

1601 Provisions of the Act

1601.01 Section 4(a-1)(i)

of the Act provides, in part, that:

"There shall not be considered as a day of unemployment or as a day of sickness with respect to any employee...

- "(i) any of the seventy-five days beginning with the first day of any registration period with respect to which the Board finds that he knowingly made or aided in making or caused to be made any false or fraudulent statement or claim for the purpose of causing benefits to be paid;"

1601.02 Section 9(a)

of the Act provides, in part, that:

". . . any person . . . who shall knowingly make or aid in making or cause to be made any false or fraudulent statement or claim for the purpose of causing benefits or other payment to be made or not to be made under this Act, shall be punished by a fine or not more than \$10,000 or by imprisonment not exceeding one year, or both."

1602 Provisions of the Regulations

Title 20, Part 355, Regulations under the Program Fraud Civil Remedies Act of 1986 (20 CFR 355) provides procedures for civil penalties and assessments against persons who make false or fraudulent statements or claims.

1603 Provisions of the Basic Board Orders

Basic Board Order No. 1, Section 6, Fraud, Waste, Abuse or Other Wrongdoing in Agency Programs and Operations, Part B states:

All bureau and office heads shall:

1. Refer to the OIG Office of Investigations matters that appear to involve criminal activity, fraud, waste, abuse or other wrongdoing.
2. Ensure an OIG investigation is not jeopardized by administrative action by directing employees to adhere to guidance issued by the agency's General Counsel pursuant to the request of the OIG.
3. Provide advice and assistance to the OIG as requested. If the head of an office or bureau believes that a request made by the OIG is unreasonably

burdensome, the office or bureau head may appeal to the Chairman of the Board.

4. Pursue recovery of debts incurred under the Acts administered by the Board concurrent with investigations by the OIG; however, upon notice from the OIG that the case has been submitted to the Department of Justice for criminal prosecution, recovery shall be ceased.

In essence, the Board Order directs the Office of Programs to develop the facts, issue notices of determination and establish accounts receivable before referring a case with an appearance of fraud to the OIG.

1604 Scope of Article Confined to Fraud of Claimant

This article is confined to a discussion of fraudulent claims made by a claimant, since experience has shown fraudulent claims made by an individual other than a claimant to be uncommon. A brief should be prepared to obtain advice from the Director of Policy and Systems before proceeding to develop a case for prosecution of a non-claimant under section 9(a).

1605 Elements of Fraud

To constitute fraud within the meaning of section 4(a-1)(i) or 9(a) of the Act, the following facts must be established:

- a. That the claimant made or aided in making a statement or claim or caused a statement or claim to be made.
- b. That the statement or claim was false.
- c. That when the statement was made, the claimant knew it to be false or made it recklessly without any knowledge of its truth.
- d. That the claimant made the statement or claim with the intention that it should be acted upon so as to cause benefits to be paid.

1606 Types of Fraud

For the purposes of section 9(a) and section 4(a-1)(i) of the RUJA, there are three types of overpayment cases with respect to fraud.

1. Criminal Fraud - Cases that meet the criteria for referral to the Office of Inspector General for criminal prosecution and punitive action. Also may include the filing of a civil action to obtain a judgment against the debtor. A debtor may be subject to both actions.

2. Administrative Fraud - Cases that do not meet the criteria for referral to the Office of Inspector General for criminal prosecution but the 75-day fraud disqualification period still applies.
3. "No Fraud" - Cases where evidence does not support a fraud determination but a denial or recovery of benefits is still warranted.

1607 Basis for Fraud

Fraud may be involved if there is information that:

1. a claim or statement made by a claimant in connection with a claim may be false or fraudulent, or
2. a claimant has knowingly withheld information pertinent to a claim.

For example: a claimant was or may have been employed on a substantial number of days for which unemployment or sickness benefits were paid. Employment on a single claimed day or on a few days only ordinarily does not warrant investigation for fraud, although benefits paid for the days may be determined to be erroneous.

In nearly all cases, fraud determinations can reasonably be based upon the evidence in file and the circumstances of the case (e.g. number of incorrect certifications, repeated infractions, previous inquiries, interviews, warnings, booklets or notices, degree of education, number of years of railroad service and prior job responsibilities, health, etc.)

1607.01 Sources of fraud

Information indicating fraud may be received:

- on or with applications or claims,
- from wages shown on state wage records,
- during entitlement interviews,
- from tips or complaints from interested outsiders directed to either the field office, headquarters or through the OIG Hotline,
- from employers, or
- from other sources.

1607.02 "Hot" tips

Occasionally, information is received from someone other than the claimant that an individual may be fraudulently claiming sickness or unemployment benefits. This information may be received directly at headquarters, field offices or through the Office of Inspector General's (OIG) Hotline. If offices need to report this information to the OIG, the information should be sent to the OIG Hotline e-mail address (Hotline@OIG.RRB.Gov). Receipt of such tips are to be treated as potential fraud and developed accordingly. If the OIG receives information about a claimant committing fraud, they may refer the information to the Director of Operations for further case development.

1608 Investigating for Fraud

Ordinarily, field offices and Operations are to adjudicate cases only to the extent needed to determine entitlement to benefits. If, in the course of adjudication, it is found that the claimant is not entitled to benefits and the standards of fraud apply, care is to be taken in developing supporting information on the alleged fraud.

In cases that appear to meet the OIG referral criteria, the investigation should be limited to obtaining facts (e.g. information not provided on forms or clarification of information provided.) Any investigations should not determine why answers were given or used as a means to confront an individual about the fraudulent information he or she has given. If it is necessary to contact the claimant, do so only through written questionnaires. There is to be no personal contact either face to face or by telephone. This will help to avoid alerting the parties suspected of fraud and compromising any subsequent investigations that may be initiated by the OIG.

In cases that do not meet the OIG referral criteria, an interview is to be scheduled, if appropriate. The basic information to be obtained and reported is described in Appendix 316-A. Form UI-48, Claimant's Statement Regarding Benefit Claims for Days on Which He or She Worked, is to be completed at the interview.

1609 Applying Disqualification Under Section 4(a-1)(i)

1609.01 Statement of Determination

A Statement of Determination Form UI-27 showing the basis for the determination that section 4(a-1)(i) is applicable is to be prepared in each case which it is found to be applicable. The statement should also contain information as to whether the case was referred to OIG for possible prosecution.

1609.02 Notice to claimant

When it is determined that the disqualification provided for in section 4(a-1)(i) is applicable, the claimant is to be notified in the body of the letter advising the claimant of his or her denial of benefits. If a recovery is involved, such disqualification notice is to be included in the billing document.

1609.03 Application of a stop record

A stop reason 160 is to be established on the claimant's record beginning the first day of a registration period in which it was found that the claimant fraudulently claimed benefits and ending 75 days after the beginning date of the last fraudulent claim.

Example A:

A claimant fraudulently claimed benefits for days in the following claim periods:

03/03 - 03/16	6666999	9999999
03/17 - 03/30	9999999	9999999
03/31 - 04/13	9999999	9999999
04/14 - 04/27	9999999	9666666

A 75-day disqualification period applies to each fraudulent registration period. In this example, the stop should end 75 days after the beginning of the last fraudulent registration period beginning April 14. Therefore, one stop should be established beginning March 3 and ending June 27.

Example B:

A claimant fraudulently claims benefits for days in the following two claim periods:

10/12 - 10/25	9999999	9999999
01/02 - 01/15	9999999	9999999

In this example, two stop periods need to be established because there is more than 75 days between the fraudulent registration periods. Therefore, one stop should be established beginning October 12 and ending 75 days later on December 25. The other stop should begin January 2 and end March 17.

1610 Referral to OIG for Possible Prosecution

Cases referred to and returned from OIG should be logged into the Referral Tracking System application (see [FOM1 15165 – RTS Instructions](#)). Please see your supervisor for instructions on who enters cases for your Section.

1610.01 Actions By Headquarters- SUBS

Personnel in SUBS will make the final fraud determinations and establish the receivables, including the 75-day disqualification period. If the fraud case also meets the case referral standards for the Office of the Inspector General (OIG), SUBS will refer the case to them for criminal investigation within one workday after establishing the account receivable and verifying it processed on FMIS correctly.

1610.02 Referral Criteria

Refer the case to the OIG for their investigation if it meets any of the following criteria:

Debt Amount

- The debt is equal to or greater than \$7,500.00, excluding debt due to the 75-day disqualification or;
- The debt is less than \$7,500.00 and there is evidence that the claimant:
 - previously filed fraudulent claims and;
 - - has a debt established on his/her record but no notification or bill was released.

Fraudulent Representation

- Regardless of whether there is an overpayment, SUBS will refer the case if the individual fraudulently represented that he or she is a railroad employee entitled to benefits.

Forged Signature

- The individual forged the signature of a person authorized under Part 335 of the Railroad Retirement Board's regulations to execute a statement of sickness or altered the statements contents.

1610.03 Notifying the Debt Recovery Section (DRS)

SUBS will also notify BFO - Debt Recovery Section (DRS) of the referral to OIG. DRS will modify FMIS to suspend further collection activities.

1610.04 Manner of referral

A memorandum summarizing the facts shall be prepared for each case to be referred to the OIG and shall be sent together with the following.

For SI cases include:

- the source documents
- the UI-27
- the original sickness claims (SI-3's) stored at headquarters or sent in by Field Service. If the SI-3's are at the Federal Records Center (FRC), SUBS should request the Division of Real Property Management to retrieve them. SUBS should send an e-mail to the current file assistant with the Forms "G-50" and "Request for Forms from the FRC" completed and attached. Copy (CC) the assistant's supervisor and the OIG on the e-mail. The request should include instructions for the SI-3's to be delivered directly to the OIG. The OIG will follow up and trace for these claims if needed.

For UI cases include:

- the source documents
- the UI-27
- the UI-35 and UI-35c (interview)
- the UI-1
- the original unemployment claims (UI-3's) stored at headquarters or sent in by Field Service. If the UI-3's are at the Federal Records Center (FRC), SUBS should request the Division of Real Property Management to retrieve them. SUBS should send an e-mail to the current file assistant with the Forms "G-50" and "Request for Forms from the FRC" completed and attached. Copy (CC) the assistant's supervisor and the OIG on the e-mail. The request should include instructions for the UI-3's to be delivered directly to the OIG. The OIG will follow up and trace for these claims if needed.

1610.05 OIG action

Upon receiving a referral from Operations, the OIG will examine the case and through their investigations determine if the case warrants civil or criminal prosecution. If, after the OIG's investigation, it is found that the case warrants prosecution, the case will be referred by the OIG to the appropriate United States Attorney. The OIG releases Referral Memos in cases that are referred to the United States Attorney. A copy of those memos can be found on imaging.

If the U.S. Attorney prosecutes successfully obtaining an order or agreement of restitution, the OIG will refer the case to DRS to reactivate the accounts receivable and follow-up on the restitution in keeping with the order or agreement. In such cases, no recovery letter is to be released to the claimant;

rather, funds are applied to the debt as remitted directly to DRS by the claimant or through the Department of Justice.

If the U.S. Attorney declines the case, the OIG will return the case to DRS with a closing memorandum to reactivate the debt and follow-up on repayment.

1610.06 Action if repayment is offered

If, after the case has been referred to the OIG, the claimant offers to make repayment or has any inquiries regarding the benefits he/she received as a result of his/her fraudulent claim or statement, those inquiries should be forwarded to the OIG.

Field Office (FO) Actions

Written Inquiries – FO personnel are to fax written inquiries to the OIG at 312/751-4342. Include the claimant's social security number and the statement "Open Investigation" on the fax cover sheet. Forward the original to SUBS via Form G-26. SUBS will forward the documents to OPNS-UPSD-Tax, Clerical & Imaging Section (TCIS) to be imaged. Notate on the original that it was faxed to the OIG, initial and date. A copy of the correspondence should be retained in the FO for one year.

E-mail Inquiries- FO personnel should forward the e-mail to Hotline@oig.rrb.gov. The subject line should include "Open Investigation" and the social security number. Make a copy of the email and forward it to SUBS via Form G-26. SUBS will forward the documents to TCIS to be imaged. Notate on the copy that the original was forwarded to the OIG, initial and date. A copy of the correspondence should be retained in the FO for one year.

Telephone or In Office Inquiries- If a claimant calls or comes into the office to discuss their case, the FO personnel should advise the claimant that **"We do not have specific information on your case and a written request will have to be sent to headquarters for a response."** Request the claimant to prepare a written statement that will be forwarded to headquarters. Do not mention that the request will be sent to the OIG. Fax the statement to the OIG at 312/751-4342. Include the claimant's SSN and the statement "Open Investigation" on the fax cover sheet. Forward the original to SUBS, via Form G-26. SUBS will forward the statement to TCIS to be imaged. Notate on the original that it was faxed to the OIG, initial and date. A copy of the correspondence should be retained in the FO for one year.

Problems or Special Needs Cases- If a claimant insists on speaking to someone or this case needs special attention, have the FO Manager call or e-mail the Assistant Director of UPSD for SUBS. They will contact the OIG for the FO and obtain the requested information.

UNDER NO CIRCUMSTANCES SHOULD FO PERSONNEL FORWARD ANY CLAIMANT CALLS TO THE OIG OR GIVE OUT THE OIG TELEPHONE NUMBER.

Note: You may take any non-overpayment related action on these cases (i.e. change of address, direct deposit, etc.). However, after performing the action, send an e-mail to Hotline@oig.rrb.gov. Notate the action taken and date. The subject line should include “Open Investigation” and the SSN.

Headquarters Actions

Written Inquiries- Headquarter employees are to fax written inquiries to the OIG at 312/751-4342. Include the claimant’s SSN and the statement “Open Investigation” on the fax cover sheet. The original should be sent to TCIS, so that the statement can be imaged. Notate on the original that it was faxed to the OIG, initial and date.

E-mail Inquiries- Headquarter employees should forward the email to Hotline@oig.rrb.gov. The subject line should include “Open Investigation” and the SSN. Make a copy of the email and forward it to TCIS via a G-156a to be imaged. Notate on the original that it was faxed to the OIG, initial and date.

Phone calls- If a claimant calls to discuss their case, personnel should advise the claimant that **“We can not provide the information over the telephone and a written request is required.”** Have the claimant send the request to:

U.S. Railroad Retirement Board

844 N. Rush St

Chicago, Il. 60611

Attention: Sickness and Unemployment Benefits Section (SUBS)

Do not mention that the request will be sent to the OIG upon receipt. Fax the statement to the OIG at 312/751-4342. Include the claimant’s SSN and the statement “Open Investigation” on the fax cover sheet. The original should be sent to TCIS, via a G-156a, so that the statement can be imaged. Notate on the original that it was faxed to the OIG, initial and date.

Problems or Special Needs Cases- If a claimant insists on speaking to someone or this case needs special attention, refer it to your supervisor (Chief of SUBS). They will contact the OIG and obtain the requested information.

UNDER NO CIRCUMSTANCES SHOULD HEADQUARTER PERSONNEL FORWARD ANY CLAIMANT CALLS TO THE OIG OR GIVE OUT THE OIG TELEPHONE NUMBER.

Note: You may take any non-overpayment related action on these cases (i.e. change of address, direct deposit, etc.). However, after performing the action, send an e-mail to Hotline@oig.rrb.gov. Notate the action taken and date. The subject line should include “Open Investigation” and the SSN.

1611 Release of Information

1611.01 U.S. Attorney requesting RRB records

Original RRB records required by the United States Attorney shall be made available upon request. This means that, in any such case, the RRB consents to the release of information to the United States Attorney. Also, the RRB employee may, if requested, appear as a witness for the United States Government taking with him or her original documents and necessary data and certified copies.

1611.03 Subpoena requesting RRB records

Any subpoena served on an employee in connection with such a fraud case should be accepted. Upon request, such copies of documents should be furnished for the record, but the original documents should not be placed in the record.

If an RRB employee is to appear as a witness, and original documents are to be displayed, the RRB employee shall explain that the original documents may not be placed in the record. RRB employees may testify fully from the files in their possession. Records and testimony must relate solely to the claimant whose case is being prosecuted.

1612 Authority to Make Fraud Determinations

Both Field Service (FS) and Operations are authorized to make final determinations as to fraud in unemployment and sickness benefit cases. However, personnel in Operations are responsible for establishing the receivables and/or denial of benefits including the 75-day fraud disqualification period.

1613 Publicity on Fraud Cases

Notice that a claimant has been indicted for or convicted of making a fraudulent claim for benefits should tend to discourage others from making fraudulent claims. OIG will arrange to publicize any indictments or convictions for fraud.

1614 Reconsideration and Appeal of Fraud Determinations

If the claimant shows lack of fraudulent intent in reconsideration or appeal, the fraud determination can be reversed. This is not to say however, that the

recovery for the erroneously claimed days will also be reversed. That determination must be made separately from the fraud reversal determination.

If there is indication that a fraud case has been submitted to the United States Attorney for prosecution, all reconsideration and administrative appeal considerations are to be suspended. If the U.S. Attorney declines the case for prosecution reconsideration or appeals determinations may resume.

