

1205.5 General

Whenever a person has been overpaid by RRB, we are required by law to attempt recovery of the incorrectly paid amount. At the same time, we must also recognize the individual's rights to due process of law.

1205.10 Cause

The principal causes of overpayments are reviewed in the following sections.

1205.10.1 SS Benefits

Overpayments resulting from SS entitlement are usually recovered from the SS benefit accrual when social security (SS) benefits are certified to the RRB for payment. However, overpayments result when:

- A. The RRB has jurisdiction for paying the SS benefit, but the Social Security Administration (SSA) does not certify payment to the RRB, and the RR benefit was paid without an SS reduction;
- B. The RRB has jurisdiction for paying the SS benefit, but the SSA reduces the benefit accrual certified to the RRB for payment; or
- C. SSA has jurisdiction for paying the SS benefit, the annuitant fails to notify RRB, and the RR annuity requires an SS offset.

1205.10.2 Earnings

Overpayments caused by earnings occur when:

- A. The applicant fails to report actual or expected earnings in excess of the current exempt amount; or
- B. The applicant fails to report that he is in LPE at the time of filing;
- C. The applicant claims self-employment which is actually LPE; or
- D. The annuitant fails to report his/her return to LPE;
- E. A disability annuitant fails to report either return to any work, regardless of earnings, or earnings in excess of \$790.00 per month; or
- F. The annuitant fails to report returning to work for a railroad employer.

1205.10.3 Change of Status

An overpayment can occur when a change of status is not reported. These overpayments occur when:

- A. A full-time student (or his payee) fails to make a timely report of discontinuance of full-time attendance, change in intent to continue FTA, or marriage;
- B. A spouse annuitant fails to report his/her divorce from the employee;
- C. An auxiliary annuitant or IPI fails to report remarriage; or
- D. A timely report of death is not made for any annuitant or IPI.

1205.15 Prevention Of Overpayments

Overpayments generate a good deal of work in Headquarters and the field. They also create anxiety for our annuitants. The contact representative can help eliminate some overpayments by trying to ascertain the facts in a case and to be sure that the annuitant or his payee has a clear understanding of the events to be reported.

1205.15.1 Thorough Questioning

When assisting applicants in the completion of annuity application forms thoroughly question the individual regarding non-railroad employment.

For example, place extra emphasis on casual or part-time work, including work for relatives. If self-employment is claimed, develop complete facts as prescribed in FOM-I-330.35 to enable proper adjudication in Headquarters. Explain the consequences of LPE and penalties for return to or continuation in LPE.

1205.15.2 Personal Contacts

Explain the certification form for the appropriate application through personal contact whenever possible so that you can fully explain the contents of the application booklet:

- In person to those applicants living in the commuting area of the field office unless it causes undue hardship; or
- By telephone, if the applicant lives in the commuting area of the field office, but cannot come into the office; or if the applicant lives outside the commuting area.
- At the discretion of the district manager or base point representative, make a personal contact whenever needed.

When you do make a personal contact, emphasize:

- Our tape exchange with SSA, other controls and penalties;

- That it is the applicant's duty to notify the RRB if he files for and receives SS benefits. Advise the applicant to bring or send his SS award notice when received, so that you may extract pertinent data for relay to Headquarters;
- The applicant must read the application booklet in its entirety and keep it as a reference.

1205.20 Due Process

The Fifth Amendment to the U.S. Constitution contains the Due Process clause which guarantees that an individual be given an opportunity to be heard at a meaningful time and in a meaningful manner if action is contemplated against him which would result in a loss of life, liberty or property. Therefore, under the Fifth Amendment, the RRB must extend due process to all individuals from whom we seek recovery of an erroneous payment.

1205.20.1 Advance Notice

- A. Downward rate correction - 30 days advance notice is provided before an annuity is decreased to prevent an overpayment from increasing. This is current policy.
- B. Suspension to recover overpayment - The RRB regulations require that an individual be given 30 days notice before his annuity is suspended to recover an overpayment. This 30 days advance notice is not required if:
 - The overpayment is an employee's last check to be recovered from a widow's accrual; or
 - The overpayment is caused by SS entitlement that is to be recovered from the SS accrual.

1205.20.2 Overpaid Annuitants' Rights

In addition to 30 days advance notice, RRB regulations require that overpaid annuitants be informed of certain rights prior to recovery of the overpayment.

- A. Review of the facts - The overpaid person has the right to question that an overpayment was made or question the amount of the overpayment. The person may also request a review if he does not understand the basis of the overpayment and needs additional information, or he wishes to submit additional information.

A review request must be made within 60 days of the date on the overpayment letter unless there is good cause for the delay. Action to stop the recovery of the overpayment can only be taken when the appropriate unit is notified before the first of the month for which benefits would be suspended. See FOM-I-1225.10 for specific instructions.

- B. Waiver consideration - The overpaid person may request the RRB to waive recovery of the overpayment. The regulations state that waiver of overpayment recovery may be granted when the overpayment came about through no fault of the beneficiary and recovery would cause a hardship (i.e. be against equity and good conscience). A person who appears to meet only one of these requirements may request waiver, but also should be advised of legal requirements for waiver.

If a person requests waiver consideration within the 60 day time limit for requesting waiver, Headquarters will suspend attempts to recover until a decision on the waiver consideration is made. If recovery action has been taken before the waiver request is received, the benefit will be reinstated or recertified back to the full amount until the decision on the waiver is made.

A request for waiver consideration must be made within 60 days of the date on the overpayment letter unless there is good cause for the delay. Action to stop the overpayment recovery can only be taken if the appropriate unit is notified before the first of the month for which benefits would be suspended. See FOM-I-1225.15 for specific instructions.

- C. Personal conference - A request for a personal conference may only be made with a request for review and/or waiver. The conference allows the overpaid person to review the evidence in file, to present his case orally, and to submit additional evidence to an RRB representative in an informal atmosphere. A personal conference is only offered when current entitlement exists.

A personal conference request must be made within 60 days of the date of the overpayment letter.

Overpayment recovery action will be stopped if notification is made timely. See FOM-I-1225.20.

- D. Additional information - The overpaid person may request additional information concerning the overpayment at any time. However, this request will not stop the action to recover the overpayment.
- E. Formal appeal - If the overpaid person still disagrees with the decision after the claim has been reviewed or additional information furnished, he also has the right to appeal that decision within 60 days of the date of the reconsideration decision.

1205.20.3 Rights in No Current Entitlement Cases

An overpaid person not currently entitled to benefits has a right to request a review of the facts and/or waiver consideration, but not to a personal conference. A person who wrongfully negotiated a benefit check after the payee's death is not entitled to waiver consideration or a personal conference. Benefit checks which are improperly negotiated by someone other than the designated payee are not considered "erroneous

payments" within the waiver provision of the act. The same condition applies to benefit payments directly deposited to a joint account under the direct deposit program.

The only exception to the rules, exist in those cases where beneficiary payments are made to a representative payee. Since the representative payee's endorsement of a check would constitute a valid negotiation, waiver rights should be given.

1205.20.4 Rights of Non-Debtors

Section 10(a) of the RR Act allows the RRB to recover an overpayment from any person who is entitled to receive benefits on the same account as the debtor. Except for waiver, the "non-debtor" is entitled to the same rights as the debtor. Waiver under the RR Act can only apply to the overpaid person. However, a "non-debtor" can be given relief from the overpayment recovery if that recovery would cause financial hardship or would be inequitable for some reason.

1205.21 Pre-Recovery Waiver

Pre-recovery waiver may not be applied to overpayments authorized in claims adjudication sections after September 30, 1996. Overpayments processed to completion October 1, 1996, and later may be granted waiver only under the standard waiver criteria.

Prior to October 1, 1996, waiver could be granted prior to recovery action by the Bureau of Fiscal Operations - Debt Recovery Division, in individual cases if:

- The overpayment was due to RRB error;
- The overpayment had gone undetected for more than 4 years; and
- The annuitant could not reasonably have been expected to be aware of the error.

1205.25 Overpayment Recovery Methods

The overpayment recovery methods are determined based on data entered into the Overpayment Recovery Correspondence System (ORCS) by the OP adjudication unit responsible for handling the overpayment. ORCS was designed to combine the Form Letters RL-65, RL-66 and RL-119 into one letter. Effective with implementation of ORCS, the overpaid person now receives one letter that explains the rate correction, provides the overpayment amount and the reason for the overpayment, and offers whatever methods of recovery are available to that person.

1205.25.1 Cash Refund

This method of recovery is offered in every overpayment situation.

1205.25.2 Full Withholding

This method of recovery is accomplished by suspending the person's annuity until the total overpayment is repaid. It is offered in all overpayment situations in which recovery can be accomplished within 48 months and recovery by partial withholding is also offered. This method also may be used when the overpayment is caused by a terminating event, but benefits are payable on the employee's earnings record to another individual.

1205.25.3 Full Withholding Plus Cash

This method of recovery is accomplished by suspending the person's annuity for 48 months and requesting that the overpaid person also send in a cash payment each month. It is the method of recovery used when recovery by full withholding alone would take longer than 48 months

1205.25.4 Partial Withholding

Partial withholding is accomplished by withholding a pre-determined amount of a person's annuity until the overpayment is repaid. It is used when partial withholding is a viable means of recovery and the person from whom recovery is sought does not make a cash refund or does not select an alternate means of recovery.

Partial withholding is not a viable means of recovery when:

- The annuity rate minus the partial withholding amount is less than the SMIB premium plus \$5.00 and we are not paying a SS benefit from which the SMIB premium can be deducted;
- Entitlement is not expected to continue for the period of time required to recover the overpayment;
- There is a history of excess earnings or when excess earnings are estimated for the current year.

EXCEPTION: Partial withholding is a viable means of recovery in retirement cases involving excess earnings if one of the following conditions exists and if partial withholding could otherwise be offered:

- The overpaid annuitant is age 70 or over;
- The overpaid person states he is no longer working and future excess earnings are not likely; or
- Temporary work deductions are being applied and either the annuity rate after partial withholding is at least equal to the SMIB premium plus \$5.00 or we are paying a SS benefit from which the SMIB premium can be deducted.

NOTE: The annuity amount used in determining whether partial withholding is a viable means of recovery is the annuity rate after tax withholding.

1205.25.5 Actuarial Adjustment

This is a permanent reduction of a person's annuity by a predetermined amount. The actuarial adjustment is an alternate method of recovering a standard overpayment.

Actuarial adjustment is not offered as a means of recovery when:

- The overpaid person is a child or student receiving a CIA;
- Temporary work deductions could apply in the current year;
- The overpayment in a survivor case is due to excess earnings and future excess earnings are probable;
- There is a Medicare overpayment;
- The overpayment is an SS Act benefit being recovered for SSA; or
- The tier II amount minus the actuarial adjustment is less than the current SMIB premium amount; or
- The tier II amount plus the amount of a vested dual benefit (after cutback), minus the actuarial amount, is less than the current SMIB premium amount.

1205.25.6 Credit Card

This method allows an individual to charge the RR overpayment to a VISA, MasterCard, Discover, or American Express account. (These are the only cards we accept.) Once the transaction is approved, RRB receives full reimbursement from the credit card company.

This option is not offered when the case involves a payment issued after an annuitant's death, an overpayment which results from the issuance of a duplicate check or overpayments which are the result of a fraudulent act which may be referred to the Office of the Inspector General.

1205.26 Overpayment Tolerances

1205.26.1 Recurring Monthly Annuity Rate Tolerance

The recurring rate tolerance is \$1.00. OP will not adjust the monthly rate of a recurring payment after a final award unless it is increased or decreased by more than \$1.00.

1205.26.2 Overpayment Tolerance

The tolerance amount for newly established overpayments is \$25.00. OP will not recover an overpayment that is \$25.00 or less.

Tolerance applied to an overpayment that is \$25.00 or less is a final determination. Once tolerance has been applied to an overpayment, we will not "seek" recovery. This means that the amount of the tolerance overpayment will not be added to future overpayment amounts or recovered from future accruals.

When rate or overpayment tolerance is applied, any future adjustments for the same period will use the rates actually paid to the annuitant for deductions.

1205.26.3 Application of Tolerance Rules

Use the chart below to determine how the tolerance rules are applied when both the recurring rate and overpayment amounts are known:

Existing overpayment guidelines are followed.

Monthly Rate	Overpayment Amount	General Instructions
* More than \$1.00	\$25.00 or less	* Rate corrected * Tolerance applied to O/P
* More than \$1.00	More than \$25.00	* Rate corrected * O/P is recovered
* \$1.00 or less	More than \$25.00	* Rate corrected * O/P recovered
* \$1.00 or less	\$25.00 or less	* Tolerance applied

