

## **2201 Provisions of the Act**

### **2201.01 Section 2(d)**

of the Act provides that:

"If the Board finds that at any time more than the correct amount of benefits has been paid to any individual under this Act or a payment has been made to an individual not entitled thereto (including payments made prior to July 1, 1940) recovery by adjustments in subsequent payments to which such individual is entitled under this Act or any other Act administered by the Board may, except as otherwise provided in this subsection, be made under regulations prescribed by the Board. If such individual dies before recovery is completed, recovery may be made by set-off or adjustments, under regulations prescribed by the Board, in subsequent payments due, under this Act or any other Act administered by the Board, to the estate, designee, next of kin, legal representative, or surviving spouse of such individual, with respect to the employment of such individual.

"Adjustments under this subsection may be made either by deductions from subsequent payments or, with respect to payments which are to be made during a lifetime or lifetimes, by subtracting the total amount of benefits paid in excess of the proper amount from the actuarial value, as determined by the Board, of such payments to be made during a lifetime or lifetimes and recertifying such payments on the basis of the reduced actuarial value. In the latter case recovery shall be deemed to have been completed upon such recertification.

"There shall be no recovery in any case in which more than the correct amount of benefits has been paid to an individual or payment has been made to an individual not entitled thereto (including payments made prior to July 1, 1940) who, in the judgment of the Board, is without fault when, in the judgment of the Board, recovery would be contrary to the purpose of this Act or would be against equity or good conscience."

"No certifying or disbursing officer shall be held liable for any amount certified or paid by him in good faith to any person where the recovery of such amount is waived under the third paragraph of this subsection or has been begun but cannot be completed under the first paragraph of this subsection."

### **2201.02 Section 2(f)**

of the Act provides that:

"If (i) benefits are paid to any employee with respect to unemployment or sickness in any registration period, and it is later determined that remuneration is payable to such employee with respect to any period which includes days in such registration period which has been determined to be days of unemployment or

sickness, and (ii) the person or company from which such remuneration is payable has, before payment thereof, notice of the payment of benefits upon the basis of days of unemployment or sickness included in such period, the remuneration so payable shall not be reduced by reason of such benefits but the remuneration so payable, to the extent to which benefits were paid upon the basis of days which had been determined to be days of unemployment or sickness and which are included in the period for which such remuneration is payable, shall be held to be a special fund in trust for the Board. The amount of such special fund shall be paid to the Board and in the collection thereof the Board shall have the same authority, and the same penalties shall apply, as are provided in section 8 of this Act with respect to contributions. The proceeds of such special fund shall be credited to the account. Such benefits, to the extent that they are represented in such a special fund which has been collected by the Board, shall be disregarded for the purposes of subsection (c) of this section."

### **2201.03 Section 4(a-1)**

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-- . . . (ii) any day in any period with respect to which the Board finds that he is receiving or will have received annuity payments or pensions under the Railroad Retirement Act of 1935 or the Railroad Retirement Act of 1937, or insurance benefits under title II of the Social Security Act, or unemployment, maternity, or sickness benefits under an unemployment, maternity, or sickness compensation law other than this Act, or any other social insurance payment under any law: Provided, That if an employee receives or is held entitled to receive any such payments, other than unemployment, maternity, or sickness payments, with respect to any period which include days of unemployment or sickness in a registration period which include days of unemployment or sickness in a registration period, after benefits under this Act for such registration period will have been paid, the amount by which such benefits under this Act will have been increased by including such days as days of unemployment or as days of sickness shall be recoverable by the Board: Provided further, That, if that part of any such payment or payments, other than unemployment, maternity, or sickness payments, which is apportionable to such days of unemployment or days of sickness is less in amount than the benefits under this Act which, but for this paragraph, would be payable and not recoverable with respect to such days of unemployment or days of sickness, the preceding provisions of this paragraph shall not apply but such benefits under this Act for such days of unemployment or days of sickness shall be diminished or recoverable in the amount of such part of such other payment or payments;"

### **2201.04 Section 12(o)**

of the Act provides that:

"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 shall be entitled to reimbursement from any sum or damages paid or payable to such employee or other person through suit, compromise, settlement, judgment, or otherwise on account of any liability (other than a liability under a health, sickness, accident, or similar insurance policy) based upon such infirmity, to the extent that it will have paid or will pay benefits for days of sickness resulting from such infirmity. Upon notice to the person against whom such right or claim exists or is asserted, the Board shall have a lien upon such right or claim, any judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way of reimbursement."

## **2202 Provisions of the Federal Claims Collection Act of 1966**

Section 3, Public Law 89-508, 80 Stat. 308, provides that:

- "(a) The head of an agency or his designee, pursuant to regulations prescribed by him and in conformity with such standards as may be promulgated jointly by the Attorney General and the Comptroller General, shall attempt collection of all claims of the United States for money or property arising out of the activities of, or referred to, his agency.
- "(b) With respect to such claims of the United States that have not been referred to another agency, including the General Accounting Office, for further collection action and that do not exceed \$100,000, exclusive of interest, the head of an agency or his designee, pursuant to regulations prescribed by him and in conformity with such standards as may be promulgated jointly by the Attorney General and the Comptroller General, may (1) compromise any such claim, or (2) cause collection action on any such claim to be terminated or suspended where it appears that no person liable on the claim has the present or prospective financial ability to pay any significant sum thereon or that the cost of collecting the claim is likely to exceed the amount of recovery. The Comptroller General or his designee shall have the foregoing authority with respect to claims referred to the General Accounting Office by another agency for further collection action. The head of an agency or his designee shall not exercise the foregoing authority with respect to a claim as to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, or a claim based in whole or in part on conduct in violation of the antitrust laws; nor shall the head of an agency, other than the Comptroller General of the United States, have authority to compromise a claim that arises from an exception made by the General Accounting Office in the account of an accountable officer.

"(c) A compromise effected pursuant to authority conferred by subsection (b) of this section shall be final and conclusive on the debtor and on all officials, agencies, and courts of the United States, except if procured by fraud, misrepresentation, the presentation of a false claim, or mutual mistake of fact. No accountable officer shall be liable for any amount paid or for the value of property lost, damaged, or destroyed, where the recovery of such amount or value may not be had because of a compromise with a person primarily responsible under subsection (b)."

## **2203 Kinds of Adjustments**

### **2203.01 Underpayments and overpayments**

Adjustment is made when less than the correct amount of benefits has been paid or benefits are determined to have been paid erroneously. (See AIM-21, "Reopening and Redetermination".)

### **2203.02 Adjustment under Section 4(a-1)(ii) of the Act**

Adjustment is made when a claimant is receiving or has received other social insurance payments with respect to days for which benefits have been paid or are to be paid. (See AIM-17, "Determinations under Section 4(a-1)(ii).")

### **2203.03 Adjustments under Section 2(f) and 12(o) of the Act**

Adjustment is made when a recovery under Section 2(f) or 12(o) is made. (See AIM-30, "Determinations under Sections 2(f) and 12(o).")

### **2203.04 Payments to beneficiaries of deceased claimants or fiduciaries of incompetents**

When payment is made to a beneficiary or fiduciary, the transaction is treated as an adjustment if the amount of the payment was previously certified for payment to the claimant and the check was returned. (See AIM-28, "Death Cases.")

## **2204 Collection of Recoverable Amount**

### **2204.01 General**

When an amount has been determined to be recoverable from a debtor (i.e. claimant, railroad or third party), efforts to collect shall be started promptly. The first effort shall normally be a billing statement to the debtor, prepared by the office that made the determination or by the division of debt management, clearly explaining why the amount is recoverable. After this document has been released the follow-up efforts (dunning notices) shall be timely, forceful and persistent. If the amount recoverable is less than \$25, no additional recovery efforts are to be made following the release of the final dunning notice.

The amount recoverable should be collected in full in one lump sum whenever possible. However, if the debtor is financially unable to pay the full amount in one lump sum, payment may be accepted in regular installments. An RRB representative making arrangements for installment payments should try to get an agreement which will result in liquidating the debt in not more than three years. Where this is manifestly impossible, arrangements covering a longer period of time will be acceptable. Installment payments of less than \$50.00 per month should be accepted in only the most unusual circumstances.

### **2204.02 Amount recoverable from Railroad Retirement Act (RRA) annuitant**

When an amount in excess of \$25.00 (other than an amount reported in accordance with instructions in AIM-17) is recoverable from a debtor receiving an annuity under the RRA, the billing statement advising the debtor of the overpayment is to explain that recovery will be made from the annuity if cash repayment is not promptly made. No installment billing or partial withholding of an annuity will be offered to a debtor whose overpayment is less than the total monthly annuity. Installment billing will only be offered to debtors whose overpayments may be cleared within one year by applying 50 percent of their annuity. Cases where the debtor expresses an inability to pay the installment amount will be reviewed on an individual basis.

### **2204.03 Internal Revenue Service (IRS) and Administrative Offset**

When the debtor is receiving federal payments such as those paid by the Social Security, Veteran's Administration or federal salary, or is entitled to a tax refund from the IRS, recovery may be effected by administrative offset of these payments. The criteria for referring cases to the IRS can be found in DPOM-I, Article 7, chapter 740.25.

### **2205 Compromise of Recoverable Amount**

Under the Federal Claims Collection Act of 1966 the Board has authority to compromise claims for amounts not exceeding \$100,000. The authority does not extend to any case in which there is an indication of fraud, the presentation of a false claim or misrepresentation on the part of the debtor or his representative. Factors to be considered in a compromise are set forth in part 340.14 of the RRB's regulations. Any offer or suggestion of compromise of a debt arising under the Railroad Unemployment Insurance Act is to be referred to the Director of Operations, Office of Programs.

### **2206 Reconsideration and Waiver of Recovery**

Section 5(c)(1) of the Railroad Unemployment Insurance Act provides for reconsideration of adverse determinations and authorizes the Board to establish appeal procedures. Any debtor or survivor from whom we attempt collection of a debt has the right to request reconsideration and waiver of recovery. Survivors

are bound by the time limits that applied to the claimant, so the claimant's failure to protest may extinguish the survivor's rights. Business debtors do not have the same rights as claimants; under certain circumstances the business may request review, resulting in appointment of a hearings examiner who reports to the three-member board, which issues a final agency decision. The business debtor may then seek adjudication in a federal court. A party failing to file a timely request for reconsideration forfeits rights to review, thereby making the decision of the adjudicating office final.

Section 2(d) of the Railroad Unemployment Insurance Act provides for waiver of recovery in any case in which, in the judgment of the Board, the individual who received the amount recoverable is without fault and recovery would be against equity and good conscience. When recovery has been waived, the adjustment shall be considered as completed.

### **2206.01 Reconsideration and Waiver of Recovery for Deceased Claimants**

Section 2(d) of the Railroad Unemployment Insurance Act also provides authority for the Board to recover an overpayment under that Act by offset against annuities payable under the RRA not only to the debtor but also to the estate, designee, next of kin, legal representative or surviving spouse. However, the survivor(s) of a deceased claimant has the same rights to reconsideration except when:

1. the employee debtor had the opportunity to protest but did not do so; or
2. the employee debtor protested but failed to exhaust the administrative remedies prior to his/her death.

### **2207 Bankruptcy**

When information is received that a debtor is involved in a bankruptcy proceeding, the case is to be referred to the RUIA Analysis and Systems section to determine whether the RRB shall participate in the bankruptcy proceeding or whether the case shall be written off. The section shall give the adjudicating office appropriate instructions.

### **2208 Determinations as to Uncollectibility**

If efforts to collect a recoverable amount are unsuccessful, the division of debt management shall determine that the amount is uncollectible. An account is considered uncollectible in any of these circumstances:

1. The debtor is unable to make any substantial payment and there is positive financial evidence to this effect. Such cases are to be followed up periodically.

2. The debtor cannot be located and/or the statute of limitations has run.
3. It is likely that the cost of further collection action will exceed the amount recoverable.
4. If the debtor is deceased and has at least 120 cumulative service months and there is positive evidence showing the decedent left no estate.

## **2209 Suspension or Termination of Collection Activity**

### **2209.01 General**

The Board has authority, under the Federal Claims Collection Act of 1966, to suspend or terminate collection activity under certain circumstances when collection efforts have been unsuccessful. Such cases are not referred to the IRS, Department of Justice or a private collection agency for further action. The Board's authority to suspend or terminate does not extend to fraud cases.

### **2209.02 Suspension of collection activity**

Collection action may be suspended temporarily if the amount recoverable cannot be collected immediately and there is reason to believe that future collection action may be sufficiently productive to justify periodic review and recovery action, considering the size of the debt and the amount that may be collected.

### **2209.03 Termination of collection activity (write off)**

The collection activity shall be terminated and the debt written off in any of these circumstances:

- a. The debt is less than \$25.00 and collection efforts have failed or are no longer justified.
- b. The debtor is discharged in bankruptcy. (A debt based on a false claim is not dischargeable in bankruptcy).
- c. It is determined that the RRB's claim is legally without merit.
- d. If the debtor is deceased and has less than 120 cumulative service months and all collection efforts have failed.
- e. If the debtor has less than 120 cumulative service months, is at least 60 years old, has not worked in the railroad industry within the past 10 years, and all collection efforts have failed.

The file must contain a brief statement as to the basis for termination of collection activity.

## 2210 Forms and Form Letters Prescribed

Form G-145, Billing Statement, U. S. Railroad Retirement Board  
ID-22  
UI-68

### Appendices

#### Statute of Limitations

Public Law 89-505, 80 Stat. 304 (28 U.S.C. 2415(a)) is the statute of limitations applicable to erroneous payment cases and to recovery under section 12(o). The statute bars legal action to collect unless the complaint is filed in court within 6 years after the right of action accrues. In erroneous payment cases, the right of action generally accrues when a benefit payment is made. In section 12(o) cases, the right generally accrues when damages become payable giving the RRB a right to reimbursement. Legally required administrative proceedings (generally reconsideration and appeals) can extend the 6-year limit to 1 year after the date of a final decision.

In section 2(f) cases the statute of limitations depends on whether the RRB chooses to treat the section 2(f) claim as a tax claim. If so, under 26 U.S.C. 6501(a) the RRB must "assess" or bill the debtor within 3 years of receiving information necessary to compute and establish the debt; under 26 U.S.C. 6501(c), the RRB has 10 years from the date of billing to levy or file a claim in court to enforce collection of an amount for which the debtor was timely billed.

If the section 2(f) debt is not treated as a tax claim, the 6-year statute of limitations in 28 U.S.C. 2415(a) applies and runs from the date the RRB receives information necessary to establish the account receivable; the 3-year billing period requirement does not apply under 28 U.S.C. 2415(a).

(References: L-80-45, L-89-52, L-89-147)



