

**OFFICE OF INSPECTOR GENERAL**

**Audit Report**

**Review of Questionable On-the-Job Injury Claims**

**Report No. 13-08  
July 18, 2013**



**RAILROAD RETIREMENT BOARD**

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## INTRODUCTION

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The Office of Inspector General (OIG) conducted a review to determine if the agency's Notices of Lien were issued in accordance with applicable laws and regulations.

### **Background**

The Railroad Retirement Board (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 Railroad Unemployment Insurance Act (RUIA). These programs provide income protection during old age and in the event of disability, death, temporary unemployment or sickness. The RRB paid over \$11.4 billion in benefits to approximately 600,000 beneficiaries during fiscal year (FY) 2012.

Generally, railroad employees do not receive workers' compensation for on-the-job injuries; instead, they sue their employers for injury claims. The RRB pays sickness benefits to railroad employees during the period of injury, and subsequently sets up a lien against any future settlements to recover the amount of sickness benefits paid. The RRB's Office of Programs is responsible for adjudicating and processing sickness applications and for issuing Notices of Lien. They also issue Internal Revenue Service Form W-2, Wage and Tax Statement (W-2), which identifies sickness benefits paid and taxes withheld.

Sickness benefits are paid out of the RRB's Unemployment Insurance Trust Fund. 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. In order to be eligible to receive sickness benefits, employees must complete an Application for Sickness Benefits and have their doctor complete a Statement of Sickness. If the employee designates that his or her injury or illness is work-related, the RRB claims examiner codes the claim appropriately and a Notice of Lien is automatically generated.

The RRB sends Notices of Lien to each person or company identified as liable, or potentially liable, for causing the employee's injury at work or work-related illness. The Notice of Lien notifies the person or company that the RRB is entitled to reimbursement of the sickness benefits paid if the employee receives any sum or damages from the liable party through suit, compromise, settlement, or judgment. As of February 2013, there were approximately 11,500 outstanding Notices of Lien.

From May 2011 through September 2012, four railroad employers sent the OIG a total of 247 referrals for cases where they had received a Notice of Lien from the RRB, yet they had no corresponding record of a work-related injury. In order to respond directly to these inquiries and to support the RRB's goal to provide excellent customer service, we performed this audit.

## **Audit Objective**

Our objective was to determine if the agency's Notices of Lien were issued in accordance with applicable laws and regulations.

## **Scope**

Copies of 247 Notices of Lien referred to the OIG by four railroad employers during FY's 2011 and 2012.

## **Methodology**

To accomplish our audit objective, we:

- reviewed applicable RRB policies and procedures;
- reviewed applicable laws and regulations;
- compared laws and regulations to RRB policies and procedures;
- obtained information from Workdesk<sup>1</sup> regarding each referral;
- developed test strategy and checklist for reviewing referrals;
- reviewed referrals and summarized our findings;
- reviewed the tape print-out<sup>2</sup> analysis for each referral;
- interviewed responsible RRB management and staff as necessary; and
- contacted railroad employers.

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 November 2012 through June 2013.

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<sup>1</sup> Workdesk is the automated system used to view information that has been permanently stored in the agency's imaging system, such as forms and letters.

<sup>2</sup> A tape print-out (TPO) is a printed record of information about a claimant's benefit applications and claims contained in the computer tape files of the RUIA Daily Claims Processing System.

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## RESULTS OF REVIEW

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Our review determined that the agency's policies and procedures generally complied with applicable laws and regulations regarding the processing of Notices of Lien. However, improvements are needed to ensure Applications for Sickness Benefits are coded correctly and sickness benefits properly taxed.

We also observed that although the employees had certified to the RRB that their injuries or illnesses were work-related, they had not notified their railroad employers. The RRB relies on the employee's certification of an on-the-job injury or illness, without corroboration from the railroad employer, to exempt sickness benefits from taxation. As a result, employees can receive tax-free sickness benefits even though the employer does not have any record of the injury or illness.

The details of this review, as well as our finding and recommendations for corrective action, follow.

### **Coding Errors Resulted in Improper Notices of Lien and a Loss of Tax Dollars**

Our review disclosed that Notices of Lien were incorrectly sent to the railroads and sickness benefits were not taxed because of coding errors by claims examiners.

RRB procedures provide guidelines for coding applications for sickness benefits and for determining on-the-job injuries. If the applicant indicates that they were injured at work or have a work related illness, the claims examiner codes the application to release a Notice of Lien. This coding also results in the sickness benefits not being included as income on the W-2 and taxes not being withheld from the sickness benefits. RRB's management controls include procedures to perform a monthly review of a portion of the Application for Sickness Benefits forms that have been processed, and the related codes. The RRB's practice is to issue corrected W-2s when previously issued W-2s contain incorrect information. However, they do not issue new W-2s for sickness benefits that were previously omitted.

The Railroad Retirement Solvency Act of 1983 and Internal Revenue Service (IRS) guidance state that sickness benefits paid for on-the-job injuries are not taxable.<sup>3, 4</sup>

Claims examiners miscoded some Applications for Sickness Benefits. For 8 of the 247 cases reviewed, the applicants had not stated that they were injured at work or that they had work-related illnesses; yet, the claims examiner incorrectly entered a code indicating that it was an on-the-job injury or illness for which the railroad employer was liable. In addition, the errors were not detected by the agency's monthly reviews because the cases were not selected for review.

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<sup>3</sup> Public Law 98-76.

<sup>4</sup> IRS Publication 525 (2012), "Taxable and Nontaxable Income."

Because the agency's procedure uses the 12(o) code not only for issuing Notices of Lien, but also for determining the taxability of sickness benefits, miscoding results in a loss of tax dollars. More needs to be done to ensure the proper taxation of sickness benefits.

As a result of the miscoding, Notices of Lien were sent to railroad employers in error, sickness benefits of approximately \$32,000 were not included as income on the employees' W-2s, and a total of \$2,440 in taxes were not withheld. (See Appendix 1)

### Recommendations

We recommend that the Office of Programs:

1. strengthen controls to ensure that claims examiners correctly code Application for Sickness Benefits forms;
2. issue corrected W-2s for the eight miscoded cases; and
3. consider changing the procedures for coding Applications for Sickness Benefits so that the determination of the taxability of sickness benefits is separate from the issuance of the Notices of Lien.

### Management's Response

The Office of Programs concurred with recommendation 1. They stated that they will emphasize the importance of the correct entry of the 12(o) code during their annual Change in Benefit Year training, with particular emphasis on Federal Income and Tier 1 tax implications, because of an incorrect entry.

The Office of Programs concurred with recommendation 2. They stated that they will issue corrected W-2s for the eight miscoded cases.

The Office of Programs rejected recommendation 3. They stated that they do not believe changes to the current process are warranted. They also stated that they expect the actions that they plan to take in response to recommendation 1 will result in the necessary improvements to this area.

## RRB-OIG's Comments on Management's Response

We disagree with the Office of Program's statement that changes to the current process are not warranted. We also disagree with their statement that the actions they plan to take in response to recommendation 1 will result in the necessary improvements to this area. Changes are needed to ensure the proper taxability of sickness benefits. The Office of Programs does not substantiate the employee's claim of an on-the-job injury or illness prior to determining the taxation of sickness benefits. In all of the claims reviewed, the railroad employer did not have a record of an on-the-job injury or illness. We question the adequacy of agency procedures that exempt sickness benefits from taxation without validation of an on-the-job injury or illness.

**Sickness Benefits Not Taxed and Potential Taxes Not Withheld**

	Railroad Employer 1	Railroad Employer 2	Railroad Employer 3	Railroad Employer 4	Total
Total sickness benefits paid for the 247 referrals	\$8,646	\$199,179	\$452,794	\$451,388	\$1,112,007
Sickness benefits incorrectly not taxed for the eight miscoded cases	\$4,884	\$5,544	\$13,266	\$8,193	\$31,887
Potential taxes not withheld for the eight miscoded cases <sup>5</sup>	\$374	\$424	\$1,015	\$627	\$2,440

<sup>5</sup> Represents 7.65% Tier 1 railroad retirement tax.





UNITED STATES GOVERNMENT  
**MEMORANDUM**

FORM G-1151 (1-92)

RAILROAD RETIREMENT BOARD

July 12, 2013

**TO:** Martin Dickman  
 Inspector General

**FROM:** Martha Barringer  
 Director of Programs *Martha Barringer*

**SUBJECT:** Draft Report - Audit of Questionable On-the-Job Injury Claims

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**Recommendation 1** We recommend that the Office of Programs (OP) strengthen controls to ensure that claims examiners correctly code Application for Sickness Benefits forms.

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**Office of Programs  
 Response**

We concur. We will emphasize the importance of the correct entry of the 12(o) code during our annual Change in Benefit Year training, with particular emphasis on Federal income and Tier 1 tax implications, because of an incorrect entry. We will hold the initial training session by August 1, 2013 and annually each June.

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**Recommendation 2** We recommend that the Office of Programs issue corrected W-2s for the eight miscoded cases.

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**Office of Programs  
 Response**

We concur. We will issue Forms W-2 for the eight miscoded cases by September 30, 2013.

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**Recommendation 3** We recommend that the Office of Programs consider changing the procedures for coding Applications for Sickness Benefits so determination of the taxability of sickness benefits is separate from the issuance of the Notices of Liens.

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**Office of Programs  
 Response**

We reject this recommendation. We do not believe changes to the current processes are warranted. We expect the actions we plan to take in response to Recommendation 1 will result in the necessary improvements to this area.

cc: Karl T. Blank, General Counsel  
 Michael Pawlak, Director of Unemployment and Programs Support Division