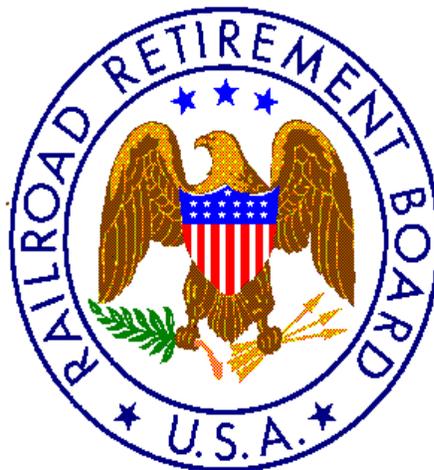


# OFFICE OF INSPECTOR GENERAL

## Audit Report

### Audit of the Impact of a New Legal Opinion Related to RUIA Section 12(o) Liens

Report No. 12-09  
September 25, 2012



**RAILROAD RETIREMENT BOARD**

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## EXECUTIVE SUMMARY

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### Background

The Office of Inspector General conducted an audit to determine the impact of a new legal opinion related to the Railroad Unemployment Insurance Act (RUIA) Section 12(o) liens. In this legal opinion, the Railroad Retirement Board's (RRB) General Counsel concluded that the RRB should not allow the amount of its lien to be reduced for medical and hospital expenses paid under the Health and Welfare Agreement, as was the agency's previous practice.<sup>1</sup>

Generally, railroad employees cannot receive workers' compensation for on-the-job injuries. Instead, they sue their employers for injury claims, and then apply to receive sickness benefits from the RRB during the period of injury. The RRB pays sickness benefits to the railroad employee during the period of injury, and subsequently sets up a lien against any future settlements to recover the amount of sickness benefits paid. The agency refers to this lien as a 12(o) lien (hereafter referred to as "the lien"). Sickness benefits are paid out of the RRB's Railroad Unemployment Insurance Trust Fund.

In 1975, railroad management and railroad labor entered into an agreement called the Health and Welfare Agreement (hereafter referred to as "the Agreement"). This agreement provided for the railroad employers to set up a separate insurance policy to pay for medical and hospital expenses for injured employees. The expenses covered by the separate policy would otherwise have been the responsibility of the railroad employer.

In the legal opinion, the RRB's General Counsel stated that if medical and hospital expenses were paid through the Agreement, these expenses could not be deducted from the RRB's lien. Prior to the legal opinion, the RRB deducted all submitted medical and hospital expenses when a railroad employee provided them for consideration in order to reduce the lien against the settlement from the railroad employer. As a result of the legal opinion, the Inspector General tasked us with determining its impact on the RUIA trust funds.

### Objective

The objective of our audit was to determine the potential amount of dollars not recovered by the Railroad Unemployment Insurance Trust Fund due to the RRB's previous practice of reducing its lien amount by the amount of medical and hospital expenses paid pursuant to the Agreement.

We conducted our fieldwork at the RRB's headquarters in Chicago, Illinois from July 2011 to June 2012.

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<sup>1</sup> RRB Legal Opinion, L-2011-06, dated July 22, 2011. Hereafter referred to as "the legal opinion."

## **Findings**

We found that:

- The Railroad Unemployment Insurance Trust Fund would have potentially recovered approximately \$300,000 more in sickness benefits if the policy prescribed by the legal opinion had been in effect in calendar years 2008 through 2010.
- Data for 12(o) lien reductions was not readily available.
- Some 12(o) lien documentation was incomplete.
- New policies and procedures for 12(o) liens had not been developed.

## **Recommendations**

To address the problems found, we recommended that the Office of Programs:

- Implement a comprehensive tracking system for 12(o) liens.
- Strengthen existing controls to ensure that procedures provide explicit instructions regarding the documentation and approvals required for 12(o) lien decisions.
- Develop policies and procedures for 12(o) liens based on the legal opinion, without further delay.
- Review all 12(o) lien reductions that were processed subsequent to the legal opinion and adjust them, if necessary.

## **Management's Response**

The Office of Programs agreed to take corrective action for all four of our recommendations. They did, however, provide a general comment on the discussion in the report related to the delays in the audit staff not being able to obtain the information needed to perform their analysis. They stated that the information needed was not readily available because there was no business requirement to maintain the information in the form requested. They also stated that had the Office of Programs been asked to assist in either the compilation of the data, or simply in the identification of data sources to be used, they believe that the timeframe for information gathering could have been substantially reduced. The full text of agency management's response is included in this report as Appendix IV.

## **RRB-OIG's Comments to Management's Response**

The OIG maintains that they did speak to the Office of Programs staff prior to requesting the data from the Bureau of Information Services and were told that the data we were requesting was not maintained in a format that we could use to satisfy our audit objectives. Furthermore, the Office of Programs Staff would have had to manually extract the information in the same manner that OIG auditors did, therefore saving no time.

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## TABLE OF CONTENTS

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### EXECUTIVE SUMMARY

### INTRODUCTION

Background .....	1
Audit Objective .....	2
Scope .....	3
Methodology.....	3

### RESULTS OF AUDIT

Potential Impact of a New Legal Opinion Related to RUIA Section 12(o) Liens.....	4
Data for 12(o) Lien Reductions was not Readily Available.....	5
Recommendation .....	6
Some 12(o) Lien Documentation was Incomplete.....	6
Recommendation .....	7
New Policies and Procedures for 12(o) Liens had not been Developed.....	7
Recommendations .....	8

### APPENDICES

Appendix I - Glossary of Terms.....	10
Appendix II - Audit Methodology for Determining the 12(o) Universe.....	12
Appendix III - Testing Methodology and Results of Census .....	14
Appendix IV - Management's Response .....	17

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## INTRODUCTION

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The Office of Inspector General (OIG) conducted an audit to determine the impact of a new legal opinion related to the Railroad Unemployment Insurance Act (RUIA) Section 12(o) liens. In this legal opinion, the Railroad Retirement Board's (RRB) General Counsel concluded that the RRB should not allow the amount of its lien to be reduced for medical and hospital expenses paid under the Health and Welfare Agreement, as was the agency's previous practice.<sup>2</sup>

A glossary of terms has been provided in Appendix I.

### **Background**

The RRB is an independent agency in the executive branch of the Federal government. The RRB administers the retirement/survivor and unemployment/sickness insurance benefit programs for railroad workers and their families under the Railroad Retirement Act and the RUIA. These programs provide income protection in the event of old age, disability, death, temporary unemployment, or sickness. The RRB paid almost \$91 million in RUIA benefits to approximately 29,000 beneficiaries during fiscal year 2011.

Generally, railroad employees cannot receive workers' compensation for on-the-job injuries. Instead, they sue their employers for injury claims, and then apply to receive sickness benefits from the RRB during the period of injury. The RRB pays sickness benefits to the railroad employee during the period of injury, and subsequently sets up a lien against any future settlements to recover the amount of sickness benefits paid. The agency refers to this lien as a 12(o) lien (hereafter referred to as "the lien"). Sickness benefits are paid out of the RRB's Railroad Unemployment Insurance Trust Fund. The RRB's Office of Programs is administratively responsible for, and maintains oversight of, the lien process.

Section 12(o) of the RUIA provides that benefits payable to an employee with respect to days of sickness shall be payable by the RRB regardless of the liability of any person to pay damages for such infirmity. The RRB is entitled to reimbursement of the benefits paid if the employee or other person receives any sum or damages from the liable party through suit, compromise, settlement, judgment, or otherwise.

The RRB's right of reimbursement applies only to the net amount of a settlement after deducting legal, medical, and hospital expenses that were submitted by the railroad employee from the gross settlement amount. The RRB informs the railroad employer of the RRB's lien and when a settlement occurs the RRB determines whether to enforce the entire lien, or to reduce it. For the railroad employees included in this audit, the RRB reduced the liens by approximately \$1.3 million for calendar years (CY) 2008 through 2010.

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<sup>2</sup> RRB Legal Opinion, L-2011-06, dated July 22, 2011. Hereafter referred to as "the legal opinion."

When determining whether to enforce a lien, RRB's regulations specify that medical and hospital expenses that the railroad employee submitted be subtracted from the lien amount. These expenses are deductible even if they are paid under an insurance policy covering the railroad employee or are covered by his or her membership in a medical or hospital plan or association. However, medical and hospital expenses are not deductible from the lien if they are paid by the railroad employer.

In 1975, railroad management and railroad labor entered into an agreement called the Health and Welfare Agreement (hereafter referred to as "the Agreement"). This agreement provided for the railroad employers to set up a separate insurance policy to pay for medical and hospital expenses for injured employees. The expenses covered by the separate policy would otherwise have been the responsibility of the railroad employer.

In the legal opinion, the RRB's General Counsel concluded that the RRB should not allow the amount of its lien to be reduced by the amount of medical expenses that are paid on an injured employee's behalf, pursuant to the Agreement because the medical and hospital expenses paid by this separate insurance policy for the railroad employers should be considered the equivalent of payment of medical and hospital expenses paid directly by the railroad employer.

Prior to the legal opinion, the RRB had followed existing regulations in computing the net settlement amount and included the medical and hospital expenses paid by the railroad employers' separate insurance policies in the reduction of the lien.<sup>3</sup> The legal opinion introduced a change to the requirements that the RRB must consider when computing how much of the settlement is subject to the agency's lien.

This audit supports one of the goals of the RRB's strategic plan, which is to serve as responsible stewards for the customers' trust funds and agency resources. In support of this goal and based on a request from the Inspector General, we performed this audit.

### **Audit Objective**

The objective of our audit was to determine the potential amount of dollars not recovered by the Railroad Unemployment Insurance Trust Fund due to the RRB's previous practice of reducing its lien amount by the amount of medical and hospital expenses paid pursuant to the Agreement.

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<sup>3</sup> 20 CFR § 341.5

## Scope

The scope of the audit was the lien reduction cases for CYs 2008 through 2010 for nine selected railroad employers.

## Methodology

To accomplish our audit objective, we:

- reviewed prior OIG audit findings;
- reviewed and compared applicable laws and regulations to RRB policies and procedures;
- conducted a walkthrough of the lien reduction process;
- interviewed responsible RRB management and staff, and railroad representatives, as necessary;
- obtained a download of all liens listed on the RRB systems;
- obtained an understanding of the data related to the liens with a review of RRB procedures and discussion with agency employees;
- validated information we received about 12(o) cases that:
  - do not involve a lien for an on-the-job injury;
  - involve an on-the-job injury but do not yet have a settlement; or
  - involve an on-the-job injury, a settlement, and all benefits have been recovered; (See Appendix II.) and
- performed a full review of all remaining lien cases that had the potential for a lien reduction. (See Appendix III.)

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We conducted our fieldwork at the RRB's headquarters in Chicago, Illinois, from July 2011 through June 2012.

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## RESULTS OF AUDIT

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Our audit disclosed that the Railroad Unemployment Insurance Trust Fund would have potentially recovered approximately \$300,000 more in sickness benefits if the policy prescribed by the legal opinion had been in effect in CYs 2008 through 2010.

During our audit, we also found that:

- Data for 12(o) lien reductions was not readily available.
- Some 12(o) lien documentation was incomplete.
- New policies and procedures for 12(o) liens had not been developed.

The details of our findings and recommendations for corrective action follow. The full text of management's response is included in this report as Appendix IV.

### **Potential Impact of a New Legal Opinion Related to RUIA Section 12(o) Liens**

The Railroad Unemployment Insurance Trust Fund would have potentially recovered approximately \$300,000 more in sickness benefits if the policy prescribed by the legal opinion had been in effect in CYs 2008 through 2010. See Appendix III for details of the calculation.

Prior to the legal opinion, the RRB followed the existing regulations in 20 CFR § 341.5. These regulations stated that the RRB compute the net settlement amount by including all medical and hospital expenses incurred by the employee unless they were paid by a railroad or other person directly to the doctor, clinic or hospital that provided the medical care or services. However, the regulations did not address medical expenses paid by the special insurance policies on behalf of the railroads. Therefore, the RRB would deduct all submitted medical and hospital expenses when a railroad employee provided them for consideration in order to reduce the lien against the settlement from the railroad employer.

The legal opinion required a change to the procedures so that the RRB will no longer deduct medical and hospital expenses from the settlement to determine the 12(o) lien reduction if the expenses were paid as a result of special insurance in which the railroad employer participated. The legal opinion established the medical and hospital expenses paid by the special insurance policy on behalf of the railroad are the equivalent of medical (and hospital) expenses paid directly by the railroad.

Once new procedures to reflect the legal opinion are implemented, the RRB has the potential to recover more money for the Railroad Unemployment Insurance Trust Fund in the future.

## **Data for 12(o) Lien Reductions was not Readily Available**

Our audit disclosed that data for lien reductions was recorded in multiple places and was not readily available.

The US Government Accountability Office's (GAO) Federal Information System Controls Audit Manual identifies the characteristic of availability as key for information maintained by Federal agencies. Application data and reports and other relevant business information should be readily available to users when needed. GAO defines the objective of availability as ensuring timely and reliable access to and use of information. GAO states that proper control of information systems ensures availability of data that enables the accomplishment of the agency's mission.<sup>4</sup>

According to GAO's Standards for Internal Control in the Federal Government, transactions should be promptly recorded to maintain their relevance and value to management in controlling operations and making decisions. Controls over these transactions and control activities help to ensure that all transactions are completely and accurately recorded. In order for management to have the information necessary to direct operations and make informed decisions, all transactions and other significant events need to be clearly documented and the documentation should be readily available for examination.<sup>5</sup>

To accomplish our audit objective, we needed to examine all lien reductions that took place during CYs 2008 through 2010. When we first requested the information about lien reductions granted during the above time period, we found that the agency did not track this information and the transactions that supported the reductions were not recorded in a manner that was easily retrievable. The lack of availability of this data was an obstacle to conducting this audit.

The agency took more than seven weeks to determine the best way to answer our data request. The OIG had to submit a formal request and a new information technology project plan was created so that agency management could provide us with lien reduction data. When they did provide us with information, the data contained only indicators of potential lien reductions. To identify actual lien reductions, OIG had to manually extract data from various RRB systems.

In addition, although the Office of Programs advised us that most of the information related to liens was available in the agency's on-line imaging system, the information we needed, including the date of the lien reduction, the employer, the employee, the settlement amount, and the amount of lien reduction, was not summarized in any one place. The OIG believes that this data should be available at individual and summary levels.

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<sup>4</sup> "Federal Information System Controls Audit Manual (FISCAM)," GAO-09-232G (02/09), pages 44, 68, and 227.

<sup>5</sup> "Standards for Internal Control in the Federal Government," GAO/AIMD-00-21.3.1 (11/99), page 15.

Because the data was not readily available, OIG auditors had to manually analyze approximately 500 cases that had the potential for lien reductions. Of these approximately 500 cases, only 139 were found to have actual lien reductions for the selected railroad employers. See Appendices II and III for details.

The lien reduction data was not readily available because agency management does not track the lien reductions granted, the existing systems do not record lien reduction transactions, and the information to identify lien reductions resides in multiple systems. The agency does not have a comprehensive tracking system for 12(o) liens.

Because the data is not summarized, agency management does not know the number or dollar amount of lien reductions granted, and therefore, cannot make informed decisions regarding the lien reduction process.

### Recommendation

We recommend that the Office of Programs:

1. implement a comprehensive tracking system for 12(o) liens.

### **Management's Response**

The Office of Programs stated that they believed they could develop a cost-effective method that would provide them with the capability to retrieve the information for analysis should it be needed.

### **Some 12(o) Lien Documentation was Incomplete**

Some documentation related to 12(o) lien reductions was incomplete.

GAO's Standards for Internal Control in the Federal Government state that specific control activities support strong internal controls. One such control activity is accurate and timely recording of events. Events, such as a telephone conversation with a railroad employee's attorney, should be promptly recorded so that the relevance of the events is maintained and so that management can use the events in making decisions about lien enforcement or reduction. The documentation of events should be readily available for examination. According to GAO, approvals are control activities that support strong internal controls.<sup>6</sup>

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<sup>6</sup> "Standards for Internal Control in the Federal Government," GAO/AIMD-00-21.3.1 (11/99), pages 14, 15, and 11.

During our audit, we found incomplete documentation for some potential lien reduction cases. To complete our analysis of potential lien reductions, we looked for the form that the agency used to support the computation of the net settlement amount subject to the RRB's lien. This form is called the Net Settlement Worksheet. Documentation problems included the following:

- Missing Net Settlement Worksheet where a lien reduction was granted.
- Net Settlement Worksheet was available, but supervisory approval had not been documented.
- Missing records for telephone conversations with railroad employee's attorneys. These conversations resulted in decisions to either reduce the lien or to reverse lien enforcement.

Documentation for these cases was sometimes incomplete because procedures for 12(o) lien decisions were not detailed. Although existing procedures outlined the steps that examiners should take to make lien decisions, they did not specifically instruct examiners to document their decisions, or the reasoning behind their decisions, or to document supervisory approval. In addition, although procedures allowed for RRB employees to discuss settlements over the telephone with employers, railroad employees, and railroad employees' attorneys, they do not instruct them to document these discussions.

We identified four cases with lien reductions totaling approximately \$31,000 where documentation problems existed.

### Recommendation

We recommend that the Office of Programs:

2. strengthen existing controls to ensure that procedures provide explicit instructions regarding the documentation and approvals required for 12(o) lien decisions.

### **Management's Response**

The Office of Programs stated that they agreed that the process could be better documented and will implement process improvements.

### **New Policies and Procedures for 12(o) Liens had not been Developed**

Our audit determined that new policies and procedures based on the legal opinion had not been developed. The legal opinion introduced a change to the requirements that the RRB must consider when computing lien reductions.

GAO's Standards for Internal Control in the Federal Government state that part of management's responsibility in implementing internal control standards is to develop detailed policies, procedures, and practices. Policies and procedures are part of internal control and aid in enforcing management directives. According to GAO, information, including policy and procedures based on changed requirements, should be recorded and communicated within a time frame that enables agency management to carry out their responsibilities. Timely communication of all relevant information is necessary to achieve agency objectives.<sup>7</sup>

Because the legal opinion changed the way RRB considers medical and hospital expenses regarding lien enforcement under Section 12(o), policies and procedures needed to be revised. In August 2011, agency management advised us that they were in the process of developing policy and procedures to implement the legal opinion, and that they would provide the OIG with a copy as soon as they became available. However, after more than a year, new policies and procedures had not yet been finalized.

During the audit, agency management informed us that they had not finalized procedural revisions because they had requested another legal opinion from the RRB's General Counsel, and they were awaiting a response before proceeding. However, when we obtained a copy of their request, we found no reason for further delay, as this request was not related to overall policies and procedures for lien reductions. The request was for an opinion on whether one specific railroad employer should be treated as all of the others with regards to the Agreement and lien reductions.

In the interim, agency management took a conservative approach, and excluded all medical and hospital expenses from the calculation of lien reductions. As a result, the agency may not have granted all of the lien reductions to which the railroad employees may have been entitled.

### Recommendations

We recommend that the Office of Programs:

3. develop policies and procedures for 12(o) liens based on the legal opinion, without further delay; and
4. review all 12(o) lien reductions that were processed subsequent to the legal opinion and adjust them, if necessary.

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<sup>7</sup> "Standards for Internal Control in the Federal Government," GAO/AIMD-00-21.3.1 (11/99), pages 7, 11, and 18.

## **Management's Response**

In regard to recommendation 3, the Office of Programs stated that policies and procedures to implement the legal opinion will be implemented when they have completed their internal review process, including any necessary consultation with the Office of General Counsel. They also stated that interim procedures that recognize settlements will remain in effect while they complete this process.

In regard to recommendation 4, the Office of Programs agreed that a review of cases processed in the interim period is appropriate. They stated that they expect to complete that review and make adjustments as necessary.

## Glossary of Terms

### 20 CFR § 341.5

#### **Amount of reimbursement.**

(a) The Board shall receive as reimbursement the lesser of:

(1) The amount of sickness benefits paid to the employee for the infirmity for which he or she recovers any sum or damages; or

(2) The net amount of the sum or damages paid to the employee for the infirmity, after subtracting the amount of the expenses listed in paragraph (b) of this section.

(b) The expenses that may be subtracted from the amount of damages recovered are: (1) The medical and hospital expenses that the employee incurred because of his or her injury. These expenses are deductible even if they are paid under an insurance policy covering the employee or are covered by his or her membership in a medical or hospital plan or association. But such expenses are not deductible if they are not covered by insurance or by membership in a medical or hospital plan or association and are consequently paid by a railroad employer or other person directly to the doctor, clinic or hospital that provided the medical care or services.

(2) The cost of litigation. This includes both the amount of the fee to which the attorney and the employee have agreed and the other expenses that the employee incurred in the conduct of the litigation itself.

#### **Census of Potential Lien Reduction Cases**

A census is a count of the population and the population is all items in the audit universe. For this audit, all records where an on-the-job injury occurred and a lien reduction was granted were counted and analyzed.

#### **Class I Railroad**

A line haul freight railroad with 2010 operating revenue of \$398.7 million or more.

#### **Gross Settlement Amount**

The total amount of the settlement prior to any deductions.

<b>Health and Welfare Agreement</b>	An agreement entered into by railroad management and railroad labor on October 22, 1975. Railroad management was represented by the National Carriers Conference Committee and railroad labor was represented by the Brotherhood of Maintenance of Way employees in consenting to this agreement.
<b>Lien Amount</b>	The lesser of the benefits paid or the net settlement.
<b>Lien Reduction</b>	A lien placed on the benefits paid may be reduced under certain circumstances. If the lien is reduced the RRB does not recover the full amount of benefits paid.
<b>Net Settlement Amount</b>	Considered to be the amount of the damages paid with respect to the employee's injury, minus the amounts of the medical, hospital, and legal expenses incurred by the employee in connection with the injury.
<b>Section 12(o) of the RUIA</b>	Benefits payable to an employee with respect to days of sickness shall be payable regardless of the liability of any person to pay damages for such infirmity. The Board is entitled to reimbursement of the benefits paid if the employee or other person receives any sum or damages from the liable party through suit, compromise, settlement, judgment, or otherwise. The Board's right of reimbursement under Section 12(o) applies only to the net amount of a settlement after deduction of the amount of an employee's expenses incurred in connection with the injury.

## **Audit Methodology for Determining the 12(o) Universe**

### Objective

The objective was to eliminate (from the audit universe) all Section 12(o) cases that did not involve a lien reduction.

### Scope

The scope was the RUIA benefit payment records with lien activity for CYs 2008 through 2010 for nine selected railroad employers.

### Audit Methodology

To determine that a record did not belong in the universe of potential lien reductions, we started with the data showing possible lien reductions which we received from the agency. We then searched the agency's systems for the following:

- Evidence that no lien was placed on the settlement.
- Evidence that there was a lien determination involving a third party and not a railroad employer.
- A letter to an insurance company which indicated that the railroad employer was not liable.
- Documentation to support the conclusion that no lien determination had been made.
- The application for sickness benefits where the railroad employees indicated an on-the-job injury.
- A form that indicated an on-the-job injury but no lien reduction occurred.
- An application for sickness benefits that indicated that the injury was the responsibility of a third party.
- A 'Notice of Lien' sent to a third party and not the railroad employer.
- An application for sickness benefits that indicated that no one was liable, or that the injury had not occurred at work.

Conclusion

We determined that we could eliminate all cases falling into the categories below because they would not involve a lien reduction:

- No lien for an on-the-job injury was involved.
- An on-the-job injury was involved, but there was no indication of a settlement.
- An on-the-job injury was involved, there was a settlement, but all benefits were recovered.

## Testing Methodology and Results of Census

### Census of Potential Lien Reduction Cases and Calculation of Impact Based on the Legal Opinion

#### Test Objective

The objective was to determine (for cases where an on-the-job injury occurred and a lien reduction was granted) the total dollar amount of the liens that had been reduced by the medical and hospital expenses paid by the railroad employer, or by the insurance paid for by the railroad employer as part of the Agreement, for the three calendar years prior to the legal opinion.

#### Scope

The scope was the RUIA sickness benefit payment records involving reductions granted in CYs 2008 through 2010, and any related documents that supported those lien reductions, for the nine selected railroad employers, including seven Class I railroad employers and two large non-Class I railroad employers. The universe consisted of all records within the scope years where sickness benefits were paid under the RUIA, an on-the-job injury was involved, the railroad employer was liable, and not all sickness benefits were recovered.

We eliminated records where the net sickness benefits amount was less than or equal to \$1,000 to remove cases where the lien reduction amounts were small.

#### Audit Methodology

To determine if there was an actual lien reduction:

1. We searched RRB systems for evidence of a lien reduction using the railroad employee's social security number.
2. If evidence of a lien reduction was located, we:
  - a) obtained copies of the lien reduction letter; and
  - b) copied the net settlement worksheet and any correspondence found from an attorney or the railroad employee that pertained to a lien reduction request.
3. If no evidence of a lien reduction was found, we searched RRB systems to locate any evidence to support why the case was in the universe.

After we determined which cases had an actual lien reduction, we contacted eight railroad employers and asked that they provide the amount of medical and hospital expenses that they paid, or that their insurance company paid on their behalf as part of the Agreement, for each of their employees that received a reduction within the scope years.<sup>8</sup> When we received the replies from the railroad employers, we calculated the impact of the legal opinion. The methodology used to calculate the impact follows.

For each individual case where we contacted the railroad employer, we:

1. Entered the data from the Net Settlement Worksheet prepared by the RRB into a spreadsheet. If the Net Settlement Worksheet was not available, we entered the data based on other documents available for the case.
2. Compared the original lien amount for the case with the amount RRB claimed for reimbursement based on existing criteria. We subtracted the RRB reimbursement claim (revised lien) amount from the original lien amount. The difference was the amount of the lien reduction based on existing criteria.
3. Transferred all of the data from the Net Settlement Worksheet to the auditor's spreadsheet except for the medical and hospital expenses.
4. Subtracted the medical and hospital expenses paid by the railroad employer or the special insurance (as a result of the Agreement) from the expenses on the Net Settlement Worksheet and used the result as the medical and hospital expenses on the auditor's worksheet. This medical and hospital expenses amount represented what would be considered for the lien reduction based on the legal opinion.
5. Recalculated the lien reduction using the new medical and hospital expenses (based on the legal opinion).
6. Subtracted the re-calculated lien reduction from the amount reduced under the policy in effect in CYs 2008 through 2010, to determine what effect the recent legal opinion would have had on the lien reductions, if it was in place at that time.
7. Subtotaled the following amounts by employer for each of the eight employers contacted:
  - a) Amount of lien reduction under the old method.
  - b) Amount of lien reduction based on the legal opinion.
  - c) The effect of the legal opinion if it would have been applied in CYs 2008 through 2010.
8. Totaled each of the three subtotals.

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<sup>8</sup> Initially we selected nine railroad employers for review. However, our analysis of potential 12(o) lien waiver cases identified that only eight of the selected railroad employers had employees with lien reductions during our scope.

## Results

We examined 497 cases where there was a potential lien reduction. We found 139 that met the criteria for lien reduction involvement and we contacted 8 railroad employers about these 139 cases.

We calculated that RRB reduced liens by approximately \$1.3 million for the time period using criteria in place at that time. Based on the information received from the railroad employers, we calculated that the RRB would have reduced the liens by only about \$1 million for these same liens, using the legal opinion criteria. Therefore, had the legal opinion been in effect, the Railroad Unemployment Insurance Trust Fund would have potentially recovered an additional \$300,000 during the subject years.

## Audit Conclusion

We determined that the Railroad Unemployment Insurance Trust Fund would have potentially recovered approximately \$300,000 more in sickness benefits if the policy prescribed by the legal opinion had been in effect in CYs 2008 through 2010. Therefore, once new procedures to reflect the legal opinion are implemented, the RRB has the potential to recover more money for the Railroad Unemployment Insurance Trust Fund in the future.



UNITED STATES  
GOVERNMENT

*MEMORANDUM*

FORM G-115f (1-92)  
RAILROAD RETIREMENT BOARD  
September 20, 2012

**TO:** Diana Kruei  
Assistant Inspector General for Audit

**FROM:** Ronald Russo *R. Russo*  
Director of Policy and Systems

**THROUGH:** Dorothy Isherwood *D. Isherwood*  
Director of Programs

**SUBJECT:** Draft Report – Audit of the Impact of a New legal Opinion Related to RUIA Section 12(o) Liens

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**Recommendation 1** We recommend that the Office of Programs implement a comprehensive tracking system for 12(o) liens.

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**Office of Programs Response** We believe we can develop a cost-effective method that would provide us with the capability to retrieve the information for analysis should it be needed. Target date: March 31, 2013.

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**Recommendation 2** We recommend that the Office of Programs strengthen existing controls to ensure that procedures provide explicit instructions regarding the documentation and approvals required for 12(o) liens.

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**Office of Programs Response** We would like to note that the number of exceptions identified relative to the number cases reviewed by the OIG study was quite low (3%). However, we do agree that the process could be better documented and we will implement process improvements by March 31, 2013.

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**Recommendation 3** We recommend that the Office of Programs develop policies and procedures for 12(o) liens based on the legal opinion without further delay.

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**Draft Report – Audit of the Impact of a New legal Opinion  
Related to RUIA Section 12(o) Liens, *continued***

**Office of Programs Response** Policies and procedures to implement the legal opinion will be implemented when we have completed our internal review process, including, any necessary consultation with the Office of General Counsel. Interim procedures that recognize settlements will remain in effect while we complete this process.

We expect final formal policy and procedure to be in place by December 31, 2013.

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**Recommendation 4** We recommend that Office of Programs review all 12(o) lien reductions that were processed subsequent to the legal opinion and adjust them, if necessary.

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**Office of Programs Response** We agree that a review of cases processed in the interim period is appropriate. We expect to complete that review and make adjustments as necessary by June 30, 2013.

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**General Comment** Although we have agreed with the recommendations made in this audit, we do want to comment on the discussion related to the delays in audit staff not being able to obtain information needed for their analysis. As we stated at the closing conference, the information needed was not readily available because there was no business requirement to maintain this information in the form requested. However, had the Office of Programs been asked to assist in either the compilation of the data, or simply in the identification of data sources to be used, we believe that the timeframe for information gathering could have been substantially reduced.

cc: Director of Program Evaluation and Management Services  
Director of Unemployment & Programs Support Division