

1235.5 Collection Standards

The Railroad Retirement Board (RRB) is required by the rules and regulations issued by the Treasury Department to take aggressive action on a timely basis to collect all erroneous payments. Among other things, these regulations provide that we make written demands for repayment, collect debts by offset whenever possible, and when offset or cash refund is not possible, accept repayment in regular installments.

Installment payments should be made monthly and in an amount sufficient to liquidate the debt in a reasonable period of time based on the debtor's financial condition (generally the maximum period of time should be 36 months). All requests for an installment agreement should be forwarded to the Debt Recovery Division (DRD) in the Bureau of Fiscal Operations (BFO), along with the debtor's initial payment for approval.

1235.10 Collection Procedures

1235.10.1 Annuity Payable

When an overpayment is assessed against a person due an annuity, the debtor is normally given the option of refunding the entire overpayment or having his annuity withheld (totally or partially) to recover the overpayment. Generally, there is no problem in recovering overpayments when an annuity is payable.

1235.10.2 No Current Entitlement

When there is no monthly annuity payable or no lump-sum payment due the debtor, collection efforts are in the form of an initial letter requesting a refund, a tracer letter if no response is received, and then a field office investigation of the debtor's ability to repay the debt. If the debtor is deceased, his estate is liable for the overpayment. Collection efforts will be made through the legal representative of the estate.

The district office should not take any action to investigate the debtor or his ability to repay the debt unless directed to do so by DRD.

1235.15 Uncollectible Debts

An overpayment is considered uncollectible when evidence in file indicates that recovery of an overpayment cannot be accomplished by:

- Further active collection effort;
- Full or partial withholding of a currently payable railroad annuity or supplemental annuity;
- Actuarial Adjustment; or
- Waiver of recovery.

If an overpayment recovery cannot be made by these methods in a reasonable amount of time from the date of the overpayment notice or from the date the last payment was received, whichever is later, DRD is authorized to make a determination that the overpayment is uncollectible.

The following means will be considered for disposing of uncollectible debts: compromise, suspension or termination of collection efforts, referral to a private collection agency, referral to the Internal Revenue Service, referral to the Department of Justice or Federal salary offset.

1235.20 Additional Collection Methods

Whenever normal recovery methods are unsuccessful, DRD is authorized to take additional measures to recover an erroneous payment. Each case must be judged on its own set of circumstances. Therefore, it is difficult to predict how each case will be handled until it is reviewed by an examiner in DRD.

1235.20.1 Compromise Settlement

The RRB, or the Chief Financial Officer for the RRB, has the authority to compromise an overpayment which does not exceed \$100,000.00 and does not involve fraud, false claim or misrepresentation. A compromise means that we will settle the overpayment with the debtor for an amount less than the assessed overpayment amount. Sometimes it is to our advantage to settle in this manner, especially if the debtor is unable to pay the entire debt, or there is little chance of being successful in court, or the cost of enforced debt collection is greater than the debt itself. All compromise offers must be in writing.

- A. Restrictions - We will try to discourage compromises payable in installments. However, if this type of arrangement is necessary, we will obtain an agreement with the debtor which stipulates that the prior indebtedness, minus the payments made in installments, will be reinstated upon default. Payments should be sufficient in size and frequency to liquidate the RRB's claim in as short a time as possible. We will not accept payments of less than \$10.00 per month unless the total amount to be recovered is \$100.00 or less.
- B. Developing for a compromise settlement - Generally, we will only make a compromise settlement if a debtor offers a partial refund as a compromise or if information already in file indicates that a compromise might be advantageous to the government. If this occurs, DRD will direct the field to obtain Form DR-423, if not already in file. The field office should furnish a recommendation as to whether the debt should be compromised. Base your recommendation upon the debtor's ability or inability to repay the debt, using your observations and information on Form DR-423. DRD is in a better position to consider other factors like enforced collection costs or litigation possibilities. See [FOM-I-1240.10](#) for factors to consider when making your recommendation. Send your recommendation along with Form DR-423, if needed, to DRD.

1235.20.2 Suspension or Termination of Collection Efforts

Collection action may be suspended or terminated when the erroneous payment is \$100,000.00 or less, prior to the referral of cases to the Department of Justice for litigation.

- A. Suspension of collection activity - Collection action may be suspended temporarily when:
- The overpaid person cannot be located and there is reason to believe that future collection action may be productive enough to justify periodic review and action on the claim; or
 - The person owns no substantial equity in real estate and is unable to make installment payments or effect a compromise; or
 - The person is a member of the armed forces stationed in a controversial area until the individual returns to the U.S.
- B. Termination of collection activity - occurs when an overpayment is considered uncollectible and:
- Claim Legally Without Merit - Collection action is terminated whenever it is determined that the erroneous payment claim is legally without merit. A claim can be considered legally without merit if, for example, the statute of limitations has expired.
 - No Evidence to Substantiate Claim - Collection action is terminated when it is determined that evidence necessary to prove the case cannot be produced or necessary witnesses are unavailable and voluntary payment cannot be secured.
 - Debt Size Does Not Warrant Further Recovery - Recovery is not pursued in the following situations:
 - Any debt that is less than \$600.00, unless the debtor is receiving a salary or retired pay from the U.S. government.
 - Any debt that is less than \$400.00, if the debtor is involved in bankruptcy proceedings.
 - Any debt of less than \$800.00, when the debtor is not located and reasonable attempts have been made to locate him or her.
 - Any debt of less than \$800.00, when the annual income of the debtor is less than \$7,500.00 per year in a rural area and \$8,500.00 in an urban area and is derived from non-Federal sources and there is no indication

that the debtor has a high income potential, has inheritance prospects or has assets which may be realized by enforced collection proceedings. The family income figure stated above is generally considered to be for a family of two and should be increased by \$500.00 for each additional dependent.

NOTE: The monetary limits given above are meant as guidelines and not as absolute values.

- Any case in which there is evidence that the debtor has been discharged in bankruptcy and the amount owed the RRB was listed in his schedule of debts, provided no question of fraud is involved.
- Any debt of \$100,000.00 or less, in a case which the debtor is deceased and there is positive evidence showing the decedent left no estate.

1235.20.3 Referral to the Internal Revenue Service

The Deficit Reduction Act of 1984 authorizes Federal agencies to refer debts to the Internal Revenue Service (IRS) for collection by offset against tax refunds due individuals by the U.S. government. Federal agencies may exercise the tax refund offset authority under the Deficit Reduction Act through January 10, 1994. An agreement between the Railroad Retirement Board (RRB) and the IRS and the Financial Management Service of the U.S. Department of Treasury governs the RRB's participation in the tax refund offset program.

The Bureau of Fiscal Operations (BFO) is responsible for making the determination as to whether the debt is still past-due and legally enforceable. BFO will forward the list of delinquent debts to the IRS.

Debts selected for referral to the IRS for tax refund offset must meet certain criteria. A debt which may be referred to the IRS is a debt:

- Resulting from erroneous payments made under the Railroad Unemployment Insurance Act or the Railroad Retirement Act;
- That is at least \$25.00;
- Which has been delinquent at least 3 months, but not more than 10 years, from last contact with debtor at the time the tax refund offset is made;
- With respect to which the debtor's rights to reconsideration, waiver and appeal have been exhausted;
- With respect to which the RRB's records do not contain evidence that the debtor has filed for bankruptcy or the debt has already been discharged by bankruptcy proceedings;

- Which cannot currently be collected by offset of amounts payable to the debtor under the acts administered by the RRB;
- With respect to which the RRB has made a reasonable attempt to notify the individual that the debt is past due and will be referred to the IRS unless, within 65 days, the debtor repays the debt or makes acceptable arrangements to repay the RRB; and
- With respect to which the RRB has given the debtor at least 65 days from the date of the notification to present evidence that all or part of the debt is not past-due or is not legally enforceable, and has considered the evidence presented by the debtor and determined that the debt is past-due and legally enforceable.

The IRS will review the list of delinquent debts provided by the RRB and after determining that there is a tax refund payable, will deduct as much of the overpaid amount as possible.

1235.20.4 Civil Suit

A civil suit is a legal action that can be instituted by the Department of Justice at the RRB's request for the purpose of recovering an erroneous payment. A civil suit has no punitive aspect. If the U.S. government wins the case, the court enters a judgment against the debtor. Recovery may be affected if the debtor has sufficient assets to settle the claim.

A civil suit may be recommended when it has been established that:

- Waiver of recovery of the overpayment is not possible;
- Recovery by full or partial withholding is not possible;
- Reasonable efforts to secure refund have failed;
- Compromise settlement has not been made and collection action has not been suspended or terminated;
- The overpayment is \$600.00 or more; and
- It is clear that the debtor (including an estate) has sufficient assets to satisfy a judgment, or has current income large enough to make repayment.

DRD will direct the field office to investigate the debtor's ability to repay the debt. See [FOM-I-1240.10.1](#) for field office actions to develop this information.

1235.20.5 Referrals to a Private Collection Agency

Overpayments may be referred to a private collection agency by the bureau of fiscal operations through DRD when the following conditions are met:

- The debtor is living;
- The initial notice of overpayment or the last refund is dated no more than 5 1/2 years from the date of submission to BFO;
- The debt is \$100.00 or more;
- Fraud is not evident;
- The debt is a last check or direct deposit payment and Headquarters has documentation that the person who has been named as debtor cashed the not-due check or withdrew the EFT payment made erroneously;
- The debt is not under reconsideration or the right to request reconsideration has expired;
- The debt is not under consideration for waiver of recovery or the right to request waiver of recovery has expired;
- Recovery of the debt is not being made from an annuitant entitled on same railroad account as the debtor, i.e., the recovery is not being made under section 10(a) of the Railroad Retirement Act;
- The debt is not under appeal or the appeal process has been exhausted;
- The debtor is refusing to repay although financially able or the debtor's ability to repay cannot be determined;
- The RRB, or its designee, determines referral would serve the interests of the agency.

1235.25 Fraud Cases

The RR Act provides for fines to be levied and prison sentences for any person convicted of knowingly making or causing to be made any false or fraudulent statement to effect an award or payment under the act. Prosecution for fraud is a criminal action and is punitive in purpose. Occasionally however, fraud prosecution does result in restitution. This usually occurs when the court suspends sentence upon the condition that the erroneous payment is repaid.

The filing of a criminal action does not preclude the filing of a civil action to obtain a judgment against a debtor (i.e., the debtor must pay back the illegally gotten monies). A debtor may be subject to both actions.

It is important that you notify the appropriate adjudication section in the Office of Programs, i.e., retirement post section or survivor post section, when you first become aware that fraud may be involved in a case. A brief memorandum summarizing the

situation should be directed to the section manager in a plain envelope marked "Do Not Open in Mailroom." The section will initiate adjudicative and development actions, and, if an overpayment is over the threshold amount (see [RCM 6.6.191](#)), prepare a referral to the Office of Inspector General (OIG). Cases referred to and returned from OIG should be logged into the Referral Tracking System application (see [FOMI 15165 – RTS Instructions](#)). Please see your supervisor for instructions on who enters cases for your Section.

When retirement, survivor or disability adjudicative units send a field assignment to obtain earnings, medical or other information from an individual, field office personnel should obtain information by questionnaire when possible. Field personnel should exercise caution during any questioning of individuals that involves personal contact (either in person or by phone). Do not interrogate the individual about inconsistencies. Helping the individual complete a questionnaire or asking for information or for a clarification is different from interrogation to obtain incriminating evidence. The latter is the OIG's responsibility. The reason for this focus on questioning technique is to avoid compromising effective prosecution if fraud is pursued. See FOM1 [1310.30](#) and [1335.40](#).

The time limitation on fraud prosecution makes early investigation and referral extremely important. The offender cannot be prosecuted for a fraudulent act unless action is instituted within 5 years after the commission of the offense.

1235.25.1 Elements of fraud

The elements of fraud are defined by two broad concepts:

The first, "Failure to Report" covers a broad area of cases. Some of the common events that occur that may be considered violations if the subject fails to report them are:

- 1) The annuitant died and the subject continued to illegally receive benefits either via check or electronic funds.
- 2) An annuitant has left the subject's care and the subject continued to receive and use the benefit for themselves instead of forwarding the funds to a nursing home or the new payee, etc., or using it for the annuitant's care and welfare.
- 3) The annuitant is employed and such employment could affect their retirement or disability annuity.
- 4) The annuitant begins to receive a public service pension, etc., which could affect the current benefit rate.
- 5) The annuitant has returned to railroad service.
- 6) The annuitant has remarried.

The second concept is "False Claims and/or False Statements". These cases involve circumstances in which an individual submits a document to the RRB which provides false information and, based on that document, the RRB pays benefits. These are commonly referred to as false claim cases. In other cases the individual may submit an RRB form or some form of correspondence on which the person provides the agency with false information. Although the RRB form or correspondence containing the false information is not a specific claim for benefits, it may result in the initiation or the continuation of benefits. These cases may be prosecuted as false statement cases. This also applies to circumstances in which an individual makes a false oral statement to a RRB employee which results in the initiation or continuation of benefits.

When any of the factors is involved in a case being handled in an adjudication unit, and the overpayment involved is over the threshold amount (see [RCM 6.6.191](#)), the case is referred to a Quality Analyst for possible referral to the OIG for investigation of fraud. Disability cases are notated for referral to the OIG, pending the overpayment determination. Cases referred to and returned from OIG should be logged into the Referral Tracking System application (see [FOMI 15165 – RTS Instructions](#)). Please see your supervisor for instructions on who enters cases for your Section.

1235.25.2 Investigation of fraud

Investigation of fraud is the responsibility of the OI-OIG.

1235.30 Charges on Overpayments

The Debt Collection Act of 1982 requires the Railroad Retirement Board (RRB) to charge interest on claims for money owed the RRB, to assess penalties on delinquent debts and to assess charges to cover the costs of processing claims for delinquent debts.

1235.30.1 Interest

The rate of interest to be assessed is the rate of the current value of funds to the United States Treasury (i.e., the U.S. Treasury Tax and Loan Account Rate), as prescribed and published by the Secretary of the Treasury in the Federal Register and Treasury Fiscal Requirements Manual Bulletin annually or quarterly, in accordance with the United States Code.

The interest rate to be assessed is computed each year by averaging investment rates for the 12-month period ending every September. The rate then goes into effect January 1 of the following year.

The PAR system will assess simple interest once a month on the unpaid principal of a debt. Interest shall accrue from the date on which notice of the debt and demand for payment is mailed to the debtor, or in the case of a debt in which waiver has been requested, interest shall accrue from the date that a denial of waiver of recovery is

mailed to debtor or, if waiver has not been requested, upon expiration of the time within which to request waiver.

These charges will be displayed on Line Number 997 on PAR system table screens.

1235.30.2 Penalty

A penalty charge of six percent per year shall be assessed on any debt that is delinquent for more than 90 days. The penalty charge shall accrue from the date on which the debt became delinquent. A debt is delinquent if it has not been paid in full by the 30th day after the date on which the overpayment letter was first mailed or hand-delivered. In cases where the overpayment is being repaid via installment payments, the debt is considered to be delinquent at any time after the debtor stops making installment payments.

These charges will be displayed on Line Number 999 on PAR system table screens.

1235.30.3 Administrative Charges

Administrative charges can be assessed against the debtor for administrative costs incurred as a result of processing and handling the debt because it became delinquent. Administrative costs include costs incurred in obtaining a credit report and in using a private debt collector.

The bureau of fiscal operations (BFO) is responsible for determining the administrative charge to assess. Administrative charges are applied as fixed dollar amounts to delinquent debts which are referred outside the RRB to attempt recovery. The amount of the charge is determined by the referral destination.

The three referral destinations used by the RRB, and the administrative cost associated with each for preparation of the referral, are shown below.

Referral Destination	Administrative Cost
• Private Debt Collection Agency	\$ 6.14
• Internal Revenue Service (IRS) Tax Refund Offset Program	\$ 7.68
• Department of Justice	\$45.00

These charges will be displayed on Line Number 998 on PAR system table screens.

If a debt is referred to more than one outside agency to attempt collection, a separate charge will be added for each successive referral.

1235.30.4 Assessment of Charges

Only certain overpayments are subject to interest, penalty or administrative charges. The RRB has established the following criteria:

- A. Waiver of Charges - The Debt Collection Act of 1982 allows waiver of charges under certain circumstances. The RRB has established the following criteria for automatically waiving the collection of interest charges:
- The overpaid person is repaying the overpayment by full or partial withholding;
 - The overpayment is less than 60 days delinquent (i.e., less than 60 days have elapsed since the date of the overpayment letter);
 - The overpaid person has requested waiver and/or reconsideration of the overpayment;
 - The 60-day appeals period has not expired;
 - The appeals process has not been exhausted.
- Also, when DRD makes a decision to waive an overpayment on which interest, penalty or administrative charges have been assessed, the charges associated with the amount waived are also waived. When DRD makes a decision to put an overpaid amount into uncollectible, any charges that were assessed are also put into uncollectible.
- B. Current Entitlement Cases - Interest, penalties and administrative charges will not be assessed on overpayments when either the overpaid person or a person in the same family group as the overpaid person is currently entitled to payments.
- C. Non-Entitlement or Split Family Entitlement - Interest, penalties and administrative charges apply to overpayments, when either there is no other person entitled on the same account as the person overpaid or the only individuals entitled on the same account as the person overpaid, are considered to be in a different family group (i.e., split family groups).

Charges apply to and may be assessed against the following types of overpayments:

- Overpayments made to survivor annuitants when there is no other person in the same family group in pay status;
- Overpayments where recovery is being attempted from the estate of a deceased person;

- Overpayments made to retirement or survivor disability annuitants who have recovered and no other person in the same family group is in pay status;
- Overpayments which are a result of an erroneous award (retirement or survivor) and there is no other person in the same family group in pay status;
- Overpayments which are a result of cancellation of an application (retirement or survivor);
- Overpayments made to divorced wives who have lost entitlement due to remarriage;
- Overpayments made to spouses who have lost entitlement due to divorce;
- Overpayments made to either an employee or spouse and jurisdiction of survivor benefits is being transferred to the social security administration; and
- Overpayments made to a person who is entitled to benefits, but whose annuity rate is zero.

1235.30.5 Notification of Charges

Before charges can be assessed in a case, the person from whom recovery is being sought must be advised that the result of failure to make payment in full before or by a specified date will result in the assessment of charges on the original overpayment.

The overpayment form letters designed for release to individuals who may have charges assessed on their overpayments have been revised accordingly.

Any special overpayment letters released must carry similar wording.

Charges will not be assessed on overpayments in which the debtor was previously notified of the overpayment amount and recovery action is in force. However, should the person repaying such an overpayment by installment payments default, BFO may release a notice which advises that if payment is not received in full within 60 days from the date of that notice, charges will be assessed. BFO also may assess charges when an overpaid individual wishes to re-negotiate the installment payment agreement.

In delinquent debt cases, the PAR system will be capable of releasing notices automatically. The PAR system is programmed to release two dunning notices of progressively stronger language. The system is programmed to release up to three notices of progressively stronger language. The notices include complete information regarding charges that have been assessed.

If payment has not been received by the due date specified in the initial notice of overpayment, the PAR system will begin "dunning" by releasing a "Notice of Delinquent Debt." Subsequent notices will be released at 30-day intervals. If repayment is not received within 30 days of the date the last notice is released, the debt will automatically

progress to the Accounts Receivable Referral (AREF) Table. DRD is responsible to decide which available collection program/action is most appropriate to enforce collection of the debt.

