c)"—and the final list item functions as a catchall within that category. *Ibid.*

Consistent with common usage, this Court has repeatedly recognized that the presence of the word "other" preceding a final list item defeats the last-antecedent rule. For example, in *Paroline*, the Court construed a statute "enumerat[ing] six categories of covered losses" (like medical expenses), including "a final catchall category for 'any *other* losses suffered by the victim as a proximate result of the offense.'" 572 U.S. at 446 (quoting 18 U.S.C. 2259(b)(3)(F) (2012)) (emphasis added). In holding that each of the six enumerated categories of losses had to be suffered "'as a proximate result of the offense,'" the Court reasoned that the final

"category is most naturally understood as a summary of the type of losses covered" and that it is a "'familiar canon of statutory construction that [catchall] clauses are to be read as bringing within a statute categories similar in type to those specifically enumerated.'" *Id.* at 447 (quoting 18 U.S.C. 2259(b)(3)(F) (2012) and *Federal Mar. Comm'n* v. *Seatrain Lines, Inc.*, 411 U.S. 726, 734 (1973)) (brackets in original). Other cases recognize the same principle of construction. See, *e.g.*, *United States* v. *Standard Brewery, Inc.*, 251 U.S. 210, 218 (1920) (construing a statute that covered "'beer, wine, or other intoxicating malt or vinous liquors'" and finding "it clear that the framers of the statute intentionally used the phrase 'other intoxicating' as relating to and defining the immediately preceding designation of beer and wine"); *United States* v. *United Verde Copper Co.*, 196 U.S. 207, 213-214 (1905) (rejecting argument "that the word 'other' should be * * * eliminated from the statute").

Even apart from the word "other," this Court has recognized that "[w]hen several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all." *Paroline*, 572 U.S. at 447 (quoting *Porto Rico Ry., Light & Power Co.* v. *Mor*, 253 U.S. 345, 348 (1920)); see *United States* v. *Bass*, 404 U.S. 336, 339-340 (1971) ("Since 'in commerce or affecting commerce' undeniably applies to at least one antecedent, and since it makes sense with all three, the more plausible construction here is that it in fact applies to all three."). Here, the phrase "aggrieved by a final decision under subsection (c)" plainly may be sensibly applied to the first three listed parties, 45 U.S.C. 355(f), and petitioner

does not contend otherwise. Indeed, applying the modifier across the entire list produces a far *more* sensible interpretation of the provision as a whole. See pp. 18-19, *supra*.

Petitioner responds (Br. 32) that, had Congress wished to apply the modifier across the entire list, it could have "simply said that 'any party aggrieved by a decision under section 355(c)' can sue." But Congress may have wished to specifically identify the parties it was most concerned should have access to judicial review—to rebut, for example, any inference that only certain aggrieved parties (like benefits claimants) would be able to appeal adverse decisions under Section 355(f). The Court made precisely this point in *Paroline*, where "the victim argue[d] that the first five categories of losses enumerated in [the statute] would be superfluous if all were governed by a proximate-cause requirement." 572 U.S. at 447. The Court deemed that argument "unpersuasive," reasoning that "[t]he first five categories provide guidance to district courts as to the specific types of losses Congress thought would often be the proximate result of [an] offense and could as a general matter be included in an award of restitution." *Id.* at 448. Nor was *Paroline* an outlier: delineating a category by enumerating salient members of that category and then adding a residual clause is common in statutory drafting. See p. 18, *supra*.

Petitioner's remaining textual arguments also lack merit. Petitioner emphasizes (Br. 19) that Section 355(f) permits review of "any" final decision, but that merely begs the question whether the agency action he challenges is a "final decision" within the scope of that provision. See *Rimini St., Inc.* v. *Oracle USA, Inc.*, 139 S. Ct. 873, 878 (2019) (observing that the term "'full'"

denotes "quantity or amount," and simply "means the complete measure of the noun it modifies") (citation omitted). The government agrees that Section 355(f) permits review of "any" final decision *under Section 355(c)*. Petitioner also asserts that "[e]lsewhere in section 355(f), Congress used clear qualifiers to single out specific subcategories of final decisions for special treatment," Pet. Br. 19-20, and notes that when "Congress 'uses particular language in one section of a statute but omits it in another,' this Court presumes that choice was deliberate," *id.* at 20 (quoting *Department of Homeland Sec.* v. *MacLean*, 574 U.S. 383, 391 (2015)); see also *id.* at 34-35. This argument also assumes the conclusion. There is no dispute that Section 355(f) "single[s] out" "decision[s] under subsection (c)," 45 U.S.C. 355(f), for "special treatment." Pet. Br. 20. The only question is whether that qualifier is limited to the final list item, or instead qualifies the provision more generally. Petitioner's canon sheds no light on *that* question.

Petitioner also proffers a structural argument, contending that the government's interpretation is "incompatible with section 355(g)," which he asserts "identifies various categories of decisions that are reviewable under section 355(f)—many of which are not decisions under section 355(c)." Pet. Br. 17 (emphasis omitted). As explained, see pp. 23-24, *supra*, it is petitioner's interpretation, not the government's, that drives a wedge between Section 355(f) and (g). Petitioner's argument also rests on the mistaken assumption that all decisions listed in Section 355(g) are automatically subject to judicial review. The provision's plain text belies that view: it states only that certain Board determinations "shall not be subject to review in any manner other than that set forth in subsection (f)." 45 U.S.C. 355(g). In other

words, Section 355(g) simply provides that *if* those determinations are subject to judicial review, Section 355(f) provides the exclusive mechanism.

B. Section 231g Reinforces That Reopening Decisions Are Not Judicially Reviewable

Section 231g, which incorporates into the RRA the judicial review framework of the RUIA, reinforces the conclusion that reopening decisions are not subject to judicial review. It authorizes review only of Board determinations of "rights or liabilities," 45 U.S.C. 231g—language that describes the same general category of decisions enumerated in Section 355(c). A reopening denial does not determine "rights or liabilities," *ibid.*, but is instead a "*refusal* to make a new determination," *Your Home Visiting Nurse Servs., Inc.* v. *Shalala*, 525 U.S. 449, 453 (1999).

1. Section 355 is located within the RUIA and does not directly govern judicial review of RRA determinations. Instead, Section 231g imports the Section 355 framework, *mutatis mutandis*, into the RRA. 45 U.S.C. 231g. Section 231g states, in relevant part:

> Decisions of the Board determining the rights or liabilities of any person under [the RRA] shall be subject to judicial review in the same manner, subject to the same limitations, and all provisions of law shall apply in the same manner as though the decision were a determination of corresponding rights or liabilities under the Railroad Unemployment Insurance Act.

Ibid.

Notably, Section 231g does not authorize judicial review of all "final decisions" of the Board. Pet. Br. 14. Instead, it provides for review only of those decisions

that determine "rights or liabilities * * * under [the RRA]." 45 U.S.C. 231g. And with its reference to "corresponding rights or liabilities under the [RUIA]," it reinforces the conclusion that the RUIA does not provide for judicial review of all "final decisions," either. *Ibid.* Indeed, this language confirms that review under the RUIA is limited to determinations under Section 355(c). Although Section 355(c) covers a diverse array of Board determinations, all of them determine rights or liabilities under the statute, *i.e.*, all have a direct effect on a party's entitlements or obligations under the Act. See 45 U.S.C. 355(c)(1)-(4) (describing various categories of decisions); see also 45 U.S.C. 355(c)(5) (providing that determinations under subsection (c) "shall conclusively establish all rights and obligations"). Section 231g's reference to "rights or liabilities" thus serves to distill and summarize the *kinds* of decisions reviewable under Section 355(c), and provides that the same subset of Board decisions is reviewable under the RRA.

A reopening denial does not determine "rights or liabilities * * * under [the RRA]." 45 U.S.C. 231g. Because reopening is not provided by statute, it could hardly qualify as a statutory entitlement "under" the RRA in the first place. Cf. *Smith* v. *Berryhill*, 139 S. Ct. 1765, 1775 (2019) (observing that, in contrast to reopening, "the claimant's access to [a] first bite at the apple is indeed a matter of legislative right"). Even under the regulations, a claimant has no "right" to reopening, which is purely discretionary. See 20 C.F.R. 261.11. Moreover, the net effect of a reopening denial is to leave the Board's original decision intact: it does not alter the amount of benefits awarded, the date when benefits will start, or any other substantive aspect of the claimant's benefits entitlement. It simply precludes a claimant

from *relitigating* a prior claim for benefits. In short, there is no new determination of "rights or liabilities." 45 U.S.C. 231g.

The Court's precedents confirm this interpretation. In *Your Home*, the Court considered a provision of the Social Security Act (SSA), 42 U.S.C. 301 *et seq.*, addressing reimbursement of healthcare providers for services rendered to Medicare beneficiaries. 525 U.S. at 450-451. The statute provided for an initial determination by a fiscal intermediary. *Id.* at 451. If the provider was dissatisfied with the intermediary's determination, it could obtain a hearing before a review board of "a final determination * * * as to the amount of total program reimbursement due the provider." 42 U.S.C. 1395*oo*(a)(1)(A)(i); see *Your Home*, 525 U.S. at 451, 453. The board's determination was subject to judicial review. *Your Home*, 525 U.S. at 451. By regulation, a provider could also ask the intermediary to reopen a reimbursement determination. *Ibid.* In this Court, the government argued that the board lacked jurisdiction over a reopening denial on the ground that such a denial was not "a final determination * * * as to the amount of total program reimbursement due the provider," 42 U.S.C. 1395*oo*(a)(1)(A)(i), "but rather the *refusal* to make a new determination." *Your Home*, 525 U.S. at 453. The Court agreed, noting that the government's "reading * * * frankly seems to us the more natural," and ultimately deferring to that reading under *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842 (1984). *Your Home*, 525 U.S. at 453.

Petitioner contends (Br. 23) that *Your Home* did not involve "judicial review of the final agency action," as opposed to one "administrative entity's appellate jurisdiction over another." But the plain consequence of the

Court's holding that the review board lacked jurisdiction over the intermediary's reopening decision was that judicial review of the merits of that decision was also unavailable. See *Your Home*, 525 U.S. at 452, 456. And although petitioner observes (Br. 23-24) that the Court in *Your Home* ultimately deferred to the government's interpretation under *Chevron*, he does not contest the fact that it expressly approved that interpretation as the more natural reading of the text. See *Your Home*, 525 U.S. at 453.

The Court took a similar approach in *SEC* v. *Louisiana Public Service Commission*, 353 U.S. 368 (1957) (per curiam), where it considered the reviewability of an SEC decision denying reopening of a divestment order. The statute in that case expressly authorized reopening, providing that "[t]he Commission may by order revoke or modify any order previously made under this subsection," and further stating that "[a]ny order made under this subsection shall be subject to judicial review." *Id.* at 371 (citation omitted). The Court nevertheless held that judicial review was unavailable. It reasoned that "the orders made judicially reviewable by the quoted language [were] the directory orders mentioned in, and authorized by, [the relevant subsection], and orders which may 'revoke or modify' any such order previously made under that subsection," but did "not include an order merely denying a petition to reopen * * * proceedings." *Ibid.* The same logic applies here, where a denial of reopening does not determine any "rights or liabilities" but simply leaves a prior determination intact. 45 U.S.C. 231g.

2. Petitioner's arguments to the contrary are unpersuasive. He asserts that Section 231g's reference to de-

cisions determining "rights or liabilities" is merely "another way of saying 'any final decision.'" Pet. Br. 21 (citation omitted). But the only support he cites for this assertion is *United States Army Corps of Engineers* v. *Hawkes Co.*, 136 S. Ct. 1807 (2016), which defines a "final agency action" for purposes of the Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq.*; see 5 U.S.C. 704, in relevant part, as "one by which rights or obligations have been determined, *or* from which legal consequences will flow." 136 S. Ct. at 1813 (quoting *Bennett* v. *Spear*, 520 U.S. 154, 178 (1997)) (emphasis added). That definition supports the government's position. It is phrased in the disjunctive, and only the first prong even arguably corresponds to Section 231g's reference to "rights or liabilities." See *id.* at 1814 (finding existence of final decision based on "legal consequences" alone). Thus, to the extent the APA definition is relevant at all, it confirms that Section 231g provides for review of a narrower category of decisions than all "final decisions."

Petitioner also observes (Br. 21) that Section 231g singles out decisions respecting "an annuity, supplemental annuity, or lump-sum benefit" by applying a longer limitations period to them. 45 U.S.C. 231g. He notes (Br. 21) that these three categories of decisions necessarily represent a subset of the broader universe of reviewable decisions under the RRA. But that fact alone sheds no light on the interpretive question presented here. Even under the government's interpretation, there remain Board decisions subject to judicial review beyond the three categories of decisions governed by the extended limitations period in Section 231g. For example, determinations of employer status are covered by Section 355(c)(4) and therefore reviewable

under Section 355(f), but do not directly respect an "annuity, supplemental annuity, or lump-sum benefit." 45 U.S.C. 231g.

C. Additional Structural Features Of Both Statutes Confirm This Interpretation

Two additional structural features of the RRA and RUIA further confirm that reopening denials are not reviewable. Under this Court's decisions in *Sanders* and *Your Home*, Congress's choice to afford the agency the latitude to offer reopening as a matter of discretion—rather than codifying it in either the RUIA or RRA—suggests that Congress did not intend to subject such decisions to judicial review. In addition, permitting judicial review of reopening would enable plaintiffs to circumvent the statutory limitations period and exhaustion requirement imposed by Congress.

1. Reopening is a matter of agency grace

Nothing in the RUIA or the RRA requires the Board to afford parties the opportunity to seek reopening of final agency determinations. Congress expressly considered providing for reopening at the same time it was adopting (in large part) the modern versions of the judicial review provisions in Sections 231g and 355, see Act of July 31, 1946 (1946 Act), ch. 709, Divs. II, III, §§ 215, 311, 60 Stat. 735, 738, but it declined to do so, instead "leav[ing] [reopening] rules to be prescribed by Railroad Retirement Board regulations," *Railroad Retirement: Hearings on H.R. 1362 Before the House Comm. on Interstate and Foreign Commerce*, 79th Cong., 1st Sess. Pt. 1, at 23 (1945) (statement of David B. Robertson, Committee Chairman, Railway Labor Executives' Association). The agency has nevertheless chosen to grant parties a procedural mechanism above

and beyond what the statute requires by authorizing reopening in the agency's discretion. See 20 C.F.R. Pt. 261 (RRA); 20 C.F.R. Pt. 349 (RUIA). Because parties lack any statutory entitlement to reopening, the agency is free to rescind that provision if it determines that doing so would best advance its administration of the two Acts.[5]

In both *Sanders* and *Your Home*, this Court invoked the fact that the respective statutory schemes did not *require* an opportunity for reopening to support its conclusion that the statutes similarly did not require judicial review of reopening decisions. The *Sanders* Court, in finding the statute at issue there did not afford jurisdiction, observed that "the opportunity to reopen final decisions and any hearing convened to determine the propriety of such action are afforded by the Secretary's regulations and not by the Social Security Act." 430 U.S. at 108.

Then, in *Your Home*, the Court cited *Sanders* to support its conclusion that there was no review of a reopening denial, reasoning that "[t]he right of a provider to seek reopening exists only by grace of the Secretary." 525 U.S. at 454. And in rejecting petitioner's argument

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[5] Citing a Board legal opinion from 1939, petitioner contends (Br. 27) that "the Board from its inception believed that Congress implicitly *required* it to reopen prior determinations to prevent arbitrary and capricious decision-making." But the cited opinion acknowledges that, as relevant here, no "provision appears in the Act for revision of claims once adjudicated," although "[e]xpress provisions are common where it is sought to reserve power in the administrative agency to revise awards." U.S. R.R. Ret. Bd. Gen. Counsel, Legal Op. No. 39-527, at 18 (Aug. 16, 1939). The mere fact that the Board viewed (and continues to view) reopening as consonant with the purposes of the RRA and RUIA, *ibid.*, does not suggest the Board has ever believed reopening to be mandatory.

that the agency's position ran afoul of the separate statutory requirement that it provide "for the making of suitable retroactive corrective adjustments" to reimbursement determinations, *ibid.* (citation omitted), the Court noted that the statute already guaranteed a right to review of an initial determination and that the reopening regulation did no more than "generously give[ ] [providers] a second chance to get the decision changed." *Id.* at 455. The Court deemed that overall scheme a "'suitable' procedure," "especially in light of the traditional rule of administrative law that an agency's refusal to reopen a closed case is generally 'committed to agency discretion by law' and therefore exempt from judicial review." *Ibid.* (quoting *ICC* v. *Brotherhood of Locomotive Eng'rs*, 482 U.S. 270, 282 (1987)).[6] Petitioner's contention (Br. 42) that *Sanders*'s logic is "statute-specific" cannot be squared with *Your Home*'s reaffirmation of that logic in a different statutory context. See 525 U.S. at 454.

Under *Sanders* and *Your Home*, Congress's omission of a statutory provision for reopening indicates that it did not intend to afford judicial review for any reopening decisions the agency decides to make in its discretion. Here, as in those cases, the RUIA and RRA ensure the claimant's right to judicial review of his "first bite at the apple," *Smith*, 139 S. Ct. at 1775, and

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[6] *Locomotive Engineers* reaffirmed the traditional rule that, when a claimant seeks reopening on the ground that the prior decision contains material error (as opposed to on the basis of new evidence), the agency's denial of that request is committed to agency discretion by law and thus nonreviewable. 482 U.S. at 278-280. Here, even if the Court disagrees that reopening decisions categorically fall outside Section 355(f), it should at the least make clear that this traditional rule applies to the RRA and RUIA.

the Board has further decided, in solicitude of affected parties, to permit a motion to reopen after the mandatory exhaustion process has been completed. But this opportunity simply serves as a check on an earlier process that includes both agency and judicial review, and there is no reason to allow a claimant to leverage the agency's generosity into a second court proceeding.

Petitioner stresses (Br. 28-29) the importance to claimants of the Board's benefits determinations and the potential for error in processing a large number of claims. But given that, under the statute, the benefits scheme could be administered without reopening *at all*, there is no reason to conclude that Congress believed judicial review of reopening decisions was necessary to avoid error. And the possibility for error is no greater here than it was in *Sanders*, under the SSA. Requiring judicial review in this context could also have the perverse consequence of discouraging the agency from offering reopening in the first place.[7]

Petitioner also attacks (Br. 42) a straw man, disputing the existence of any "blanket rule that agency-created procedures are immune from judicial review just because Congress gave the agency the discretion to establish them." The government asserts no such blanket rule. There is a critical difference between the reopen-

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[7] The availability of judicial review for immigration reopening decisions is not to the contrary. Review in that context rests on a variety of unique considerations not present here, including that "[f]ederal-court review of administrative decisions denying motions to reopen removal proceedings dates back to at least 1916." *Kucana* v. *Holder*, 558 U.S. 233, 240 n.5, 242 (2010); see also *Dada* v. *Mukasey*, 554 U.S. 1, 12-15 (2008) (discussing distinctive history of reopening in immigration cases, including its codification as a "statutory form of relief").

ing regulations here, which simply offer claimants a discretionary opportunity outside the mandatory exhaustion process, and regulations that constrict a claimant's ability to claim a statutory entitlement. All of petitioner's examples fall in the second bucket.

Petitioner first points to *Smith*, but the claimant there was "not seeking a second look at an already-final denial; he argue[d] that he was wrongly prevented from continuing to pursue his primary claim for benefits," which "is indeed a matter of statutory entitlement." 139 S. Ct. at 1778. Petitioner also invokes *Hawkes*, which involved the Army Corps of Engineers' jurisdictional determinations as to whether certain bodies of water fell within the scope of the Clean Water Act, 33 U.S.C. 1251 *et seq.* 136 S. Ct. at 1811. A party could discharge pollutants into covered waters only if it first obtained a permit. *Id.* at 1812. The only question in that case, however, was whether jurisdictional determinations were reviewable on a standalone basis or at the conclusion of the statutory permitting process. *Id.* at 1816. The agency conceded that such determinations, which were a threshold issue in the permitting process, could be challenged upon completion of that process. *Ibid.* The determinations at issue in *Hawkes* thus bore no resemblance to reopening decisions, which are a matter of agency grace and take place entirely outside the process for exhausting a claim for benefits. Finally, petitioner suggests (Br. 43) that the government's rule would exempt from review "modifications of benefits, which exist by virtue of regulations." But modifications (unlike reopening denials) directly affect a claimant's statutory entitlement to benefits and are reviewable under the government's interpretation. See p. 44, *infra*.

2. Judicial review of reopening denials would undermine other statutory constraints

Allowing claimants to seek judicial review of the Board's refusals to reopen would also thwart the statutory limitations period and exhaustion requirement for challenging primary benefits determinations.

a. Section 355(f) requires a claimant to file a petition for review of a Board decision under Section 355(c) "within ninety days after the mailing of notice of such decision to the claimant or other party." 45 U.S.C. 355(f). Section 231g imports this rule to the RRA, with the exception "that the time within which proceedings for the review of a decision with respect to an annuity, supplemental annuity, or lump-sum benefit may be commenced shall be one year after the decision will have been entered upon the records of the Board and communicated to the claimant." 45 U.S.C. 231g. Permitting claimants to seek reopening, and then obtain judicial review, years after the Board's disposition of a benefits claim would undermine these limitations and subvert congressional intent.

This Court recognized as much in *Sanders*, where it held that "an interpretation that would allow a claimant judicial review simply by filing—and being denied—a petition to reopen his claim would frustrate the congressional purpose, plainly evidenced in [Section] 205 (g), to impose a 60-day limitation upon judicial review." 430 U.S. at 108. The Court properly recognized that "Congress' determination so to limit judicial review to the original decision denying benefits is a policy choice obviously designed to forestall repetitive or belated litigation of stale eligibility claims," and that "[the Court's] duty, of course, is to respect that choice." *Ibid.* Then, in *Your Home*, the Court reiterated that any statutory

limitations period "would be frustrated by permitting requests to reopen to be reviewed indefinitely." 525 U.S. at 454.

Petitioner has no real response to this point, asserting (Br. 44) only that, in light of Congress's decision to specify a one-year limitations period for a subset of RRA determinations, "one might infer that Congress did not mind drawn-out litigation in some cases." This suggestion is implausible. Nothing about the statutory scheme remotely suggests that Congress contemplated that certain decisions would, as a practical matter, be subject to *no* limitations period at all. To the contrary, Congress's determination that a precise subcategory of decisions warranted a distinctive statute of limitations indicates that it paid careful attention to this particular issue, and provides all the more reason "to respect [Congress's] choice." *Sanders*, 430 U.S. at 108.

b. Judicial review of reopening decisions would also enable claimants to circumvent the statutorily required exhaustion process. See 45 U.S.C. 355(f). This case illustrates the problem. Petitioner failed to exhaust administrative remedies for the agency's denial of both his 2006 benefits application and his untimely reconsideration motion. See p. 9, *supra*. Nevertheless, he now seeks to reopen those prior denials on the ground that "an error * * * appears on the face of the evidence that was considered when the determination or decision was made." Pet. C.A. Br. 8 (quoting 20 C.F.R. 261.2(c)(7)). The current suit thus effectively seeks judicial review of a 14-year-old agency determination that petitioner failed to exhaust, raising arguments that petitioner could have raised in 2006. The Court should not countenance that result.

II. PETITIONER'S REMAINING COUNTERARGUMENTS LACK MERIT

Petitioner advances three additional arguments in support of reviewability: he invokes the presumption favoring judicial review; argues that the government's position would upset longstanding practice; and claims the Board has taken inconsistent positions on the question presented. These arguments are wrong on their own terms and could not support ignoring the plain import of the statutory text and structure.

A. The Presumption Of Judicial Review Does Not Dictate A Contrary Conclusion

Petitioner invokes the "presumption favoring judicial review of administrative action," which he claims can be overcome only by "clear and convincing evidence." Pet. Br. 24-26 (quoting *Mach Mining, LLC* v. *EEOC*, 575 U.S. 480, 486 (2015); *Bowen* v. *Michigan Acad. of Family Physicians*, 476 U.S. 667, 671 (1986)). That presumption has little force here. No one disputes that a claimant is fully entitled to judicial review of a Board decision on the merits of his benefits claim. The only question is whether he is entitled to a second round of review following his unsuccessful attempt to reopen a prior final decision pursuant to Board regulations. As explained above, see pp. 35-37, *supra*, the more natural inference in a large benefits program like that here and the Social Security program in *Sanders* is that Congress does *not* intend to afford judicial review when it leaves the availability of reopening entirely to agency discretion.

Indeed, in this Court's seminal cases assessing—and rejecting—the reviewability of reopening decisions in similar contexts, the Court declined even to *mention*

the general presumption that petitioner invokes, despite arguments from the affected parties and other Justices that it applied. See *Sanders*, 430 U.S. at 109 (noting presumption in favor of review of *constitutional* questions only); Resp. Br. at 8, *Sanders*, *supra* (No. 75-1443) ("[T]he presumption of review should prevail.") (emphasis omitted); *Your Home*, 525 U.S. at 453-454 (denying review without referencing presumption); Pet. Br. at 11, *Your Home*, *supra* (No. 97-1489) ("[T]he Secretary's interpretation of the statute (which would allow her to cut off all judicial review of refusals to reopen) is inconsistent with the presumption of judicial review."); see also *Locomotive Eng'rs*, 482 U.S. at 280 (denying review without referencing presumption); *Locomotive Eng'rs*, 482 U.S. at 293 (Stevens, J., concurring in the judgment) (Congress should "be presumed to have intended that the courts should fulfill their traditional role of defining and maintaining the proper bounds of administrative discretion") (citation omitted). These decisions cannot be squared with petitioner's assertion that a "'strong presumption'" applies and resolves "any doubts" in his favor. Pet. Br. 24 (citation omitted).

Even if the presumption did apply in this context, it would be overcome here. This Court "has never applied the clear and convincing evidence standard in the strict evidentiary sense." *Bowen*, 476 U.S. at 672 n.3 (citation and internal quotation marks omitted); see, *e.g.*, *Cuozzo Speed Techs., LLC* v. *Lee*, 136 S. Ct. 2131, 2140 (2016). To the contrary, "the Court has found the standard met, and the presumption favoring judicial review overcome, whenever the congressional intent to preclude judicial review is fairly discernible in the statutory scheme." *Block* v. *Community Nutrition Inst.*, 467 U.S. 340, 351 (1984) (citation and internal quotation marks omitted);

see *Mach Mining, LLC*, 575 U.S. at 486 (explaining that the presumption "fails when a statute's language or structure demonstrates that Congress wanted an agency to police its own conduct"). Here, the statutory text and structure, reinforced by cases like *Sanders* and *Your Home*, amply evidence Congress's intention to limit judicial review under Section 355(f) to determinations under Section 355(c), and not to afford a right to judicial review where a claimant "seeks only an additional opportunity to establish that he satisfies the [RRA's] eligibility standards for disability benefits." *Sanders*, 430 U.S. at 109.

B. The Government's Interpretation Does Not Broadly Foreclose Review Of Other Board Determinations

Petitioner claims (Br. 35-36) that the government's interpretation would foreclose review of a broad range of Board decisions. In support, he identifies a handful of Board decisions that various lower courts have reviewed in the past but that, he contends, fall outside Section 355(c). The Court need not wade into the question of whether Board determinations far afield from the reopening denial at issue here are subject to judicial review. This Court has never addressed the decisions on which petitioner relies, and caution in reaching beyond the question presented is especially prudent in this context. The RUIA and RRA benefits schemes are highly reticulated, and many of the agency decisions petitioner highlights are potentially subject to review in certain postures but not others. In any event, because those decisions likely *are* reviewable to a significant extent under the government's approach, petitioner's argument should not give the Court pause. Given the breadth of Sections 231g and 355(c), the universe of nonreviewable Board decisions is narrow.

Petitioner's principal example (Br. 35) consists of "[d]ecisions terminating or modifying benefits." He contends that these decisions fall outside Section 355(c) because "they are not 'initial determination[s].'" *Ibid.* (quoting 45 U.S.C. 355(c)(1) and (2)) (brackets in original). This argument rests on a misunderstanding of the phrase "initial determination," which petitioner appears to read as limited to the Board's original disposition of a claim for benefits. Instead, the phrase refers to the first determination on a particular issue in the hierarchical agency review process. Context supports this interpretation: because Section 355(c) is an exhaustion provision authorizing aggrieved parties to appeal to a higher authority within the agency, see 45 U.S.C. 355(c)(1)-(4), it makes sense to read "initial determination" to mean the decision by the lowest-level agency adjudicator. The Board's implementing regulations reflect the same understanding. See, *e.g.*, 20 C.F.R. 320.6(a) ("The term 'adjudicating office' means any subordinate office of the Board which is authorized to make initial determinations."). "Initial determinations" under Section 355(c) (and corresponding determinations under the RRA) become judicially reviewable when they ripen into final agency decisions upon exhaustion. In short, nothing about this language excludes termination or modification decisions from review. See 20 C.F.R. 260.1(a)(4) (defining "initial decisions" in the RRA context to include "termination").

Next, petitioner notes (Br. 36) that "the Board often decides whether to grant or deny credit to claimants for service or compensation that was not reflected in their railroad employer's records," and that these determinations have a direct effect on benefits eligibility. He points out that the RRA generally requires claimants to

"challenge any errors in [compensation] determinations within four years," and worries that this period could expire "long before the employee seeks benefits." *Ibid.* (citing, *e.g.*, 45 U.S.C. 231h). The structure of the statute suggests that even credit determinations made in advance of a benefits claim should be reviewable, given the logical priority of credit determinations to benefits decisions under Section 355(c) and the time limitation on challenging those determinations. Cf. 45 U.S.C. 355(c)(5) (providing for judicial review of a final decision "or the determination of any issue therein").

Finally, petitioner points (Br. 36) to "Board orders requiring beneficiaries to repay erroneous payments." But at least a subset of these decisions are explicitly covered by Section 355(c). See 45 U.S.C. 355(c)(3) ("The Board shall take such action as is appropriate to recover the amount of such benefits."); 45 U.S.C. 355(c)(4) (providing for payment "subject to a right of recovery"). And any recovery of overpayments that directly deprives a claimant of benefits would likely fall under Section 355(c)(1) and (2), which govern the denial of benefits claims. 45 U.S.C. 355(c)(1) and (2). Petitioner's argument to the contrary again depends on his erroneous view that Board determinations post-dating the original resolution of a benefits claim do not qualify as "initial determination[s]." *Ibid.*; see Pet. Br. 37 (arguing that "overpayment recovery involves developments after the initial grant of benefits").

On the basis of his incorrect assumption (Pet. Br. 39) that the government's interpretation would "seal[] off many of the Board's critical decisions from executive or judicial accountability," petitioner argues (Br. 37-40) that precluding judicial review of reopening decisions

would raise separation-of-powers concerns. Even setting aside the mistaken premise, petitioner does not actually contend that excluding denials of reopening from judicial review would violate the Constitution.

Regardless, petitioner fails to muster any real-world support for his rhetoric that the government's position would subject railroad workers "to the mercy of an unchecked bureaucracy" (Br. 38) and transform the Board into "a law unto itself" (Br. 40). He fails to cite a *single* reopening decision or regulation in the Board's entire nearly 85-year history even remotely resembling his far-fetched hypotheticals (Br. 38) about decisions "limiting reopening to redheaded claimants" or "terminating all annuities granted in leap years." Nor, contrary to petitioner's assertion (Br. 39), does the Board's unusual composition have any bearing on the suitability or availability of judicial review of reopening denials in a large benefits program like this.

Petitioner does not challenge the denial of his reopening request on constitutional grounds. See *Sanders*, 430 U.S. at 109 ("This is not one of those rare instances where the Secretary's denial of a petition to reopen is challenged on constitutional grounds."). The Court therefore need not decide whether judicial review would be available in some manner where a substantial constitutional challenge was raised, including the applicability of this Court's decisions stating that a "heightened showing" is required if "Congress intends to preclude judicial review of constitutional claims" altogether. *Elgin* v. *Department of Treasury*, 567 U.S. 1, 9 (2012) (quoting *Webster* v. *Doe*, 486 U.S. 592, 603 (1988)). The Court also need "not decide whether mandamus would be available in an extraordinary case."

Thryv, Inc. v. *Click-to-Call Techs., LP*, 140 S. Ct. 1367, 1374 n.6 (2020).

C. The Board Has Not Conceded That Reopening Denials Are Subject To Judicial Review

Lastly, petitioner asserts the Board has changed positions on the question presented, pointing (Br. 27-28) to a legal opinion issued in 1942 by the Board's General Counsel. The General Counsel there urged the Board to reopen a prior final decision in light of a subsequent court decision rejecting the Board's reasoning in a different case presenting the same issue. U.S. R.R. Ret. Bd. Gen. Counsel, Legal Op. No. 42-673, at 2-3 (Dec. 15, 1942) (Legal Op.). The General Counsel advised that "[a]ny action by the Board refusing to reopen" the decision "could not, in [his] opinion, be successfully sustained in court, particularly in view of the very clear mandate of the Circuit Court." *Id.* at 4. Petitioner argues (Br. 27) that this opinion shows "the Board understood as early as 1942 that denials of reopening were subject to judicial review."

Petitioner's reliance on the opinion is misplaced. Prior to 1946, Section 355(f) (which is part of the RUIA) was not applicable to claims under the RRA. See 1946 Act § 215, 60 Stat. 735. At the time of the General Counsel's opinion, the RRA had its own, separate judicial review provision, which provided that "[a]n employee or other person aggrieved may" seek judicial review "to compel" the Board "to set aside an action or decision of the Board" or "to take action or to make a decision." 45 U.S.C. 228k (1940). It is against this backdrop that the General Counsel advised that the Board's "action * * * refusing to reopen" the prior decision could not be "sustained in court." Legal Op. 4. That 78-year-old discussion of a materially different statute is irrelevant to the

question presented here. If anything, it suggests that reopening decisions are *not* reviewable under the current framework, given the General Counsel's characterization of reopening denial as an "action," which, unlike a "decision," is not subject to review under Sections 231g or 355(f). See 45 U.S.C. 228k (1940) (subjecting *both* "action[s]" and "decision[s]" to review).

Petitioner thus points to no indication that the Board has ever considered reopening denials to be judicially reviewable under Sections 231g or 355(f). To the contrary, the Board has argued for decades that its denial of a reopening motion is not reviewable, and the majority of the courts of appeals that have considered the question have agreed. See *Cunningham* v. *Railroad Ret. Bd.*, 392 F.3d 567, 571-573 & n.5 (3d Cir. 2004); *Harris* v. *United States R.R. Ret. Bd.*, 198 F.3d 139, 142 (4th Cir. 1999); *Roberts* v. *United States R.R. Ret. Bd.*, 346 F.3d 139, 141 (5th Cir. 2003); *Steebe* v. *United States R.R. Ret. Bd.*, 708 F.2d 250, 254-255 (7th Cir.), cert. denied, 464 U.S. 997 (1983); *Abbruzzese* v. *Railroad Ret. Bd.*, 63 F.3d 972, 974 (10th Cir. 1995); but see also *Stovic* v. *Railroad Ret. Bd.*, 826 F.3d 500, 505-506 (D.C. Cir.) (Kavanaugh, J.), cert. denied, 137 S. Ct. 399 (2016); *Sones* v. *United States R.R. Ret. Bd.*, 933 F.2d 636, 638 (8th Cir. 1991); *Szostak* v. *Railroad Ret. Bd.*, 370 F.2d 253, 254-255 (2d Cir. 1966). This Court should so hold as well.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

1. 45 U.S.C. 231f provides:

Railroad Retirement Board

(a) Administration

This subchapter shall be administered by the Railroad Retirement Board established by the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.] as an independent agency in the executive branch of the Government and composed of three members appointed by the President, by and with the advice and consent of the Senate. Each member shall hold office for a term of five years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of the term and any member holding office pursuant to appointment under the Railroad Retirement Act of 1937 when this subchapter becomes effective shall hold office until the term for which he was appointed under such Railroad Retirement Act of 1937 expires. One member shall be appointed from recommendations made by representatives of the employees and one member shall be appointed from recommendations made by representatives of employers as defined in paragraph (i) of section 231(a)(1) of this title, in both cases as the President shall direct, so as to provide representation on the Board satisfactory to the largest number, respectively, of employees and employers concerned. One member, who shall be the chairman of the Board, shall be appointed without recommendation by either employers or employees and shall not be in the employment of or be pecuniarily or otherwise interested

in any employer or organization of employees. Vacancies in the Board shall not impair the powers or affect the duties of the Board or of the remaining members of the Board, of whom a majority of those in office shall constitute a quorum for the transaction of business. Upon the expiration of his term of office a member shall continue to serve until his successor is appointed and shall have qualified.

(b) Powers and duties

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

(2) In the case of—

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

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

(C) any survivor of such an individual if such survivor is entitled, or could upon application become entitled, to an annuity under section 231a of this title, and

(D) any other person entitled to benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] on the basis of the wages and self-employment

> income of such an individual (except a survivor of such an individual where such individual did not have a current connection with the railroad industry at the time of his death);

the Board shall provide for the payment on behalf of the Managing Trustee of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund of monthly benefits payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] which are certified by the Secretary to it for payment under the provisions of title II of the Social Security Act.

(3) If the Board finds that an applicant is entitled to an annuity or death benefit under the provisions of this subchapter then the Board shall make an award fixing the amount of the annuity or benefit, as the case may be, and shall certify the payment thereof as hereinafter provided; otherwise the application shall be denied. For purposes of this section, the Board shall have and exercise such of the powers, duties and remedies provided in subsections (a), (b), (d), and (n) of section 12 of the Railroad Unemployment Insurance Act [45 U.S.C. 362] as are not inconsistent with the express provisions of this subchapter. The Board is authorized to delegate to any member, officer, or employee of the Board any of the powers conferred upon the Board by this subchapter, excluding only the power to prescribe rules and regulations, including the power to make decisions on applications for annuities or other benefits: *Provided, however*, That any person aggrieved by a decision on his application for an annuity or other benefit shall have the right to appeal to the Board. Notice of a decision of the

Board, or of an employee thereof, shall be communicated to the applicant in writing within thirty days after such decision shall have been made.

(4)(A) The Secretary of the Treasury shall serve as the disbursing agent for benefits payable under this subchapter, under such rules and regulations as the Secretary may in the Secretary's discretion prescribe.

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

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

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

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

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

(6) The Board shall gather, keep, compile, and publish in convenient form such records and data as may be necessary to assure proper administration of this subchapter, including subdivision (2) of this subsection. The Board shall have power to require all employers and employees and any officer, board, commission, or other agency of the United States to furnish such information and records as shall be necessary for the administration of this subchapter, including subdivision (2) of this subsection. The several district courts of the United States shall have jurisdiction upon suit by the Board to compel obedience to any order of the Board issued pursuant to this section. The orders, writs, and processes of the United States District Court for the District of Columbia in such suits may run and be served anywhere in the United States. Witnesses summoned before the Board shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. The Board shall make an annual report to the President of the United States to be submitted to Congress.

(7) Notwithstanding any other provision of law, the Secretary of Health and Human Services shall furnish the Board certified reports of wages, self-employment income, and periods of service and of other records in his possession, or which he may secure, pertinent to the administration of this subchapter, the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.],,[1] the Milwaukee Railroad Restructuring Act [45 U.S.C. 901 et seq.], and the Rock Island Railroad Transition and Employee Assistance Act [45 U.S.C. 1001 et seq.]..[1] The Board shall furnish the Secretary of Health and Human Services certified reports of records of compensation

[1] So in original.

and periods of service reported to it pursuant to section 231h of this title, of determinations under section 231a of this title, and of other records in its possession, or which it may secure, pertinent to subsection (c) of this section or to the administration of the Social Security Act [42 U.S.C. 301 et seq.] as affected by section 231q of this title. Such certified reports shall be conclusive in adjudication as to the matters covered therein: *Provided, however*, That if the Board or the Secretary of Health and Human Services receives evidence inconsistent with a certified report and the application involved is still in course of adjudication or otherwise open for such evidence such recertification of such report shall be made as, in the judgment of the Board or the Secretary of Health and Human Services, whichever made the original certification, the evidence warrants. Such recertification and any subsequent recertification shall be treated in the same manner and be subject to the same conditions as an original certification.

(8) Any department or agency of the United States maintaining records of military service, at the request of the Board, shall certify to the Board, with respect to any individual, the number of months of military service which such department or agency finds the individual to have had during any period or periods with respect to which the Board's request is made, the date and manner of entry into such military service, and the conditions under which such service was continued. Any department or agency of the United States which is authorized to make awards of pensions, disability compensation, or any other gratuitous benefits or allowances payable, on the periodic basis or otherwise, under any other Act of Congress on the basis of military service, at the request of the Board, shall certify to the Board, with respect to

any individual, the calendar months for all or part of which any such pension, compensation, benefit, or allowance is payable to, or with respect to, the individual, the amounts of any such pension, compensation, benefit, or allowance, and the military service on which such pension, compensation, benefit, or allowance is based. Any certification made pursuant to the provisions of this subdivision shall be conclusive on the Board: *Provided, however*, That if evidence inconsistent with any such certification is submitted, and the claim is in the course of adjudication or is otherwise open for such evidence, the Board shall refer such evidence to the department or agency which made the original certification and such department or agency shall make such recertification as in its judgment the evidence warrants. Such recertification, and any subsequent recertification, shall be conclusive, made in the same manner, and subject to the same conditions as an original certification.

(9) The Board shall maintain such offices, provide such equipment, furnishings, supplies, services, and facilities, and employ such individuals and provide for their compensation and expenses as may be necessary for the proper discharge of its functions. All positions to which such individuals are appointed, except one administrative assistant to each member of the Board, shall be in and under the competitive civil service and shall not be removed or excepted therefrom. In the employment of such individuals under the civil service laws and rules the Board shall give preference over all others to individuals who have had experience in railroad service, if, in the judgment of the Board, they possess the qualifications necessary for the proper discharge of the duties of the positions to which they are to be appointed. For purposes of its administration of this subchapter or the

Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.], or both, the Board may place, without regard to the numerical limitations contained in section 5108(c)(9)[2] of title 5, four positions in grade GS-16 of the General Schedule established by that Act, four positions in grade GS-17 of such schedule, and one position in grade GS-18 of such schedule.

(c) Sources of payments; adjustments

(1) Benefit payments determined by the Board to be payable under this subchapter shall be made by the disbursing agent under subsection (b)(4) from money transferred to it from the National Railroad Retirement Investment Trust or the Social Security Equivalent Benefit Account, as the case may be, except that payments of annuity amounts made under sections 231b(h), 231c(e), and 231c(h) of this title and under sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93-445 shall be made by the disbursing agent under subsection (b)(4) from money transferred to it from the Dual Benefits Payments Account. In any fiscal year, the total amounts paid under such sections shall not exceed the total sums appropriated to the Dual Benefits Payments Account for that fiscal year. The Board shall prescribe regulations for allocation of annuity amounts which would without regard to such regulations be payable under sections 231b(h), 231c(e), and 231c(h) of this title and sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93-445 so that the sums appropriated to the Dual Benefits Payments Account for a fiscal year so far as practicable, are expended in equal monthly installments throughout such fiscal year, and are distributed so that

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[2] See References in Text note below.

recipients are paid annuity amounts which bear the same ratio to the annuity amounts such recipients would have received but for such regulations as the ratio of the total sums appropriated to pay such annuity amounts bear to the total sums necessary to pay such annuity amounts without regard to such regulations. Notwithstanding any other provision of law, the entitlement of an individual to an annuity amount under section 231b(h), 231c(e), or 231c(h) of this title or section 204(a)(3), 204(a)(4), 206(3), or 207(3) of Public Law 93-445 for any month in which the amount payable to such individual is allocated under the regulations prescribed by the Board under this subsection shall not exceed the amount so allocated for that month to such individual.

(2) At the close of the fiscal year ending June 30, 1975, and each fiscal year thereafter, the Board and the Secretary of Health and Human Services shall determine the amounts, if any, which if added to or subtracted from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund would place each such Trust Fund in the same position in which it would have been if (A) service as an employee after December 31, 1936, had been included in the term "employment" as defined in the Social Security Act [42 U.S.C. 301 et seq.] and in the Federal Insurance Contributions Act [26 U.S.C. 3101 et seq.] and (B) this subchapter had not been enacted. Such determination with respect to each such Trust Fund shall be made no later than June 15 following the close of the fiscal year. If, pursuant to any such determination, any amount is to be added to any such Trust Fund, the Board shall, within ten days after the determination, certify such amount to

the Secretary of the Treasury for transfer from the Railroad Retirement Account to such Trust Fund. If, pursuant to any such determination, any amount is to be subtracted from any such Trust Fund, the Secretary of Health and Human Services shall, within ten days after the determination, certify such amount to the Secretary of the Treasury for transfer from such Trust Fund to the Railroad Retirement Account. Any amounts so certified shall further include interest (at the rate determined in subdivision (3) for the fiscal year under consideration) payable from the close of such fiscal year until the date of certification. The Secretary of the Treasury is authorized and directed to transfer to the Railroad Retirement Account from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, or the Federal Hospital Insurance Trust Fund or to any such Trust Fund from the Railroad Retirement Account, as the case may be, such amounts as, from time to time, may be determined by the Board and the Secretary of Health and Human Services pursuant to the provisions of this subdivision and certified by the Board or the Secretary of Health and Human Services for transfer from any such Trust Fund or from the Railroad Retirement Account.

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

(4) After the end of each month beginning with the month of October 1983, the Board shall determine the net amount, if any, which if added to or subtracted from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund would, with respect to such month, place those Trust Funds, taken as a whole, in the same position in which they would have been if (A) service as an employee after December 31, 1936, had been included in the term "employment" as defined in the Social Security Act [42 U.S.C. 301 et seq.] and in the Federal Insurance Contributions Act [26 U.S.C. 3101 et seq.], and (B) this subchapter had not been enacted. If for any month the net amount so determined would be subtracted from those Trust Funds, the Board shall, within ten days after the end of such month, report such amount to the Secretary of the Treasury for transfer from the general fund to the Railroad Retirement Account. Any amount so reported shall further include interest (at an annual rate equal to the rate of interest borne by a special obligation issued to the Railroad Retirement Account in the month in which the transfer is made to the Account) payable from the close of the month for which the transfer is made until the date of transfer. The Secretary of the Treasury is authorized and directed to transfer to the Railroad Retirement Account from the general fund such amounts as, from time to time, may be determined by the Board pursuant to the provisions of this subdivision and reported by the Board for transfer. For such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities issued after August 12, 1983, under section 3102 of title 31, and the purpose for which securities

may be issued under section 3102 of title 31 are extended to include such purpose. Each such transfer shall be made by the Secretary of the Treasury within five days after a report of the amount to be transferred is received. Not later than December 31 following the close of each fiscal year beginning with the fiscal year ending September 30, 1984, the Board shall certify to the Secretary of the Treasury the total of all amounts transferred pursuant to the provisions of this subdivision for months in such fiscal year. Within ten days after a transfer, or transfers, pursuant to subdivision (2) for a particular fiscal year, the Board shall request the Secretary of the Treasury to retransfer from the Railroad Retirement Account to the general fund an amount equal to (A) the total of all amounts, exclusive of interest, transferred to such Account pursuant to the provisions of this subdivision for months in such fiscal year, plus (B) interest (at the rate determined in subdivision (3) for such fiscal year) payable with respect to each amount transferred for a month during such fiscal year from the close of the month for which the transfer of the amount was made until the date of retransfer of such amount. The Secretary of the Treasury is authorized and directed to retransfer from the Railroad Retirement Account to the general fund such amounts as, from time to time, may be determined by the Board pursuant to the provisions of the preceding sentence of this subdivision and reported by the Board for retransfer.

(d) Hospital insurance benefits; certified beneficiaries; disability insurance benefits; services in Canada; exchange of information

(1) The Board shall, for purposes of this subsection, have the same authority to determine the rights of individuals described in subdivision (2) to have payments made on their behalf for hospital insurance benefits consisting of inpatient hospital services, posthospital extended care services, home health services, hospice care, and outpatient hospital diagnostic services (all hereinafter referred to as "services") under section 226 [42 U.S.C. 426], and parts A and E of title XVIII [42 U.S.C. 1395c et seq., 1395x et seq.], of the Social Security Act as the Secretary of Health and Human Services has under such section and such parts with respect to individuals to whom such sections and such parts apply. For purposes of section 231g of this title, a determination with respect to the rights of an individual under this subsection shall, except in the case of a provider of services, be considered to be a decision with respect to an annuity.

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

(i) has attained age 65 and (A) is entitled to an annuity under this subchapter or (B) would be entitled to such an annuity had he ceased compensated service and, in the case of a spouse or divorced wife, had such spouse's husband or wife ceased compensated service or (C) bears a relationship to an employee which, by reason of section 231b(f)(2) of this title, has been, or would be, taken into account in calculating the amount of the annuity of such employee; or

(ii) has not attained age 65 and (A) has been entitled to an annuity under section 231a of this title, or under the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.] and section 231a of this title, or could have been includible in the computation of an annuity under section 231b(f)(2) of this title, for not less than 24 months and (B) could have been entitled for 24 calendar months, and could currently be entitled, to monthly insurance benefits under section 223 of the Social Security Act [42 U.S.C. 423] or under section 202 of that Act [42 U.S.C. 402] on the basis of disability if service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act and if an application for disability benefits had been filed,

shall be certified to the Secretary of Health and Human Services as a qualified railroad retirement beneficiary under section 226 of the Social Security Act [42 U.S.C. 426].

(3) If an individual entitled to an annuity under paragraph (iv) or (v) of section 231a(a)(1) of this title would have been insured for disability insurance benefits as determined under section 223(c)(1) of the Social Security Act [42 U.S.C. 423(c)(1)] at the time such annuity began, he shall be deemed, solely for purposes of paragraph (ii) of subdivision (2), to be entitled to a disability insurance benefit under section 223 of the Social Security Act for each month, and beginning with the first month, in which he would meet the requirements for entitlement to such a benefit, other than the requirement of being insured for disability insurance benefits, if service as an employee after December 31, 1936, had been

included in the term "employment" as defined in the Social Security Act [42 U.S.C. 301 et seq.] and if an application for disability benefits had been filed.

(4) The rights of individuals described in subdivision (2) of this subsection to have payment made on their behalf for the services referred to in subdivision (1) but provided in Canada shall be the same as those of individuals to whom section 226 [42 U.S.C. 426] and part A of title XVIII [42 U.S.C. 1395c et seq.] of the Social Security Act apply, and this subdivision shall be administered by the Board as if the provisions of section 226 and part A of title XVIII of the Social Security Act were applicable, as if references to the Secretary of Health and Human Services were to the Board, as if references to the Federal Hospital Insurance Trust Fund were to the Railroad Retirement Account, as if references to the United States or a State included Canada or a subdivision thereof, and as if the provisions of sections 1862(a)(4), 1863, 1864, 1868, 1869, 1874(b), and 1875 [42 U.S.C. 1395y(a)(4), 1395z, 1395aa, 1395ee, 1395ff, 1395kk(b), 1395*ll*] were not included in such title. The payments for services herein provided for in Canada shall be made from the Railroad Retirement Account (in accordance with, and subject to, the conditions applicable under subsection (b) of this section, in making payment of other benefits) to the hospital, extended care facility, or home health agency providing such services in Canada to individuals to whom subdivision (2) of this subsection applies, but only to the extent that the amount of payments for services otherwise hereunder provided for an individual exceeds the amount payable for like services provided pursuant to the law in effect in the place in Canada where such services are furnished.

For the purposes of section 231i of this title, any overpayment under this subdivision shall be treated as if it were an overpayment of an annuity.

(5) The Board and the Secretary of Health and Human Services shall furnish each other with such information, records, and documents as may be considered necessary to the administration of this subsection or section 226 [42 U.S.C. 426], and part A of title XVIII [42 U.S.C. 1395c et seq.], of the Social Security Act.

(e) Acceptance of gifts and bequests

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

(f) Congressional copies of documents submitted or transmitted to President or Office of Management and Budget

Whenever the Board submits or transmits any budget estimate, budget request, supplemental budget estimate, or other budget information, legislative recommendation, prepared testimony for congressional hearings, or comment on legislation to the President or to the Office of Management and Budget, it shall concur-

rently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Board to submit its budget requests or estimates, legislative recommendations, prepared testimony for congressional hearings, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

2. 45 U.S.C. 231g provides:

Court jurisdiction

Decisions of the Board determining the rights or liabilities of any person under this subchapter shall be subject to judicial review in the same manner, subject to the same limitations, and all provisions of law shall apply in the same manner as though the decision were a determination of corresponding rights or liabilities under the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.] except that the time within which proceedings for the review of a decision with respect to an annuity, supplemental annuity, or lump-sum benefit may be commenced shall be one year after the decision will have been entered upon the records of the Board and communicated to the claimant.

3. 45 U.S.C. 355 provides:

Claims for benefits

(a) Publication of Board's regulations

Claims for benefits and appeals from determinations with respect thereto shall be made in accordance with such regulations as the Board shall prescribe. Each employer shall post and maintain, in places readily accessible to employees in his service, such printed statements concerning such regulations as the Board supplies to him for such purpose, and shall keep available to his employees copies of such printed statements. Such printed statements shall be supplied by the Board to each employer without cost to him.

(b) Findings, hearings, investigations, etc., by Board

The Board is authorized and directed to make findings of fact with respect to any claim for benefits and to make decisions as to the right of any claimant to benefits. The Board is further authorized to hold such hearings, to conduct such investigations and other proceedings, and to establish, by regulations or otherwise, such procedures as it may deem necessary or proper for the determination of a right to benefits. When a claim for benefits is filed with the Board, the Board shall provide notice of such claim to the claimant's base-year employer or employers and afford such employer or employers an opportunity to submit information relevant to the claim before making an initial determination on the claim. When the Board initially determines to pay benefits to a claimant under this chapter, the Board shall provide notice of such determination to the claimant's base-year employer or employers.

(c) Hearing and review of decisions on claims

(1) Each qualified employee whose claim for benefits has been denied in whole or in part upon an initial determination with respect thereto upon a basis other than one which is reviewable pursuant to one of the succeeding paragraphs of this subsection, shall be granted an opportunity for a fair hearing thereon before a referee or such other reviewing body as the Board may establish or assign thereto. In any such case the Board or the person or reviewing body so established or assigned shall, by publication or otherwise, notify all parties properly interested of their right to participate in the hearing and of the time and place of the hearing.

(2) Any claimant whose claim for benefits has been denied in an initial determination with respect thereto upon the basis of his not being a qualified employee, and any claimant who contends that under an initial determination of his claim he has been awarded benefits at less than the proper rate, may appeal to the Board for the review of such determination. Thereupon the Board shall review the determination and for such review may designate one of its officers or employees to receive evidence and to report to the Board thereon together with recommendations. In any such case the Board or the person so designated shall, by publication or otherwise, notify all parties properly interested of their right to participate in the proceeding and, if a hearing is to be held, of the time and place of the hearing. At the request of any party properly interested the Board shall provide for a hearing, and may provide for a hearing on its own motion. The Board shall prescribe regulations governing the appeals provided for in this paragraph and for decisions upon such appeal.

(3) Any base-year employer of a claimant whose claim for benefits has been granted in whole or in part, either in an initial determination with respect thereto or in a determination after a hearing pursuant to paragraph (1), and who contends that the determination is erroneous for a reason or reasons other than a reason that is reviewable under paragraph (4), may appeal to the Board for review of such determination. Despite such an appeal, the benefits awarded shall be paid to such claimant, subject to recovery by the Board if and to the extent found on the appeal to have been erroneously awarded. The Board shall take such action as is appropriate to recover the amount of such benefits including if feasible adjustment in subsequent payments pursuant to the first two paragraphs of section 352(d) of this title. Upon an appeal, the Board shall review the determination appealed from and for such review may designate one of its officers or employees to receive evidence and report to the Board thereof together with recommendations. In any such case the Board or the person so designated shall, by publication or otherwise, notify all parties properly interested of their right to participate in the proceeding and, if a hearing is to be held, of the time and place of the hearing. At the request of any party properly interested the Board shall provide for a hearing, and may provide for a hearing on its own motion. The Board shall prescribe regulations governing the appeals provided for in this paragraph and for decisions upon such appeal.

(4) In any case in which benefits are awarded to a claimant in whole or in part upon the basis of pay earned in the service of a person or company found by the Board to be an employer as defined in this chapter but which denies that it is such an employer, such benefits awarded

on such basis shall be paid to such claimant subject to a right of recovery of such benefits. The Board shall thereupon designate one of its officers or employees to receive evidence and to report to the Board on whether such benefits should be repaid. The Board may also designate one of its officers or employees to receive evidence and report to the Board whether or not any person or company is entitled to a refund of contributions or should be required to pay contributions under this chapter, regardless of whether or not any claims for benefits will have been filed upon the basis of service in the employ of such person or company, and shall follow such procedure if contributions are assessed and payment is refused or payment is made and a refund claimed upon the basis that such person or company is or will not have been liable for such contributions. In any such case the Board or the person so designated shall, by publication or otherwise, notify all parties properly interested of their right to participate in the proceeding and, if a hearing is to be held, of the time and place of the hearing. At the request of any party properly interested the Board shall provide for a hearing, and may provide for a hearing on its own motion. The Board shall prescribe regulations governing the proceedings provided for in this paragraph and for decisions upon such proceedings.

(5) Final decision of the Board in the cases provided for in the preceding three paragraphs shall be communicated to the claimant and to the other interested parties within fifteen days after it is made. Any properly interested party notified, as hereinabove provided, of his right to participate in the proceedings may obtain a review of any such decision by which he claims to be aggrieved or the determination of any issue therein in the manner provided in subsection (f) of this section with

respect to the review of the Board's decisions upon claims for benefits and subject to all provisions of law applicable to the review of such decisions. Subject only to such review, the decision of the Board upon all issues determined in such decision shall be final and conclusive for all purposes and shall conclusively establish all rights and obligations, arising under this chapter, of every party notified as hereinabove provided of his right to participate in the proceedings.

(6) For purposes of this subsection and subsections (d) and (f), any base-year employer of the claimant is a properly interested party.

(7) Any issue determinable pursuant to this subsection and subsection (f) of this section shall not be determined in any manner other than pursuant to this subsection and subsection (f).

(d) Decisions of reviewing bodies; review and finality

The Board shall prescribe regulations governing the filing of cases with and the decision of cases by reviewing bodies, and the review of such decisions. The Board may provide for intermediate reviews of such decisions by such bodies as the Board may establish or assign thereto. The Board may (i) on its own motion review a decision of an intermediate reviewing body on the basis of the evidence previously submitted in such case, and may direct the taking of additional evidence, or (ii) permit such parties as it finds properly interested in the proceedings to take appeals to the Board. Unless a review or an appeal is had pursuant to this subsection, the decision of an intermediate reviewing body shall, subject to such regulations as the Board may prescribe, be deemed to be the final decision of the Board.

(e) Application of rules of evidence in law and equity; notice of findings

In any proceeding other than a court proceeding, the rules of evidence prevailing in courts of law or equity shall not be controlling, but a full and complete record shall be kept of all proceedings and testimony, and the Board's final determination, together with its findings of fact and conclusions of law in connection therewith, shall be communicated to the parties within fifteen days after the date of such final determination.

(f) Review of final decision of Board by Courts of Appeals; costs

Any claimant, or any railway labor organization organized in accordance with the provisions of the Railway Labor Act [45 U.S.C. 151 et seq.], of which claimant is a member, or any base-year employer of the claimant, or any other party aggrieved by a final decision under subsection (c) of this section, may, only after all administrative remedies within the Board will have been availed of and exhausted, obtain a review of any final decision of the Board by filing a petition for review within ninety days after the mailing of notice of such decision to the claimant or other party, or within such further time as the Board may allow, in the United States court of appeals for the circuit in which the claimant or other party resides or will have had his principal place of business or principal executive office, or in the United States Court of Appeals for the Seventh Circuit or in the United States Court of Appeals for the District of Columbia. A copy of such petition, together with initial process, shall forth-with be served upon the Board or any officer designated by it for such purpose. A copy of such petition also shall forthwith be served upon any other properly

interested party, and such party shall be a party to the review proceeding. Service may be made upon the Board by registered mail addressed to the Chairman. Within thirty days after receipt of service, or within such additional time as the court may allow, the Board shall file with the court in which such petition has been filed the record upon which the findings and decision complained of are based, as provided in section 2112 of title 28. Upon the filing of such petition the court shall have exclusive jurisdiction of the proceeding and of the question determined therein. It shall have power to enter a decree affirming, modifying, or reversing the decision of the Board, with or without remanding the cause for rehearing. The findings of the Board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive. No additional evidence shall be received by the court but the court may order additional evidence to be taken before the Board, and the Board may, after hearing such additional evidence, modify its findings of fact and conclusions and file such additional or modified findings and conclusions with the court, and the Board shall file with the court the additional record. The judgment and decree of the court shall be final, subject to review as in equity cases.

An applicant for review of a final decision of the Board concerning a claim for benefits shall not be liable for costs, including costs of service, or costs of printing records, except that costs may be assessed by the court against such applicant if the court determines that the proceedings for such review have been instituted or continued without reasonable ground.

(g) Finality of Board decisions

Findings of fact and conclusions of law of the Board in the determination of any claim for benefits or refund, the determination of any other matter pursuant to subsection (c) of this section, and the determination of the Board that the unexpended funds in the account are available for the payment of any claim for benefits or refund under this chapter, shall be, except as provided in subsection (f) of this section, binding and conclusive for all purposes and upon all persons, including the Comptroller General and any other administrative or accounting officer, employee, or agent of the United States, and shall not be subject to review in any manner other than that set forth in subsection (f) of this section.

(h) Benefits payable prior to final decision of Board

Except as may be otherwise prescribed by regulations of the Board, benefits payable with respect to any period prior to the date of a final decision of the Board with respect to a claim therefor, shall be paid only after such final decision.

(i) Fees for presenting claims; penalties

No claimant or other properly interested person claiming benefits shall be charged fees of any kind by the Board, its employees or representatives, with respect to such claim. Any such claimant or other properly interested person may be represented by counsel or other duly authorized agent, in any proceeding before the Board or its representatives or a court, but no such counsel or agent for a claimant shall either charge or receive for such services more than an amount approved by the Board or by the court before whom the proceed-

ings of the Board are reviewed. Any person who violates any provision of this subsection shall be punished by a fine of not more than $10,000 or by imprisonment not exceeding one year.