

Management Information Report
Administrative Finality
Report No. 99-11, July 14, 1999

This management information report presents the results of the Office of Inspector General's review of administrative finality as applied by the Office of Programs.

Background

The Railroad Retirement Board (RRB) is an independent agency in the executive branch of the federal government. The agency's mission is to pay unemployment, sickness, retirement and survivor benefits as mandated by the Railroad Retirement Act (RRA) and the Railroad Unemployment Insurance Act (RUIA).

The Office of Programs is responsible for the adjudication of benefit claims including: application processing, eligibility determinations, benefit calculation, adjustment of existing annuities and establishment of accounts receivable for collectible overpayments. Each area of responsibility involves decision-making that directly affects the beneficiaries.

Federal regulations provide for the finality of decisions related to the adjudication of claims for benefits under the RRA. Applicants are advised in writing of the RRB's decisions on their claims for benefits and explicitly advised that the decision of the Board will be final unless the applicant protests. The same principle applies to benefit adjustments that take place after the original award has been made.

Applicants who are not satisfied with the agency's decision can request that the decision be reviewed. Applicants may pursue review of agency decisions through three administrative levels: reconsideration, formal appeal to the Bureau of Hearings and Appeals and review by the three-member Board.

Agency decisions become final when the time limit for requesting further administrative or judicial review has expired or when a dissatisfied claimant has exhausted his administrative and judicial rights.

When the Office of Programs makes an error during the benefit adjudication process, an overpayment or underpayment may result. If the error is discovered after the decision has become final, correction of the error can only be made pursuant to the provisions of Title 20 of the Code of Federal Regulations (20 CFR), Part 261, "Administrative Finality."

The regulations set forth in 20 CFR Part 261, "Administrative Finality," became final September 29, 1997. These new regulations were adopted in response to the recommendations of independent public accountants who noted inconsistencies in the reopening of final decisions when incorrect benefit payments were detected. Fiscal year 1998 was the first full fiscal year during which these regulations were effective.

The RRB's strategic plan states that "we will optimize accuracy in providing benefits" as the agency's first strategic objective in meeting its overall goal of providing excellent customer service. We performed this review in connection with our audit of the RRB's financial statements for the fiscal year ended September 30, 1998.

Objective, Scope, and Methodology

Our objective was to determine the accuracy of agency decisions to establish and collect receivables pursuant to regulations set forth in 20 CFR Part 261, "Administrative Finality." In addition, we considered the impact of such decisions on the financial statements. The scope of this review was limited to overpayments established during fiscal year (FY) 1998.

In order to accomplish our objectives, we

- reviewed applicable laws and regulations;
- reviewed a sample of accounts receivable;
- discussed the issues with Office of Programs management and staff.

We also reviewed the status of certain underpayments submitted to the Office of Programs for administrative finality decisions during the FY 1997 financial statement audit.

Our work was performed in accordance with generally accepted government auditing standards as applicable to the objectives. The fieldwork was conducted at RRB Headquarters during November 1998 through May 1999.

RESULTS OF REVIEW

Our review determined that the reopening of administratively final decisions is not a significant financial issue when considering accounts receivable as a whole. In addition, our review indicated that:

- administrative finality regulations were not uniformly applied during FY 1998;
- the RRB's policy and procedures may not meet the Board's intent regarding finality in all situations; and
- administrative finality is still pending implementation for one class of decisions.

Impact on the Financial Statements

Administrative finality has no material impact on overpayments as reported in the financial statements.

We analyzed the population of all debt established in FY 1998 and identified two major categories of debt for which administrative finality is not a factor. Debts established as a result of the death of an annuitant or the routine adjustment of an RRA annuity for Social Security benefits do not require an administrative finality determination. The RRB

established 46,147 new overpayments during FY 1998, of which 42,418 (92%) fall in these two categories.

The remaining 3,729 debts (8%) comprise the population of overpayments for which a decision concerning administrative finality might have been required. We reviewed a sample of 361 debts selected judgmentally from these debts. Our review identified only 10 cases in which administrative finality should have been a factor.

Based on our analysis of the population and the results of the sample review, we would expect to identify approximately 100 cases requiring an administrative finality decision if the entire population of 46,147 debts were examined in detail. As a result, we have concluded that administrative finality as applied to overpayments does not have material impact for financial statement purposes.

Administrative Finality Regulations Not Applied Accurately

We identified four cases in which the original examiner decision to collect an overpayment was incorrect. Three of the four overpayments had been assessed early in the fiscal year, prior to formal training on the new regulations.

The number of incorrect decisions is very small in relation to the number of overpayments in our sample (2.7%). Since we identified only 10 cases to which a reopening decision might have been applied, this result tends to indicate that the accuracy of reopening decisions was uncertain during FY 1998.

The effect of an incorrect reopening decision may include the improper assessment and collection of debt as well as adjustment of the annuity on a prospective basis.

Based on our analysis, we estimate that there are fewer than 200 such incorrect decisions in the entire population of debts established in FY 1998.

We do not recommend that the Office of Programs search for incorrect reopening decisions. We estimate the number of affected cases to be very low, and the effort to identify them to be costly and labor intensive. In addition, we have not questioned the validity of the examiner action relative to the benefit provisions of the RRA. We have questioned only the decision to make the correction.

Recommendations

We recommend that the Office of Programs:

--reverse the four incorrect reopening decisions identified by the audit (recommendation #1).

The Office of Programs has implemented additional internal controls, including examiner

training, in order to improve awareness and performance in this area. As a result, we make no recommendations for training or controls.

Management's Response

Management agrees with the recommendation.

Existing Regulations May Not Be Adequate

During our review, we identified one case in which an overpayment had been assessed even though the error to which the overpayment related had transpired more than six years earlier. We believe that this case falls within the provisions of 20 CFR Part 261.1, "Administrative Finality," that limits reopening of cases to a period of four years from the date of an incorrect decision. The Office of Programs reviewed the case and has taken the position that the unique circumstances of the case do not fall within the scope of that regulation.

The error in the benefit calculation was identified in 1991, shortly after benefits were initially awarded; however, the actual case correction was delayed until 1997. In 1997, the annuity rate was corrected prospectively and an overpayment was assessed for the prior period during which the annuity had been paid incorrectly. (The widow was awarded benefits in 1991 and paid retroactively to her annuity beginning date in 1986. The error in the benefit calculation went uncorrected for approximately six years after being discovered (1991-1997). The cumulative overpayment pertained to a period of approximately eleven years from the annuity beginning date (1986-1997).

The overpayment was identified during a case review necessitated by the widow's request for reconsideration of a different issue. The Office of Programs took prompt action on the reconsideration request, but did not handle the case correction until 1997.

The Office of Programs contends that, because of the widow's request for reconsideration, the case was never "final." Since the provisions of 20 CFR Part 261 apply only to final decisions, they believe it cannot be invoked in this instance.

The Office of Programs normally corrects all affected individuals receiving benefits under the same claim number. Consistent with that practice, they also recomputed the annuity of the widow's disabled daughter who had been receiving benefits as a disabled child during the same period.

Under the current interpretation, it is possible for a case to pend indefinitely without becoming final. The OIG believes that this interpretation produces an effect that is contrary to the intention of the Board in enacting the revised regulations governing administrative finality.

Recommendation

We recommend that the Office of Programs seek change, as necessary, to provide for the finalization of decisions in the absence of agency action on a pending matter (recommendation #2).

Management's Response

Management agrees with the recommendation and noted that the Bureau of Law has previously raised this issue with the Board. This matter is presently pending Board decision.

Application Of 20 CFR Part 261 Pending For Some Cases

The FY 1997 financial statement audit tested a sample of 93 cases for benefit payment accuracy. The Bureau of Quality Assurance (BQA) assessed accuracy for each case and calculated the monetary impact of any errors identified. Each case containing a monetary error was submitted to the Office of Programs for a reopening decision pursuant to the provisions of 20 CFR Part 261.

The Office of Programs has not yet made a decision concerning the reopening of eight of the cases submitted for a reopening determination. In each of the eight cases, BQA had determined that the current benefit payment had not been adjusted for changes in the annuitant's earnings record.

RRA annuity calculations are based on compensation earned through railroad employment, wages covered under the Social Security Act, military service and self-employment income. Earnings records are updated periodically to reflect additions and corrections. This record may not be complete at the time of retirement. Post-retirement changes to an earnings record can have a significant impact on retirement benefits.

Changes in the earnings records of these eight cases took place at a time when such changes were not automatically used to update benefit payment calculations. As a result, the Office of Programs does not consider these to be "errors." However, such updates are now done routinely.

Regardless of past practice, we believe that these cases are within the scope of 20 CFR Part 261 and should be reopened and corrected accordingly.

Recommendation

We recommend that the Office of Programs reopen the eight cases in which an annuity had not been adjusted for post-retirement changes to the beneficiary's earnings record (recommendation #3).

Management's Response

This matter is currently under development for a policy decision. The Office of Programs will treat these cases in accord with the new policy.