

## § 255.1

- 255.13 When recovery is against equity or good conscience.
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AUTHORITY: 45 U.S.C. 231f(b)(5); 45 U.S.C. 231i.

SOURCE: 62 FR 64163, Dec. 4, 1997, unless otherwise noted.

### § 255.1 Introduction.

Section 10 of the Railroad Retirement Act provides for the recovery of an overpayment of benefits to an individual. This part explains when an overpayment must be recovered, from whom an overpayment may be recovered, and when recovery of the overpayment may be waived or administrative relief from recovery granted, and circumstances under which the overpayment may be compromised, or circumstances under which recovery of the overpayment may be suspended or terminated.

### § 255.2 Overpayments.

An overpayment, within the meaning of this part, is made in any case in which an individual receives a payment under the Railroad Retirement Act, all or part of which payment he or she is not entitled to receive.

### § 255.3 When overpayments are to be recovered.

Overpayments shall be recovered in all cases except those in which recovery is waived under § 255.10 of this part or administrative relief from recovery is granted under § 255.16 of this part, or where the overpayment is compromised or recovery is terminated or suspended under § 255.18 or § 255.19 of this part.

### § 255.4 Persons from whom overpayments may be recovered.

(a) *Overpaid individual.* The Board may recover an overpayment from the individual to whom the overpayment has been made by any method permitted by this part, or by the Federal Claims Collection Standards (4 CFR

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chapter 2) (Example 1 of this section). If the overpaid individual dies before recovery is completed, then recovery may be effected by recovery from the estate or the heirs of such individual.

(b) *Other than overpaid individual.* The Board may recover an overpayment from a person other than the overpaid individual if such person is receiving benefits based upon the same record of compensation as the overpaid individual under a statute administered by the Board. In such a case, the Board will ordinarily recover the overpayment by setoff against such benefits as are provided for in § 255.6 of this part (Example 2 of this section). However, the Board may ask for a cash refund of the overpayment.

(c) *Individual not in the same household.* Recovery under paragraph (b) of this section may be made from an individual who was not living in the same household, as defined in part 216 of this chapter, as the overpaid individual at the time of the overpayment, if the individual from whom recovery is to be made either was aware that benefits were being paid incorrectly or benefitted from the overpayment. (Example 3 of this section).

(d) *Examples.* This section may be illustrated by the following examples:

*Example (1).* An employee receiving a disability annuity returns to work without notifying the Board. The Board discovers that the employee is working and determines that the employee has recovered from his disability and has been overpaid. The Board requests that the employee repay the overpayment by cash refund either in one lump sum or in installment payments. If the employee refuses, the Board may refer the debt to a collection agency or the Department of Justice for civil suit or may collect the debt in any other manner permitted by law.

*Example (2).* The employee in Example 1 agrees to refund the overpayment by cash installment payments. However, the employee dies before repaying the total amount of the overpayment. At his death the employee's widow, who was living with the employee at the time the overpayment was incurred, becomes entitled to a widow's annuity. The Board may recover the remainder of the overpayment from any benefits due the widow.

*Example (3).* C, a child of a deceased employee by his first marriage, is receiving a disability annuity on the employee's record of compensation. W, the employee's second wife, is receiving a widow's annuity on the

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employee's record of compensation. C lives with his mother, the employee's first wife. C marries without notifying the Board. Marriage terminates a child's annuity. W is not aware of C's marriage. Upon discovery of C's marriage, the Board demands that C refund the overpaid annuities; C refuses. Even though W is receiving an annuity based upon the same record of compensation as that of C, the Board will not recover the overpayment from W because she is not in the same household as C, was not aware of the incorrect benefits paid, and did not benefit from them.

### § 255.5 Recovery by cash payment.

The Board shall have the right to require that an overpayment to an individual be immediately and fully repaid in cash by that individual. However, if the Board determines that the individual is financially unable to pay the amount of the indebtedness in a lump sum, payment may be accepted in regular installments in accordance with the Federal Claims Collection Standards, found in 4 CFR chapter 2. These standards provide that whenever possible installment payments should be sufficient in amounts and frequency to liquidate the debt in not more than 3 years.

### § 255.6 Recovery by setoff.

An overpayment may be recovered by setoff from any subsequent payment determined to be payable under any statute administered by the Board to the individual who received the overpayment. An overpayment may be recovered from someone other than the overpaid individual by setoff from a subsequent payment determined to be payable to that other individual on the basis of the same record of compensation as that of the overpaid individual.

### § 255.7 Recovery by deduction in computation of death benefit.

In computing the residual lump sum provided for in part 234, subpart D, of this chapter, the Board shall include in the benefits to be deducted from the applicable percentages of the aggregate compensation provided for in that part all overpayments, whether waived under § 255.10 of this part or otherwise not recovered, that were paid to the employee or to his or her spouse or to his or her survivors with respect to the employee's employment.

### § 255.8 Recovery by adjustment in connection with subsequent payments.

(a) Recovery of an overpayment may be made by permanently reducing the amount of any annuity payable to the individual or individuals from whom recovery is sought. This method of recovery is called an actuarial adjustment of the annuity. The Board cannot require any individual to take an actuarial adjustment in order to recover an overpayment nor is an actuarial adjustment available as a matter of right. An actuarial adjustment becomes effective and the debt is considered recovered when, in the case of an individual paid by electronic funds transfer, the first annuity payment reflecting the annuity rate after actuarial adjustment is deposited to the account of the overpaid individual, or, in the case of an individual paid by check, the first annuity check reflecting the annuity rate after actuarial adjustment is negotiated.

*Example.* An annuitant agrees to recovery of a \$5,000 overpayment by actuarial adjustment. However, the annuitant dies before negotiating the first annuity check reflecting the actuarially-reduced rate. The \$5,000 is not considered recovered. If the annuitant had negotiated the check before he died, the \$5,000 would be considered fully recovered.

(b) In calculating any adjustment under this section, beginning with the first day of January after the tables and long-term or ultimate interest rate go into effect under section 15(g) of the Railroad Retirement Act (the triennial evaluation), the Board shall use those tables and long-term or ultimate interest rate.

[63 FR 29548, June 1, 1998]

### § 255.9 Individual enrolled under supplementary medical insurance plan.

Where recovery of the overpayment is by setoff as provided for in § 255.6 of this part, and where recovery of the overpayment by such means will be accomplished within a period of 5 months, and the individual from whom recovery is sought is an enrollee under Part B of Title XVIII of the Social Security Act (Supplementary Medical Insurance Benefits for the Aged and Disabled), an amount of such individual's monthly benefit which is equal to his