

Certain railroad benefit recoveries are not handled like the regular overpayments described in previous chapters. These special situations and the methods for their recovery are explained below.

## **1245.5 Recovery of the Residual Lump-Sum**

Sometimes a change in law occurs which permits the payment of a survivor insurance annuity to a new class of annuitants. If a residual lump-sum (RLS) was previously paid in a case, it may have to be recovered before an annuity can be paid to a newly eligible individual. The RLS will only be recovered from the person who received it and only the amount he received will be recovered.

### **1245.5.1 RLS Previously Elected**

A person who previously elected and received the RLS can never receive a survivor annuity, even if a change in law occurs.

If an RLS was elected and paid to someone other than the newly eligible individual, that individual can receive an annuity without recovery of the RLS. The RLS would not be recoverable in this situation.

EXAMPLE 1: Lisa Jones, a surviving RR widow, elected to receive the RLS on her deceased husband's account after his death in 1975. She remarried after she attained age 60. Although remarried widows are eligible for an annuity under the 1981 amendments. Mrs. Jones cannot receive an annuity because she elected and received the RLS.

EXAMPLE 2: Nancy Jones is the surviving divorced wife of RR employee Jones in Example 1. Under the 1981 amendments, she is eligible for a survivor annuity as a surviving divorced wife. She may receive that annuity even though Lisa Jones elected the RLS in 1975. The annuity will be paid without recovery of the RLS. The RLS will not be recovered from the widow either.

### **1245.5.2 RLS Paid on Modified Election**

An individual can make a modified election for the RLS if he has future entitlement and SSA has survivor benefit jurisdiction or RRB has jurisdiction and the employee is insured under the SS Act on wages alone. When an RLS was paid based on a modified election, the individual who made the election and received the RLS can receive a survivor annuity if a change in law occurs which makes him eligible for an annuity. However, the RLS he received must be recovered from the annuity.

EXAMPLE: Sarah Smith, widow of deceased RR employee Allen Smith, remarried before age 60. She made a modified election to receive the RLS on her deceased husband's account in 1979. Since her second marriage terminated in 1980, she is eligible for a remarried widow's annuity under the 1981 amendments despite her

modified election to receive the RLS. However, the RLS will be recovered from the survivor annuity.

### **1245.5.3 RLS Paid Without Election**

If the RLS was previously paid to an individual without an election and that individual later becomes eligible for an annuity due to a change in law, the annuity will be paid to him. However, the RLS must be recovered from the annuity.

EXAMPLE: Amy Johnson received an RLS in 1973 as designated beneficiary on her deceased ex-husband's account. Under the 1981 amendments, Amy is eligible for an annuity as a surviving divorced wife. She can be paid that annuity after the RLS is recovered.

## **1245.10 Recovery of Death Benefits**

When an employee died before 1947, a death benefit may have been paid equal to 4% of the employee's creditable compensation or the residual amount payable at that time. This benefit was the only survivor benefit payable before 1947.

This benefit is recoverable from any survivor annuity payable due to changes in the law. However, the 4% death benefit is recoverable even if the newly eligible individual did not receive it.

## **1245.15 Method of Recovering The RLS Or Death Benefit**

When an RLS or death benefit is recoverable from an annuity, ORSP will take the action described in the following sections.

### **1245.15.1 Annuity Accrual Sufficient for Offset**

The RLS or death benefit will be withheld from the initial award and the annuitant will be advised of the recovery in the award letter (see exhibit 16).

### **1245.15.2 Annuity Accrual Not Sufficient for Offset**

The annuity will be withheld until the RLS or death benefit is fully recovered. Neither partial withholding nor actuarial adjustment will be offered or accepted as a means of recovery in these cases. However, cash refund will be offered as an alternate means of recovery. The annuitant will receive an award letter (see exhibit 17) advising him of the amount of the recovery and the reinstatement date if a cash refund is not made.

If you receive a cash refund in a case like this, take action as outlined in [FOM-I-1220.15](#).

## **1245.20 Overpayments Caused By Cashing Original and Replacement Checks**

Refer to RCM [6.6.174](#) – [6.6.175](#), Double Payment Overpayments-Original and Replacement Checks Cashed.

## **1245.25 Overpayments Discovered In The Benefit Accuracy Study**

Many cases were discovered in the Benefit Accuracy Study (CFO Informational Memorandum No. 32-80) which involves erroneous payments, either underpayments or overpayments. Underpayments will be handled by re-certifying the annuity to the correct rate. Overpayments will be handled as outlined below.

### **1245.25.1 Overpayment Retroacts Less than 4 Years**

ORSP will follow existing procedure in recovering the overpayment. See [FOM-I-1210](#).

### **1245.25.2 Overpayment Retroacts More than 4 Years**

The annuity rate will be corrected. The annuitant will be given 30 days advance notice of the rate correction. The advance notice will also serve as the adjustment notice; no award letter will be released. See exhibit 19 for a sample of the letter.

If all of the conditions for pre-recovery waiver are met (see [FOM-I-1205.21](#)), DRD will release a letter to the annuitant explaining the overpayment and the fact that the RRB granted pre-recovery waiver.

If all of the conditions for pre-recovery waiver are not met, an overpayment letter (usually form RL-65b or RL-66) will be released directly to the annuitant or to the field office for field office release.

## **1245.30 Estate Development**

In cases where an overpayment caused by an event other than a last payment(s) situation is discovered, the overpaid annuitant is deceased and no other individual(s) is entitled to an annuity based on the same earnings record, recovery may be attempted from the estate of the deceased.

### **1245.30.1 ORSP Actions**

When the name and address of a relative, an individual who notified RRB of death or representative payee is available in the claim folder, survivor claims examiners will release code letter 601 to that person (see exhibit 28). This letter requests information concerning the estate of the deceased. Although no action on the part of field personnel is required, servicing field offices will receive a copy of this letter in the event any inquiries are received from the recipient.

Following release of this letter to a relative or representative payee, ORSP will pend for 30 days for a response. At the expiration of 30 days, if no response has been received, the servicing field office will be asked to initiate estate development via HSL.

### 1245.30.2 Field Actions

Where the name and address of a relative or an individual who notified the RRB of death is not available, no representative payee is involved or no response to code letter 601 has been received within 30 days of release, survivor claims examiners will release a request for estate development to the servicing field office via HSL (see exhibit 29). When an HSL message requesting estate development is received, check appropriate court records to determine if there is an estate. Court records regarding the existence of an estate may be secured by phone or letter, personal examination is not required. At this point, do not contact family members for this information as code letter 601 was already released and failed to secure a satisfactory response.

- A. Estate is Open - In the event an estate has been opened for probate, secure the name and address of the administrator or executor, the name and address of the court which has jurisdiction for the estate and the expected closing date of the estate. Enter this information in the space provided on the HSL message and respond directly to the Debt Recovery Division (DRD).

In addition to the above, secure a list of the assets and liabilities, if possible. Depending on the length of the list, it will generally be most practical to forward this information to DRD via memorandum.

DRD will pend the initial release of the HSL request for estate development for 60 days. If at the expiration of this time period no response has been received, DRD will begin tracing on the request. Because of the limited amount of time required to file a proof of claim with the court in open estate situations, the requested information should be forwarded as soon as possible.

- B. Estate has been Closed - In the event the estate has been closed at the time field offices are requested to develop for an estate, secure a transcript of the final accounting of the estate. Forward this accounting to DRD via memorandum. DRD will then determine if recovery action can be attempted from the distributees of the estate.
- C. Estate was not Submitted for Probate - In many situations, an estate was probably not submitted for probate. If a search of court records does not result in discovery of either an open or closed estate, attempt to determine if the deceased had any assets not held in joint tenancy. It may be field office personnel have the name of a relative other than the individual who was sent code letter 601. If so, contact this individual in an attempt to secure this information. Advise DRD of progress in this attempt. DRD may also suggest additional avenues to pursue prior to abandonment.

- D. Overpaid Amount is \$5,000.00 or More - Where the overpaid amount is \$5,000.00 or more, field office personnel will always be requested to search court records for an estate. If a search of court records results in the discovery of either an open or closed estate, advise DRD via HSL as described in A or B above.

If a search of court records does not indicate an estate was opened, attempt to determine from a family member if the deceased had any assets not held in joint tenancy. In this situation, code letter 601 has not been released. Contact any family member to obtain this information. Advise DRD of the progress in securing the information. DRD may suggest additional avenues to pursue prior to abandonment of estate development.

## 1245.35 Treasury Offset Program (TOP) Recoveries

### 1245.35.1 Overview

Effective August 1, 2007, monthly annuity payments under the Railroad Retirement Act and monthly Social Security benefits paid by the Railroad Retirement Board (LAF E cases) for **non-tax debts** were subject to offset under the Treasury Offset Program (TOP). The Debt Collection Improvement Act of 1996 (P.L. 104-134) authorized the Treasury Offset Program. The Act requires Federal-disbursing agencies to offset Federal payments to collect delinquent debts owed to the Federal government. Offsets for Federal **tax debts** owed to the Internal Revenue Service (IRS) became effective with the August 1, 2011, monthly benefit payments.

TOP is the reduction of Federal benefit payments to recover delinquent debts owed to other Federal agencies. It is an automated process performed by the Department of the Treasury's Financial Management Service (FMS). FMS matches each agency's payment records against a large debtor database. When a match occurs, the benefit is reduced if all the criteria for offset are met. When an offset occurs, FMS notifies the beneficiary and sends the offset funds to the agency where the debt is owed, known as the creditor agency. FMS also notifies the paying agency that the payment was reduced due to TOP.

Over 30 Federal agencies participate in TOP as creditor agencies. Examples of debts owed to other agencies are student loans owed to the Department of Education, home loans owed to the Veteran's Administration, and food stamp overpayments owed to the Food and Nutrition Service.

A beneficiary may owe more than one debt to a Federal agency or agencies. When this occurs, FMS's policy is to collect the oldest debt first. After the oldest debt is collected, FMS will continue offsetting the benefit as collection toward the next debt.

If the beneficiary has any questions regarding the offset, he or she must contact the creditor agency at the number shown on the Treasury notice or, contact the TOP Help

Desk at (800) 304-3107 or Telecommunications Device for the Deaf (TDD) (866) 297-0517.

## 1245.35.2 TOP Effective Date

### **A. Non-Tax Debts**

The RRB began its participation in TOP effective with the August 1, 2007 monthly benefit payments. Individuals with **non-tax debts** were issued a first notification on August 1, 2007 of the intent to recover the debt (60-day notice). The notice provided an explanation of the debt to be recovered. A second notification was issued by Treasury to these same individuals on September 1, 2007, (30-day notice) which again provided an explanation of the debt to be recovered. The first recovery by TOP of non-tax debts occurred with the issuance of the October 1, 2007, RRA monthly benefit payments. A final notification that the debt recovery was initiated was issued to this same group of annuitants within a few days of the October 1, 2007, payment date.

Ongoing, if future monthly matches of the monthly RRA monthly payment file to the debtor database result in 'hits' for non-tax debts, the beneficiaries will be notified with 60-day, 30-day, and final notifications of debt recovery, as appropriate.

**IMPORTANT:** If an individual's debt has been fully repaid to the debtor agency after the release of the first notification on the intent to recover the debt, no future notices will be released to the individual by Treasury.

### **B. Tax Debts**

Offsets for Federal tax debts owed to the IRS began in August 2011. By law, an advance notice of the intent to recover an IRS debt under TOP is not required. Beneficiaries who owe a tax debt will have received one or more notices directly from the IRS ([Click here for a sample of the final notice](#)). The notices will have included an explanation of the debt, a statement of the intent to levy, an explanation of appeal rights, and instructions on how to make repayment arrangements. Beneficiaries will receive notice from Treasury that the offset has occurred. The notice will advise the beneficiary to contact IRS if there are any questions concerning the action being taken. The payments that have been offset for a tax debt will be included in the monthly TOP offset information available for viewing on Boardwalk.

## 1245.35.3 Offset Amount

### **A. Minimum Benefit Offset Amount**

By law, TOP will not reduce benefit payments below \$750 per month for a non-tax debt. Therefore, RRB beneficiaries who have been identified by the TOP process as delinquent debtors with a non-tax debt will still receive at a minimum \$750 per month. RRB beneficiaries whose benefit payments are below the \$750 threshold will continue

to receive their full monthly benefit payments and no TOP recovery will be made against their payments.

For recovery of IRS debts, TOP will not reduce benefit payments below \$166.67 per month. RRB beneficiaries who have been identified by the TOP process as delinquent debtors with a tax debt will still receive \$166.67 per month. RRB beneficiaries whose benefit payment amounts are below the \$166.67 threshold will continue to receive their full monthly benefit payments and no TOP recovery of the tax debt will be made against their payments.

## **B. Maximum Benefit Offset Amount**

The maximum amount that is offset from an individual's benefit payment under TOP is 15 percent of the available benefit. Tier 2 benefits are exempt from offset under TOP. Here are several examples of how Treasury calculates the offset amount.

- 1) A debtor receives a monthly railroad retirement annuity of \$950, consisting of tier 1 benefits of \$850 and tier 2 benefits of \$100. The amount that is offset is the lesser of \$127.50 (15 percent of \$850) or \$100.00 (the amount by which \$850 exceeds \$750). In this example, the amount that is offset is \$100 (assuming the debt is \$100 or more).
- 2) A debtor receives a monthly railroad retirement annuity of \$3067, consisting of a tier 1 of \$1923, a tier 2 of \$1101, and a supplemental annuity of \$43. The payment subject to offset is \$1966 (\$3067 minus tier 2 benefits of \$1101). The amount that is offset is the lesser of \$294.90 (15 percent of \$1966) or \$1216 (the amount by which \$1966 exceeds \$750). In this example, the amount offset is \$294.90 (assuming the debt is \$294.90 or more).
- 3) A debtor receives combined railroad retirement and social security benefits from the RRB, consisting of a tier 1 of \$69.28, a tier 2 of \$105.32, and Social Security benefits of \$1118.00. The total monthly benefit payment is \$1196.20 after deduction of Part B Medicare premiums of \$96.40. The amount subject to offset is \$1090.88 (\$1196.20 minus \$105.32). The amount that is offset is the lesser of \$163.63 (15 percent of \$1090.88) or \$340.88 (the amount by which \$1090.88 exceeds \$750). In this example, the amount offset is \$163.63 (assuming the debt is \$163.63 or more).
- 4) A debtor receives a monthly railroad retirement annuity of \$912.56, consisting of a tier 1 of \$548.00 and a tier 2 of \$364.56. The amount subject to offset is \$548.00 (\$912.56 minus tier 2 benefits of \$364.56). No amount is offset because \$548.00 is less than \$750.00.
- 5) A debtor has an outstanding tax debt and receives a monthly railroad retirement annuity of \$685.60 consisting of a tier 1 of \$550.00 and a tier 2 of \$135.60. The amount subject to offset is \$550.00 (\$685.60 minus tier 2 benefits of \$135.60). The amount that is offset is the lesser of \$82.50 (15 percent of \$550.00) or \$383.33 (the



amount by which \$550.00 exceeds \$166.67). In this example, the amount offset is \$82.50 (assuming the debt is \$82.50 or more).

#### **1245.35.4 Reduction of RRB Benefit not Appealable to RRB**

The reduction of an RRB benefit under TOP cannot be appealed to the RRB since the offset occurred due to a debt that is owed to another Federal agency (the creditor agency). Annuitants should discuss any appeal rights with the creditor agency. Likewise, the reduction of Social Security benefits paid by the RRB (LAF E cases) cannot be appealed to the RRB or the Social Security Administration.

#### **1245.35.5 RRB Overpayments**

If a railroad retirement beneficiary has a payment that was reduced due to TOP, and we later determine that the payment was not due the beneficiary, he or she is liable for the entire payment amount (the amount before TOP). The following scenario is used for the examples below.

A debtor receives a monthly railroad retirement annuity of \$2781.81 consisting of a tier 1 of \$1765.00 and a tier 2 of 1016.81. The total monthly benefit payment dated November 1, 2007 is \$2600.31, after deduction of Part B Medicare premiums of \$93.50 and Federal income taxes of \$88.00. The payment subject to offset is \$1583.50 (\$2600.31 minus tier 2 benefits of \$1016.81). The amount that is offset is the lesser of \$237.53 (15 percent of 1583.50) or \$833.50 (the amount by which \$1583.50 exceeds \$750). In this example, the amount offset is \$237.53. The November 1 payment issued to the beneficiary is \$2362.78 (\$2600.31 minus \$237.53)

##### **Example #1 – Death Termination**

On November 5, we receive a report that the beneficiary died on October 29, 2007. The payment dated November 1, including the offset amount of \$237.53 is not due. In this situation the RRB will initiate a reclamation request to Treasury. Treasury will reclaim the amount of the November 1 benefit payment of \$2362.78 issued to the beneficiary and reverse the offset amount issued to the debtor agency.

##### **Example #2 – Death Termination (outstanding check with representative payee)**

On November 5, we receive a report that the beneficiary died on October 29, 2007. The payment dated November 1, including the offset amount of \$237.53 is not due. In outstanding last check cases involving a representative payee, we cannot institute reclamation if the annuitant, and not the representative payee, died and payments were being made by paper check. The RRB will seek recovery from the representative payee, or the annuitant's estate, for the amount of the November 1 benefit payment that was actually received, plus the offset amount.

##### **Example #3 – Non-Death Termination**



On November 5, we receive a report that the beneficiary returned to railroad service on October 29, 2007. The payment dated November 1, including the offset amount of \$237.53 is not due.

In this situation, the RRB will release an overpayment letter to the beneficiary for the amount of the November 1 benefit payment that was actually received, plus the offset amount.

**Exception:** If the offset amount of the not-due payment represents a federal tax debt, a reclamation request must be submitted within nine months of the payment date to ensure the return of the offset funds. See section [1245.35.7 D](#).

### **Hardship Requests**

Any request for relief from TOP due to hardship must be directed to the debtor agency. The RRB is not authorized to stop or delay the collection of another agency's debt via TOP. In addition, the RRB cannot issue special payments to pay benefit amounts that were offset. Repayment, if any, would have to be paid by the debtor agency.

## **1245.35.6 Exemptions from TOP**

### **A. Payments Exempt from TOP**

The following payment types are exempt from TOP:

- Daily RRA accrual payments are not subject to TOP.
- The tier II portion of an RRA monthly benefit payment is not subject to TOP.
- RUIA benefits are not subject to TOP.

### **B. Debts Exempt from TOP**

There are also some debts that are not subject to collection via TOP:

- Debts owed to or enforced by states, the District of Columbia and territories, including child support may not be offset against RRB benefit payments.
- Railroad retirement debts will not be collected from RRB benefits via TOP. For example, FMS will not collect a delinquent RRB debt from an RRB benefit paid to that person. This is because RRB will conduct its own benefit withholding to collect its debts. Debts referred to Treasury by the RRB are collected under TOP only from payments issued by other Federal agencies.

**NOTE:** FMS is responsible for identifying debts that should not be offset from the RRB's payments. In the case of RRB payments that should not be offset to collect a

RRB debt, the system will automatically identify the payment to be exempt. No action is required on the part of the RRB.

### 1245.35.7 Claims Processing

#### **A. Non-Receipts**

Handle reports of non-receipt according to the instructions in [FOM-I-115.30](#). Remember to check the PREH, PAYBACK, DATA-Q, PACER, and Treasury Check Information (TCIS) systems to verify and confirm the status of the payment. If the report is valid, process the request based on the original amount of the payment (before offset) per the instructions in [FOM-I-1573.5](#).

Treasury has created three new status disposition messages. The messages have been added to [FOM-I-1574.5](#).

- SF-1184 PROCESSED – PAYMENT WAS OFFSET – Initial processing by Treasury's Philadelphia Regional Financial Center (PFC) for a payment that was offset by TOP is complete. PFC has forwarded the non-receipt request to its debt collection center in Birmingham, AL (BDMOC). BDMOC will process the non-receipt claim or EFT trace request against the payment it issued after having applied the offset.
- COURTESY DISBURSEMENT ISSUED – PAYMENT WAS OFFSET – A courtesy disbursement check was processed for a payment that was offset by TOP.
- REJECT – PAYMENT WAS FULLY OFFSET – A non-receipt status or photocopy request was received for a payment that was fully offset by TOP. **NOTE:** Because benefit payments must be greater than \$750.00 (or \$166.67 for IRS tax levies) to be eligible for offset, this message will not be received from Treasury. In the event this message is received, contact P&S-PAS.

#### **B. Reclamations**

There are no changes to the reclamation process. Reclamation requests are processed based on the original amount of the payment (before offset). Treasury will seek the return of any offset funds sent to a debtor agency.

**Exception:** Treasury will not process the return of offset funds from the IRS for federal tax debts, if the reclamation request is received nine months after the payment date. In this situation, only the partial payment amount will be returned for the reclamation request. See section D below.

#### **C. Returned Payments**

Treasury has developed the following check cancellation codes to cancel and/or return offset funds and payments:

- Code 70 – Used internally by Treasury to cancel a payment before it is released to the beneficiary because the payment was identified as being subject to offset by TOP.
- Code 71 – Used to return the offset amount of the original payment as a result of a non-entitlement claim, stop reason codes E and F.
- Code 72 – Used to return the net amount of the original payment (after offset as a result of a non-receipt claim, stop reason codes A, D, and G.

In all other cases, Treasury uses the standard reason for return codes listed in [FOM-I-15100.35](#) when cancelling/returning offset payments and offset funds to the RRB. Payments returned for less than the original amount may require additional manual handling by headquarters, as the lesser payment amount will not match against the Checkwriting Master file to initiate a suspension or termination transaction.

Example: The debtor's original benefit payment amount as shown in the Checkwriting Master file is \$1350 (tier 1 benefits of \$1150 and tier 2 benefits of \$200). The TOP offset amount is \$172.50. The amount of the payment sent to the debtor is \$1177.50 (\$1350 minus \$172.50). The \$1177.50 payment is returned as undeliverable (code 98). Because the amount of the payment does not equal the rate shown in the Checkwriting Master file, the annuity did not suspend.

Processing a change of address transaction will not reissue the payment. The payment must be manually reissued. Field offices and non-claims examining units should verify the address and/or Direct Deposit information and contact the retirement or survivor Customer Service Group to have the payment reissued.

#### **D. IRS Payment Offset Reversals**

Internal Revenue Code Section 6343(b) authorizes the return of levied property or funds when the IRS determines that the property has been wrongfully levied. However, only amounts collected during the nine months preceding the date of the Notice of Reclamation request may be returned.

- If **less than nine months pass** and the RRB determines that the payment was made in error (or learned that the beneficiary has died) and submits a reclamation request, **IRS will return the offset funds** to the RRB.

Example: The debtor's RRB benefit payment dated September 1, 2014, for \$1,000.00 has an IRS TOP offset amount of \$200.00. The RRB submits a reclamation request in June 2015. TOP will process the reversal since it was attempted within nine months of the payment date, IRS will return the offset amount of \$200.00. The partial payment amount of \$800.00 would be returned to the agency.

- If **more than nine months pass** and the RRB determines that the payment was made in error (or learned that the beneficiary has died) and submits a reclamation request, **IRS will not return the offset funds** to the RRB.

Example: The debtor's RRB benefit payment dated October 1, 2014, for \$1,000.00 has an IRS TOP offset amount of \$150.00. The RRB submits a reclamation request in August 2015. TOP will reject the request since it was attempted nine months after the payment date, the offset amount of \$150.00 would not be refunded. The partial payment amount of \$850.00 would be returned to the agency.