

July 23, 1997
L-97-27

TO : Lawrence D. Haskin
Debt Recovery Officer
Office of Administration - Bureau of Fiscal Operations

FROM : Steven A. Bartholow
Deputy General Counsel
Through: Catherine C. Cook
General Counsel

SUBJECT : Support Enforcement Overpayments

This is in reply to your memorandum of July 11, 1997, regarding the recovery of amounts paid in satisfaction of a support enforcement obligation which turn out to have been made erroneously. You inquire whether these erroneous payments may be recovered from the employee, his estate, and/or any other beneficiary. The answer depends on the circumstances of each case.

The overpayment occurs when the deductions should be terminated, either due to the death of the employee or the termination of the support enforcement order, but are not terminated because either the examiner who reinstates the employee annuity to its full rate fails to terminate the support deduction, or there is a delay in provision of notification to the RRB of the death of the employee.

Section 10(a) of the Railroad Retirement Act provides that "annuities or other benefits" erroneously paid may be recovered by offset against any future benefits payable to any person who receives benefits on the same compensation record as the overpaid individual. In Legal Opinion L-68-2, we determined that recovery under section 9(a) of the Railroad Retirement Act of 1937 (the predecessor of section 10(a)) should generally be made only from benefits due members of the same family group as the overpaid individual. This so-called "split family group" doctrine is included in the proposed revisions to Part 255 of the Board's regulations.

The employee would ordinarily be in a different family group from that of the support beneficiary, so the overpayment should not, consistent with Legal Opinion L-68-2, be recovered from the employee unless he was either aware that benefits were being paid incorrectly or benefited from the overpayment.

Section 10(a) refers to recovery from future benefits, and would not apply to recovery of a debt from an estate unless that debt could be recovered from a benefit due by the RRB to the estate.

Recovery of the erroneous payment from any other beneficiary would be open to the same objection as recovery from the employee: the beneficiary is likely to be in a separate family group from the person who received the overpayment and therefore the recovery could not be made from that individual. However, recovery could be made if that individual was aware that benefits were being paid incorrectly or benefited from the overpayment. Recovery could also be made if the individual paid under the support order and the annuitant were the same person or were in the same household (i.e., were in the same family group).