

Regulations provide for the right to appeal certain initial Office of Programs (OP) decisions, and prescribe time limits for asserting those rights.

NOTE: Individuals may retain an attorney to represent them in a reconsideration or an appeal if they so wish. However, the attorney's fees are the responsibility of the individual. There is no provision in the Railroad Retirement Act (RRA) for payment of attorney's fees by the RRB, nor will the RRB award a portion of any accrual granted as a result of reconsideration or an appeal directly to an attorney.

In general, the procedure for the administrative appeal of initial OP decisions dated August 24, 1982, and later, provides for a formal three-stage review and appeals process.

The three stages and time limits are capsulated as follows:

1. Reconsideration - An individual has 60 days from the date of the initial notice of a decision to file a request for a reconsideration of the initial decision.

Failure to request reconsideration within the time allotted, will result in forfeiture of further appeal rights.

2. Appeal to the Bureau of Hearings and Appeals (BHA) - An individual has 60 days from the date of the notice of the reconsideration decision to file an appeal to BHA. Any written request stating an intent to appeal which is received within the 60-day period will protect the individual's right to appeal, provided that the individual files the HA-1 within the later of the 60-day period following the date of the reconsideration decision, or the 30-day period following the date of the letter sending the HA-1 to the individual.

3. Appeal to Board - An individual has 60 days from the date of the notice of the hearings officer's decision to file an appeal to the Board. Any written request stating an intent to appeal which is received within the 60-day period will protect the individual's right to appeal, provided that the individual files the appeal form within the later of the 60-day period following the date of the hearings officer's decision, or the 30-day period following the date of the letter sending the form to the individual.

After all administrative remedies within the RRB are exhausted an individual may file an appeal to a court of competent jurisdiction. Such an appeal must be filed within one year of the RRB's final decision notice.

## **140.5 Decisions Which Can Be Questioned Or Appealed**

An individual has the right to question or appeal OP initial decisions in the following areas:

- Applications for benefits or HI/SMI.
- Initial determinations of HI/SMI effective dates.
- Withdrawal of an application.
- Change in an annuity beginning date or HI/SMI effective dates.
- Termination of an annuity.
- Termination of HI/SMI coverage (except death and voluntary terminations).
- Adjustment in an annuity rate or lump-sum amount.
- Reinstatement of an annuity.
- Existence and recovery of an overpayment.
- Eligibility for and amount of a supplemental annuity.
- Whether a representative payee should be appointed for an annuitant.
- Who shall be appointed or continue to be recognized as representative payee for an annuitant. This decision can be appealed by the annuitant, not by the individual filing an application as representative payee.
- Award of Canadian HI payments.

### **140.10 Who May/May Not Request Reconsideration Or Appeal**

Every annuitant has the right to file a request for reconsideration or an appeal of an initial OP decision, with the following exceptions:

1. An individual under age 18 does not have the right to reconsideration of a finding of incapacity to manage his or her annuity payments, but does have the right to contest the finding that he or she is, in fact, under age 18.
2. An individual who has been declared legally incompetent does not have the right to reconsideration of a finding that he or she is incapable of managing annuity payments, but does have the right to contest the fact of having been adjudged legally incompetent.
3. An individual does not have the right to reconsideration of a denial of an application to serve as representative payee on behalf of an annuitant.
4. An individual does not have the right to reconsideration when partial withholding or actuarial adjustment is implemented in the same amount the individual previously agreed to.

5. An individual does not have the right to reconsideration when the annuity rate is being adjusted to remove partial withholding unless the rate is also being adjusted for some other reason.
6. An individual does not have the right to reconsideration when the annuity is being reinstated after overpayment recovery by full withholding unless the annuity rate is being adjusted for some other reason.
7. An individual does not have the right to reconsideration on withholding made for a garnishment or legal partition. With respect to legal partitions, a state court's decision to allocate a portion of an employee's divisible benefits under the RRA as a property award is not a matter which can be appealed. However, the **computation** of the award can be appealed.
8. An individual does not have the right to reconsideration of the adjustment to the annuity to collect or adjust the amount of SMI premiums.

### 140.15 Release Of Initial Decision Notices

Each written notice of initial decision contains information about the annuitant's or applicant's right to a reconsideration and appeal of the decision. Reconsideration and appeal information is usually provided in the body of the initial decision notice. In overpayment situations, reconsideration and appeals rights are usually provided on an enclosure with the initial decision notice.

The reconsideration and appeals wording for initial notices involving decisions other than overpayments is as follows:

"If you believe that this decision is not correct, you may request that the decision be reconsidered. If you wish this reconsideration, you must request it in writing and your request must be received by the RRB within 60 days from the date of this notice. You may send your request to any field office of the Railroad Retirement Board, or you may send it directly to the following address: Railroad Retirement Board, Reconsideration Section, 844 North Rush Street, Chicago, Illinois 60611-2092. If you have any additional evidence to be considered, please include it with your request.

"If you disagree with the reconsideration decision, you may then appeal to the Bureau of Hearings and Appeals within 60 days from the date of the reconsideration decision.

"If you do not request reconsideration within 60 days from the date of this notice, you may not file an appeal at a later date."

The reconsideration and appeals wording which accompanies OP decisions involving overpayments where no current entitlement exists is as follows:

"If you do not believe that you have been overpaid, or if you believe that the amount of the overpayment is wrong, you may ask us to review the facts of your claim. Please

indicate the reason why you would want a review of the facts and submit any evidence you may have to support your belief. Your request for a review of the facts must be received at an office of the RRB within 60 days from the date of the accompanying letter”.

“If you believe that you should not have to repay the benefit payments made in error, you may request us to waive recovery of the overpayment. However, we may consider waiving recovery of the overpayment only if:

- You were not at fault in causing the overpayment, and
- Recovery would prevent you from meeting your ordinary and necessary living expenses or recovery would be unfair for some other reason.

If you request us to consider waiving the repayment you will need to furnish us with information detailing your living expenses and your assets. This information must be submitted for a waiver to be considered. Your request for a waiver of recovery must be received within 60 days after the date of the accompanying letter”.

The rights afforded beneficiaries in overpayment decisions where current entitlement exists are contained in Form G-66, which is enclosed with such decisions.

## 140.20 Filing For Rights Consideration

The filing date of a reconsideration request, Form G-66a, or a Form HA-1 is the earlier of:

- The date it is received at an RRB office; or
- The date it is received by an employee of the RRB who is authorized to receive it at a place other than one of the RRB offices.

If using the date the RRB receives the reconsideration request would result in the loss or lessening of rights, the RRB will also accept as the date of filing the date a document or form is mailed to the RRB by the United States mail. Use the date shown by a U.S. postmark as the date of mailing. Always attach the envelope to all reconsideration and appeal requests.

If someone contacts you claiming to have filed a reconsideration request but you have no record of the request, take the following action:

1. If the rights period has expired, follow the instructions in [FOM1 140.20.2](#) for late filing.
2. If the rights period has not expired or you cannot determine the rights period, suggest that another request be filed to insure that the desired rights are protected.

### 140.20.1 Filing Late for Rights Consideration

Late filing will only be allowed in situations where good cause for the delay is evident. In determining whether good cause for the delay exists, the circumstances which kept the annuitant from filing the request timely, and any action by the RRB which misled the annuitant, are considered.

Some examples of circumstances in which good cause may exist are:

- Serious illness prevented the annuitant from contacting the RRB in person, in writing, or through a friend, relative or other person;
- A death or serious illness in the annuitant's immediate family prevented timely filing;
- Important and relevant records were destroyed;
- Failure to be notified of a decision;
- An unusual or unavoidable circumstance existed which demonstrates that the annuitant could not have known of the need to file timely or which prevented the claimant from filing in a timely manner;-.
- The annuitant thought that his or her representative had requested reconsideration.

### 140.20.2 Requests Filed Late - Field Office Handling

If you receive a late request for a review of the facts (overpayment cases), waiver, personal conference, or an appeal form, obtain a signed statement from the claimant explaining the cause for the delay. Any documentation the claimant has to substantiate good cause for failing to make a timely request should also be secured.

If you receive a late request for a review of facts, personal conference or waiver, it is the field office's responsibility to determine if good cause for delay is evident ([FOM1 140.20.1](#) lists circumstances in which good cause may exist).

If good cause is evident, forward the request, the reason for delay statement from the annuitant, and a statement which summarizes your reasoning for finding good cause in a plain white envelope addressed to the Reconsideration Section (Operations -RECON) or Debt Recovery Division (BFO-DRD), depending on which rights were chosen.

Submit the signed statement and documentation in a plain white envelope, as follows:

- Requests for review of the facts - send to the Reconsideration Section (Operations - RECON). **NOTE:** Send to the Medicare Section if a review of the facts is for an arrearage.

- Requests for waiver - send to the Debt Recovery Division (BFO-DRD) unless the waiver request is in regards to a Medicare Part B arrearage. Send arrearage waiver requests to the Medicare Section, who will forward the request to BFO-DRD after verifying that the request should go to BFO-DRD and coding ASTRO.

NOTE: Request for both review of the facts and waiver should be sent to Operations - RECON.

- Request for personal conference in conjunction with review of the facts - send to the Reconsideration Section (Operations -RECON).
- Request for personal conference in conjunction with a waiver – send to the Debt Recovery Section (BFO-DRD).
- Request for personal conference in conjunction with review of the facts and waiver - send to Operations - RECON.
- Requests for appeal - send to Bureau of Hearings and Appeals (BHA).

If good cause is not evident, the field is responsible for releasing a denial letter to the annuitant. The letter must include reconsideration rights.

### 140.20.3 Requests Filed Late - OP Handling

When a late request is received directly in Headquarters a letter will be released to the claimant. This letter acknowledges that the reconsideration request was received and advises the individual requesting reconsideration what he/she must do if he/she believes there was good cause for late filing and wishes to pursue the reconsideration request. No action by the field office is necessary in this type of case unless the individual contacts the field office for assistance. Headquarters will contact the field office to secure other information if needed.

### 140.25 Reconsiderations

An individual making an inquiry about filing an appeal of an Office of Programs (OP) decision should be questioned about the type of decision made in his/her case, to prevent an unnecessary letter of protest or appeal.

An explanation of the decision may satisfy the inquirer. For instance, an annuitant who is receiving a partial annuity should be informed that he/she has no right to appeal except with respect to those facts which have been finally determined in his case (e.g., an applicant's age, disability, etc.).

If the explanation does not satisfy the inquirer and the individual had not previously questioned the decision or you have no record of a reconsideration request, secure a signed statement requesting reconsideration of the decision.

**NOTE:** To determine if there is an active or completed reconsideration on a given case, check Universal STAR (USTAR). Work items in USTAR have a 6-character *Category Code* as described in [FOM1 15120.5.5](#). The Category Codes used for reconsiderations handled by the Reconsideration Section are listed below:

First 3 USTAR <i>Category Code</i> characters	Second 3 USTAR <i>Category Code</i> characters	
RDI	any 3 characters EXCEPT 00D	Disability reconsideration request (See <a href="#">FOM1 1310.25</a> )
RME	00R	Medicare reconsideration request
RRE	any 3 characters EXCEPT 00D	Retirement reconsideration request
RSE	any 3 characters	Service and compensation reconsideration request
RSI	any 3 characters EXCEPT 00D	Sickness Insurance reconsideration request
RSU	any 3 characters EXCEPT 00D	Survivor reconsideration request
RUN	any 3 characters EXCEPT 00D	Unemployment Insurance reconsideration request

Reconsideration requests undergoing active review do not have a date in the “Complete Dt” column.

### 140.25.1 Field Office Handling of Reconsideration Requests

Every annuitant, applicant, or payee must request reconsideration of an initial OP decision as the first step in the formal appeals process. Such a request for reconsideration must be filed within 60 days after the date of the initial decision notice unless good cause can be established for failure to file a timely request.

**EXCEPTION:** In initial decisions involving an overpayment where the overpaid person has current entitlement, Form G-66a must be completed to request a review of the facts, waiver, and/or personal conference. The Form G-66a must be completed and returned within 60 days after the date of the overpayment notice.

If the individual fails to make a timely request for reconsideration and good cause is not evident, he/she forfeits the right to pursue any other step in the appeals process. He/she can, however, request reconsideration of a decision regarding untimely filing.

**NOTE:** Waiver requests are an exception to this rule. BFO-DRD will consider a waiver request received at any time. However, if the request is received after 60 days and good cause for the delay is not established, recovery of the overpayment will continue while the request is being considered and amounts recovered prior to the request will not be waived. See FOM1 [1225.15.3](#) and [1225.15.4](#) for additional information.

The statement should indicate that reconsideration is being requested; however, a statement that does not specifically refer to reconsideration by name is acceptable. Do not use an appeal form to request reconsideration. If by mistake a Form HA-1 is filed before a reconsideration decision has been made, the Form HA-1 will serve as a request for reconsideration.

See [FOM1 1225](#) for detailed instructions on handling overpayment reconsiderations.

#### **140.25.1.1 Handling Reconsideration Requests Involving Disability**

When reconsideration of a disability denial is being requested, submit any applicant-source medical or non-medical evidence the individual has (if any), along with the statement directly to the Reconsideration Section (RECON) in a plain white envelope. Always attach the envelope to all reconsideration requests. See [FOM1 140.20](#). Do not get an RRB examination. When RECON determines whether an examination should be authorized at RRB expense, an assignment will be sent to schedule an examination.

#### **140.25.1.2 Handling Reconsideration Requests NOT Involving Disability**

When a non-disability reconsideration request is received in the field office, the claims representative should have the request and the envelope imaged. Release an E-mail to RECON advising them that the request is on imaging. RECON does not currently have a notification process in place when a document is scanned to imaging.

As an acceptable alternative, you may send the reconsideration request and envelope to RECON in a plain white envelope labeled "DO NOT OPEN IN MAILROOM". See [FOM1 140.20](#).

#### **140.25.2 Handling of Reconsideration Requests in Headquarters**

The reconsideration section prepares reconsideration decisions in all cases. If a reconsideration request is made with an accompanying waiver request, RECON will handle the reconsideration, and when necessary, send the waiver request to the Bureau of Fiscal Operations - Debt Recovery Division (BFO-DRD). All waiver requests are exclusively handled by BFO-DRD. (**EXCEPTION:** Medicare Part B arrearage waiver requests for Social Security beneficiaries are sent by the Medicare Section to SSA.) If RECON affirms the initial decision, a preliminary notice without appeals rights is



released to the individual. The individual is advised that the waiver will be handled elsewhere and a final decision notice with full appeal rights will be forthcoming.

If a reconsideration request is made for a finding that a previous reconsideration request was not filed timely, the reconsideration of this issue is done in headquarters. If the decision regarding untimely filing is reversed, reconsideration of the initial decision will proceed.

If after reconsideration the initial decision is determined to be incorrect, Recon will take corrective action. If the reconsideration decision reaffirms the initial decision, a notice advising of such will be prepared. The notice will include a paragraph advising the individual of his right to appeal the reconsideration decision.

**NOTE:** RECON will release Form Letter RL-185 a, b, c, d or Form Letter RL-211a to an individual upon receipt of a timely request for reconsideration. The form letter used depends on the type of decision to be reconsidered. This notice acknowledges that the request was received timely and will be handled as soon as possible. No further action is required by the annuitant.

Form Letter RL-185e will be released to the individual if the request for reconsideration was not received timely. The individual will be advised what he/she must do if he/she believes there was good cause for late filing.

Recon will request additional information if necessary. This should eliminate duplicate and status inquiries.

## **140.30 Appeal Of Reconsideration Decisions**

An appeal of an unfavorable Recon reconsideration decision must be received at an RRB office within 60 days after the date of the reconsideration decision.

### **140.30.1 Field Office Handling of Appeals**

If the individual has received a reconsideration notice and wishes to appeal the decision to the Bureau of Hearings and Appeals (BHA), furnish him with Form HA-1, Claimant Appeal Under Railroad Retirement Act or Railroad Unemployment Insurance Act, and Form HA-2, Filing Appeals Under the Railroad Retirement Act and the Railroad Unemployment Insurance Act. Advise the individual to complete Form HA-1 and return it to the RRB within 60 days after the date of the reconsideration decision.

Form HA-1 may be filed officially at either a field office or at Headquarters. A copy of Form HA-1 and the envelope with postmark should be imaged when the HA-1 is received by headquarters or field office personnel. The original Form HA-1 and envelope should be forwarded to Recon in those cases where the applicant or annuitant is requesting reconsideration, or Hearings and Appeals in those cases where the applicant or annuitant is appealing a reconsideration decision.

If you receive a completed Form HA-1, date stamp it to protect the individual's time limit for filing an appeal. Mail Form HA-1 to the Bureau of Hearings and Appeals in a white envelope. Include any additional evidence the individual may supply, but do not hold Form HA-1 pending receipt of additional evidence. If the individual plans to submit additional evidence, annotate the Form HA-1 with that information.

**NOTE:** Any written request stating an intent to appeal which is received within the 60-day period will protect the individual's right to appeal, provided that the individual files Form HA-1 within the later of the 60-day period following the date of the reconsideration decision, or the 30-day period following the date of the letter sending the HA-1 to the individual. Therefore, the written request and accompanying envelope with postmark must be imaged when received by headquarters or field office personnel. In addition, forward the original HA-1 and envelope to OP-Recon or BHA, as appropriate.

When a claimant or someone acting on the claimant's behalf asks a field office for information regarding a BHA case:

- Advise the individual making the request that someone will get back to him/her with a response.
- Send BHA an EMAIL stating the nature of the information requested along with the name, mailing address, and telephone number of the individual making the request.
- The field office will be sent a copy of any written response.
- If the inquiry is from a Congressional office, BHA will either respond directly in writing, with a copy to the field office, or will provide the field office information it can use to respond to the inquiry.

No field service employee should make direct phone contact with any BHA hearings officer to secure specific information on a claim.

This procedure does not relate to instances where evidence is being obtained or submitted. BHA will continue to request field offices to obtain needed evidence, and evidence should be submitted in the same manner as it has in the past.

Send material relating to a pending BHA appeal in an envelope addressed to BHA; send material not relating to the appeal (e.g., changes of address) through regular channels.

### **140.30.2 BHA's Handling of Appeals of Reconsideration Decisions**

When an appeal is filed, it is "docketed" and the Director of BHA assigns a hearings officer to act on the appeal. If the hearings officer determines that a revision, partially or wholly favorable of an initial decision on an appeal can possibly be made because of additional evidence which was submitted at the time of or subsequent to the appeal, the case will be referred back to Recon. The case also will be referred back to Recon if the

hearings officer determines that the decision can possibly be changed upon reconsideration of the facts or if additional evidence is available and should be secured.

Cases in which BHA reverses OP's reconsideration decision are routed to the appropriate adjudication unit for handling.

If Recon's reconsideration decision is upheld by BHA, the hearings officer will notify the applicant in writing. Any correspondence received subsequent to the hearings officer's decision, which deals further with the merits of the claim, will be handled by BHA.

### **140.35 Appeal To The Board Of BHA Hearings Officer's Decision**

If an individual wishes to appeal a decision made by a hearings officer, furnish him with a Form HA-1. Advise the individual to complete Part B of the form. Further advise that the completed form must be received at an RRB office within 60 days after the date of the hearings officer's decision. Any written request stating an intent to appeal which is received within the 60-day period will protect the individual's right to appeal, provided that the individual files the appeal form within the later of the 60-day period following the date of the hearings officer's decision, or the 30-day period following the date of the letter sending the form to the individual.

Where a timely appeal seeking waiver of recovery of an erroneous payment has been filed with the three-member Board, the Board shall not commence recovery of the erroneous payment by suspension or reduction of a monthly benefit payable by the Board until a decision with respect to such appeal seeking waiver has been made and notice thereof has been mailed to the individual.

The Board can, on its own motion, review the hearings officer's decision in any case. In doing so, the Board may designate any RRB employee to secure additional evidence and report the findings.

If the Board reverses the hearings officer's decision, the Board will refer the case to the office of the Director of OP. The case is then referred to the appropriate unit for handling.

If the Board upholds the BHA hearings officer's decision, the Board will notify the appellant. Any subsequent correspondence which deals further with the merits of the claim will be referred with the claim folder to the Board Members' offices for attention.

Send inquiries relating to a pending Board appeal to the Office of the Secretary of the Board; send material not relating to the appeal through regular channels.

### **140.40 United States Court Of Appeals**

An individual contemplating filing a suit against the Board should be advised to first exhaust the administrative appellate procedures within the RRB.

If, after doing so, the individual is dissatisfied with the Board's final decision, he can file civil suit in the U.S. Court of Appeals in the circuit in which (s)he lives, in the U.S. Court of Appeals for the Seventh Circuit (which has jurisdiction over the area of the Board's headquarters), or in the U.S. Court of Appeals for the District of Columbia. The suit must be filed within one year from the date of the Board's decision notice.

Once such a petition is filed, the court has exclusive jurisdiction over the proceeding and of the issue(s) to be resolved. The court can issue a decree affirming, modifying, or reversing the decision of the Board.

