

## § 340.2

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).

## § 340.2 Amount recoverable.

For purposes of this part, an "amount recoverable" is an amount of unemployment, sickness, or maternity benefits paid under the Railroad Unemployment Insurance Act which is:

(a) Determined to have been paid erroneously;

(b) Recoverable under section 2(f) of the Act because remuneration is found to be payable with respect to a period which includes days which had been determined to be days of unemployment or sickness;

(c) Recoverable under section 4(a-1)(ii) of the Act because of the employee's having received or been held entitled to receive annuity payments under the Railroad Retirement Act, insurance benefits under title II of the Social Security Act, unemployment, sickness or maternity benefits under any law other than the Railroad Unemployment Insurance Act, or any other social insurance payments under any law; or

(d) Recoverable under section 12(o) of the Act by virtue of the Board's right to reimbursement from any sum or

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damages payable through suit, compromise, settlement, judgment, or otherwise on account of liability based upon an infirmity, to the extent that it will have paid or will pay benefits for days of sickness resulting from that infirmity.

## § 340.3 When amounts recoverable to be recovered.

Amounts recoverable shall be recovered in all cases except those in which recovery is waived under § 340.10 or a compromise is approved under § 340.13.

## § 340.4 Methods of recovery of amounts recoverable.

An amount recoverable may be recovered by any one or a combination of the methods described in §§ 340.5, 340.6, 340.7, and 340.8.

## § 340.5 Recovery by cash payment.

The Board shall have the right to require that amounts recoverable be immediately and fully repaid in cash and any debtor shall have the absolute right to repay such amount recoverable in this manner. However if the debtor is financially unable to pay the indebtedness in a lump sum, payment may be accepted in regular installments. The amount and frequency of such installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. Whenever possible installment payments should be sufficient in amounts and frequency to liquidate the debt in not more than three years.

## § 340.6 Recovery by setoff.

An amount recoverable may be recovered by setoff against any subsequent payments to which the individual from whom the amount is recoverable is entitled under the Railroad Unemployment Insurance Act, the Railroad Retirement Act, or any other Act administered by the Board, or, in the case of that individual's death, from any payments due under those Acts to his or her estate, designee, next of kin, legal representative, or surviving spouse. In any case in which full recovery is not effected by setoff, the balance due may be recovered by one or more of the other methods described in this part. If the individual dies before

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recovery is completed, such recovery shall be made from his estate or heirs.

[53 FR 2489, Jan. 28, 1988]

### § 340.7 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 gross residual all amounts recoverable under this part, but not recovered, including amounts where recovery was waived, that were paid to the individual or paid to others as benefits accrued to the individual but not paid at death.

[57 FR 1379, Jan. 14, 1992]

### § 340.8 Recovery by adjustment in connection with subsequent payments under the Railroad Retirement Act.

Recovery under this part may be made by permanently reducing the amount of any annuity payable to the overpaid individual (or an individual receiving an annuity based upon the same compensation record as that of the overpaid individual) under the Railroad Retirement Act. 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 does not become effective until the overpaid individual negotiates the first annuity check which reflects the annuity rate after actuarial adjustment.

*Example:* An individual agrees to recovery of a \$5,000 overpayment made to him by actuarial adjustment to an annuity awarded him under the Railroad Retirement Act. However, he dies before negotiating the first annuity check reflecting his actuarially reduced rate. The \$5,000 is not considered recovered.

[57 FR 1379, Jan. 14, 1992]

### § 340.9 Effect of adjustment in connection with subsequent payments.

Adjustment by the method described in § 340.8 shall constitute recovery of the amount recoverable.

### § 340.10 Waiver of recovery of erroneous payments.

(a) *When waiver of recovery may be applied.* Section 2(d) of the Act provides that there shall be no recovery in any case where more than the correct amount of benefits has been paid to an individual or where payment has been made to an individual not entitled to benefits if, in the judgment of the Board:

(1) The individual is without fault; and

(2) Recovery would be contrary to the purpose of the Act or would be against equity or good conscience.

(b) *Fault.* (1) Fault means a defect of judgment or conduct arising from inattention or bad faith. Judgment or conduct is defective when it deviates from a prudent standard of care taken to comply with the entitlement provisions of the Act. Conduct includes both action and inaction. Unlike fraud, fault does not require a deliberate intent to deceive.

(2) Whether an individual is at fault in causing erroneous payments generally depends on all circumstances surrounding the erroneous payments. Among the factors the Board will consider are: the ability of the overpaid individual to understand the reporting requirements of the Act or to realize that he or she is being overpaid (*e.g.*, age, comprehension, memory, physical and mental condition); the particular cause of benefit non-entitlement; and the number of claims on which the individual made erroneous statements.

(3) Circumstances in which the Board will find an individual at fault include but are not limited to:

(i) Failure to furnish information which the individual knew or should have known was material;

(ii) An incorrect statement made by the individual which he or she knew or should have known was incorrect (including furnishing an opinion or conclusion when asked for facts);

(iii) Failure to return a payment which the individual knew or should have known was incorrect.

(c) *When recovery defeats the purpose of the Railroad Unemployment Insurance*