



U.S. RAILROAD RETIREMENT BOARD

OFFICE OF INSPECTOR GENERAL

The Railroad Retirement Board's 12(o) Lien Process Does Not Have Sufficient Controls to Identify, Monitor, and Collect Liens

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What RMA Found

According to federal law, a railroad employee must reimburse the Railroad Retirement Board (RRB) for certain sickness benefits obtained over a period of time. RRB refers to its right to reimbursement as a 12(o) lien.

RMA Associates, LLC (RMA) determined that: 1) RRB's process to identify, monitor, and collect all 12(o) liens did not comply with federal regulations, 2) RRB did not have sufficient policies or procedures over its liens, 3) RRB did not ensure all 12(o) lien information was entered into its financial management system in a timely manner, and 4) RRB did not ensure all liens were collected. These issues occurred because RRB lacked comprehensive controls to identify, monitor, and collect all 12(o) liens. The findings detailed in RMA's audit are similar to a prior RRB Office of Inspector General (OIG) audit conducted in 2012. In particular, the OIG recommended that RRB implement a comprehensive tracking system for 12(o) liens. Though this recommendation was closed in 2013, the condition returned during RMA's audit.

As a result, RRB could not determine the value of potential reimbursable sickness benefits. RMA determined that \$358.8 million of net sickness benefits paid in fiscal years 2016 through 2021 could have been potentially characterized as a 12(o) lien. The \$358.8 million are considered questioned costs.

What RMA Recommended

To address weaknesses identified in this audit, RMA made 21 recommendations concerning the lack of controls, the inability to determine the financial magnitude, the failure to comply with federal regulations, the inability to establish 12(o) lien receivables timely, or ensure collection. RRB management concurred with 19 recommendations and did not concur with 2 recommendations.

What We Did

RRB OIG engaged RMA to conduct an audit of the RRB's reimbursable sickness benefits, also known as 12(o) liens. The last audit over this subject matter was conducted in 2012.

RMA conducted this audit in accordance with performance audit standards established by generally accepted government auditing standards. RMA is responsible for the audit report and the conclusions expressed therein. RRB OIG does not express any assurance on the conclusions presented in RMA's audit report.

The overall audit objectives were to determine whether the RRB had sufficient controls to identify, monitor, and collect 12(o) liens. For details on the eight audit objectives, see the Objectives section in RMA's audit report.

The scope of the audit was RRB 12(o) liens from calendar years 2016 through 2021.

Railroad Retirement Board (RRB)
Office of Inspector General (OIG)

The RRB's 12(o) Lien Process Does Not Have Sufficient
Controls to Identify, Monitor, and Collect Liens

Performance Audit Report

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RMA Associates, LLC (RMA) conducted a performance audit of the Railroad Retirement Board's (RRB) 12(o) lien process.

Our audit objectives were to 1) determine the financial magnitude of the RRB's 12(o) lien process; 2) test the RRB's 12(o) lien process to determine if it is in accordance with the applicable criteria and whether it is effective to ensure that all 12(o) liens are identified, monitored (before and after establishment in the agency's receivable system), established in the agency's receivable system, and recovered or waived; 3) assess the RRB's documented policies and procedures for the entire 12(o) lien process from identification through waiver or recovery to determine if they are complete, current, and if they address the required actions and responsible parties for all actions required throughout this process and compare these documented policies and procedures against the actual process; 4) test the RRB's documented internal controls for the entire 12(o) lien process from identification through recovery or waiver to determine if they are in accordance with the U.S. Government Accountability Office's (GAO) *Standards for Internal Controls in the Federal Government* (GAO Standards);¹ 5) assess the timeliness of RRB actions in setting up the lien and establishing it in the agency's receivable system; 6) assess the effectiveness, timeliness, and completeness of the RRB's actions to ensure that these 12(o) liens are collected, including any applicable interest and penalty charges that may have been applied; 7) test the accuracy and validity of waivers for 12(o) lien cases against applicable laws, regulations, and approved agency policies and procedures; and 8) test RRB compliance with its regulations (20 C.F.R. § 341.9)² that provide that the RRB shall not be liable for the payment of any attorney's fee or other expenses incurred in connection with any personal injury claim.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

¹ GAO Standards, GAO-14-704G, September 10, 2014.

² 20 C.F.R. § 341.9, Board as a party; attorney's fee, January 5, 1984.

This performance audit revisits the 12(o) lien process which was the subject of an RRB Office of Inspector General (OIG) audit performed in 2012 titled, “Audit of the Impact of a New Legal Opinion Related to RUIA Section 12(o) Liens” (RRB OIG Report Number 12-09).³ The RRB OIG was particularly concerned with the impact of a new legal opinion on the lien reduction process but observed the entire 12(o) lien process from identification to collection. Given its relevancy, RMA assessed the prior audit’s findings and implementation of recommendations.

In Report Number 12-09,⁴ RRB OIG recommended that RRB “implement a comprehensive tracking system for 12(o) liens.” To close this recommendation, the Office of Programs (OP) created a new form to document net settlement calculations and could generate a comprehensive report of lien reductions.

While the recommendation was closed in 2013, RMA determined the condition returned during the scope of this audit as the controls and systems were insufficient to ensure that all 12(o) cases were identified, monitored, and collected.

In addition to assessing the implementation of prior audit recommendations, RMA found the following for each objective in our performance audit.

Objective	RMA Assessment
1. Determine the financial magnitude of the RRB’s 12(o) lien process.	RRB’s OP did not know the financial magnitude of the 12(o) lien process and as such could not adequately determine the dollar value of sickness benefits that could potentially be recovered; specifically, the dollar value of 12(o) liens eligible for recovery from the universe of sickness benefits.
2. Test the RRB’s 12(o) lien process to determine if it is in accordance with the applicable criteria and whether it is effective to ensure that all 12(o) liens are identified, monitored (before and after establishment in the agency’s receivable system), established in the agency’s receivable system, and recovered or waived.	RRB’s process was not in compliance with federal regulations to ensure all 12(o) liens were identified, monitored, and collected in the agency’s receivable system. Federal regulations for the 12(o) lien process required specific policies that RRB did not have. In addition, the monitoring of the process was neither cohesive nor comprehensive.

³ Audit of the Impact of a New Legal Opinion Related to RUIA Section 12(o) Liens, Railroad Retirement Board Office of Inspector General RRB OIG Report No. 12-09, September 25, 2012.

⁴ Ibid.

Objective	RMA Assessment
<p>3. Assess the RRB’s documented policies and procedures for the entire 12(o) lien process from identification through waiver or recovery to determine if they are complete, current, and if they address the required actions and responsible parties for all actions required throughout this process and compare these documented policies and procedures against the actual process.</p>	<p>RRB’s documented policies and procedures were not current nor complete:</p> <ol style="list-style-type: none"> 1. RRB continued to accept outdated versions of forms from railroads that were meant to request lien information or report settlements and had not distributed to all railroad employers the latest version of this form. Additionally, RRB failed to reflect the transition from the Program Accounts Receivable System (PARS) to the financial management system at the time of this audit, the Financial Management Integrated System, (FMIS), in sections of its Field Operating Manual (FOM) and Division of Program Operations Manual (DPOM). 2. Policies were not complete as: <ol style="list-style-type: none"> a. RRB did not validate third-party settlement information after the agency was informed of a settlement with a third-party (nonrailroad) entity, including the result of the lawsuit or awarded settlement amount. b. RRB also did not validate that claimants were not pursuing a settlement with a third-party if the claimant left the related question blank on the sickness application. c. RRB did not require a periodic review of total lien amounts established in the agency’s financial system by claims examiners.

Objective	RMA Assessment
<p>4. Test the RRB’s documented internal controls for the entire 12(o) lien process from identification through recovery or waiver to determine if they are in accordance with GAO Standards.⁵</p>	<p>RRB’s implementation of their documented internal controls for the 12(o) lien process was not in accordance with GAO Standards.⁶</p> <ol style="list-style-type: none"> 1. Identification: RMA noted that the policy, at the time of the audit, for how cases were coded in the Railroad Unemployment Claims System (RUCS), the system used to track open liens, left RRB open to unnecessary risk. 2. Monitoring: The monitoring process required multiple follow-ups with claimants to ensure RRB was provided with accurate and up-to-date information on the status of the case. However, RRB did not send follow-up documents to railroad employers during the scope of this audit. Additionally, for third-party cases, 20 of the 55 sampled documents had not received the necessary follow-up referrals. When RMA inquired about the missing documents, we were informed that the automatic referral system, which RRB used to ensure that follow-ups happened, was not functional, and RRB could not provide an estimate for how long the automatic referral system had not been functioning. 3. Collection: When testing the recovery of liens, RRB was unable to provide the completeness of their actions to collect liens. There was no control to ensure that all cases were transferred from the system used to track open liens to FMIS.
<p>5. Assess the timeliness of RRB actions in setting up the lien and establishing it in the agency’s receivable system.</p>	<p>RRB’s OP did not ensure that 12(o) lien receivables information was entered into the RRB’s financial management systems timely. When RMA questioned OP, they could not provide the timeliness of their actions to establish 12(o) lien receivables in FMIS.</p>

⁵ GAO Standards, GAO-14-704G, September 10, 2014.

⁶ Ibid.

Objective	RMA Assessment
<p>6. Assess the effectiveness, timeliness, and completeness of the RRB's actions to ensure that these 12(o) liens are collected, including any applicable interest and penalty charges that may have been applied.</p>	<p>RRB's OP actions were not sufficient to ensure that all 12(o) liens were collected since RMA could not verify that all settled cases were transferred from RUCS, the system used to monitor ongoing cases, to the agency's financial system, FMIS. Debts were moved between these systems using the Overpayment Recovery Correspondence System (ORCS) with additional information stored on the RUIA Daily Claims Processing System. The RUIA Daily Claims Processing System's primary purposes were to process unemployment and sickness claims, maintain a record of actions taken on each claim, accumulate data, and automatically generate forms and letters to send to claimants. The RUIA Daily Claims Processing System stored the information entered into RUCS and generated daily lists that detail the information transferred to ORCS. The process of transferring the daily list generated by the RUIA Daily Claims Processing System to ORCS and then to FMIS occurred automatically with no oversight of the resultant information transferred to FMIS from an OP employee.</p>

Objective	RMA Assessment
<p>7. Test the accuracy and validity of waivers for 12(o) lien cases against applicable laws, regulations, and approved agency policies and procedures.</p>	<p>RMA determined that while 12(o) waivers were not used at the RRB, 12(o) lien reductions fulfilled a similar process. OP reported that waivers could only be granted in instances when the claimant did not have the funds to repay the lien; which, by default, could not happen, as the claimant would have just received a settlement. Lien reductions were described in the Code of Federal Regulations (C.F.R.)⁷ as the subtraction of medical and legal expenses by the claimant before RRB is entitled to collect their lien. Lien reductions could reduce the lien amount partially or wholly and were subject to their own process at RRB.</p> <p>RRB’s controls were neither sufficient nor effective to ensure that liens were reduced in accordance with applicable policies and criteria. RMA found multiple instances where the necessary documents were not sent to claimants as part of the lien reduction process, and additional instances where claimants were sent the incorrect documents that informed them their liens had been reduced to zero. Specifically, OP did not send the following required letters per agency policies and procedures: the letter to request copies of billing documents as proof that the claimant paid the medical expenses related to the infirmity for which the employer was held liable; the letter to notify the employer that the claimant had provided RRB with evidence to result in a lien reduction; and the letter to notify the claimant of an investigation into medical expenses for a potential lien reduction.</p> <p>As part of the lien reduction process, OP generated forms to calculate the lien reduction and notify the claimant of the lien amount after the lien reduction calculation. In five samples, RMA found that the claims examiner correctly calculated the lien amount but sent the wrong form to the claimant, telling them that the lien amount had been reduced to zero.</p>

⁷ 20 C.F.R. § 341.5, Amount of reimbursement, January 5, 1984.

Objective	RMA Assessment
8. Test RRB compliance with its regulations (20 C.F.R. § 341.9) ⁸ that provide that the RRB shall not be liable for the payment of any attorney's fee or other expenses incurred in connection with any personal injury claim.	RMA assessed and tested RRB's compliance with 20 C.F.R. § 341.9 ⁹ and found no instances in which RRB was not compliant.

Information on our findings and recommendations are included in the accompanying report.

Respectfully,



RMA Associates, LLC

⁸ 20 C.F.R. § 341.9, Board as a party; attorney's fee, January 5, 1984.

⁹ Ibid.

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Introduction

This report presents the results of RMA Associates, LLC's (RMA) performance audit of the Railroad Retirement Board (RRB)'s 12(o) lien process. Section 12(o) of the Railroad Unemployment Insurance Act (RUIA)¹⁰ describes RRB's entitlement to reimbursement for sickness benefits paid if the employee who received the benefits holds either their railroad employer or a third-party liable and is awarded a settlement. As such, these specific liens are referred to as 12(o) liens.

Objectives, Scope, and Methodology

Objectives

The objectives of this audit were to:

1. Determine the financial magnitude of the RRB's 12(o) lien process;
2. Test the RRB's 12(o) lien process to determine if it is in accordance with the applicable criteria and whether it is effective to ensure that all 12(o) liens are identified, monitored (before and after establishment in the agency's receivable system), established in the agency's receivable system, and recovered or waived;
3. Assess the RRB's documented policies and procedures for the entire 12(o) lien process from identification through waiver or recovery to determine if they are complete, current, and if they address the required actions and responsible parties for all actions required throughout this process and compare these documented policies and procedures against the actual process;
4. Test the RRB's documented internal controls for the entire 12(o) lien process from identification through recovery or waiver to determine if they are in accordance with the U.S. Government Accountability Office's (GAO) *Standards for Internal Controls in the Federal Government* (GAO Standards);¹¹
5. Assess the timeliness of RRB actions in setting up the lien and establishing it in the agency's receivable system;
6. Assess the effectiveness, timeliness, and completeness of the RRB's actions to ensure that these 12(o) liens are collected, including any applicable interest and penalty charges that may have been applied;
7. Test the accuracy and validity of waivers for 12(o) lien cases against applicable laws, regulations, and approved agency policies and procedures; and

¹⁰ RUIA, June 25, 1938, page 45, Section 12(o).

¹¹ GAO Standards, GAO-14-704G, September 10, 2014.

8. Test RRB compliance with its regulations (20 C.F.R. § 341.9)¹² that provide that the RRB shall not be liable for the payment of any attorney's fee or other expenses incurred in connection with any personal injury claim.

Scope

The scope of the audit was RRB 12(o) liens established or identified in calendar years 2016 through 2021.

Methodology

To address and accomplish the audit objectives, we used the following evidence-gathering and evidence-analysis techniques:

- Identified criteria from applicable laws, regulations, policies, and procedures, including GAO Standards;¹³
- Reviewed the prior Office of Inspector General (OIG) audit findings;
- Reviewed agency documentation to address the audit objectives;
- Reviewed RRB policies and procedures to generate a process map (**Appendix II: Process Map**) from identification to collection;
- Held discussions with applicable management and key personnel;
- Identified and tested key controls within the 12(o) lien process using statistically valid samples;
- Assessed the use of waivers and lien reductions within the 12(o) lien process; and
- Tested RRB's compliance with key federal regulations.

RMA consulted the following documents to better understand the applicable criteria for this audit:

1. RUIA¹⁴ section 12(o) provides the basis for the 12(o) liens in section 12(o) of the act. This section states that RRB is entitled to reimbursement for sickness benefits paid to a railroad employee if the employee who received the benefits holds either their railroad employer or a third-party liable and is awarded a settlement.
2. C.F.R. Title 20, Employees' Benefits – Chapter II. Railroad Retirement Board Part 341 – Statutory Lien Where Sickness Benefits Paid;¹⁵ provides specific requirements that should be followed to ensure that RRB is able to recover the entirety of the funds to which they are entitled. The C.F.R. details regulations for how railroad employees and liable parties

¹² 20 C.F.R. § 341.9, Board as a party; attorney's fee, January 5, 1984.

¹³ GAO Standards, GAO-14-704G, September 10, 2014.

¹⁴ RUIA, June 25, 1938, page 45, Section 12(o).

¹⁵ C.F.R. Title 20, Chapter II, Part 341, January 5, 1984.

are to be notified of the lien, how RRB is to be reimbursed, and the specific expenses that can be deducted from an employee's final lien amount.

3. L-2011-06 Legal Opinion,¹⁶ was the subject of a previous OIG audit.¹⁷ The legal opinion states that railroad employees can use medical expenses to reduce the final amount of their lien only if they can first verify that their railroad employer did not pay those medical expenses. This legal opinion led to the development of specific policies within the lien reduction process.

RMA chose a simple random sampling approach to assess the entire population. This technique allowed us to select a random sample representative of the population (this technique was based on the distribution of the items of the population; thus, the distribution of the random sample was very similar to the universe from which the sample was pulled). The population files did not include dollar amounts or other characteristics of interest; therefore, a simple random sampling was one of the most appropriate techniques, especially to detect any errors in the population or any indication of problems or controls not in place for a specific program. RMA had initially intended to use the sample to project a dollar value across the entire population but as sampling progressed the data was determined to be unreliable. In summary, the sample was used to assess the adequacy of controls as opposed to projecting a dollar value across the entire population. More specific sampling information for the tests performed can be found in **Appendix IV: Sampling Methodology**.

We assessed the reliability of RRB data by testing the controls associated with the identification, monitoring, and collection of settled cases to determine whether the data was accurate and complete. RMA followed GAO's *Assessing Data Reliability*¹⁸ guide and determined that RRB's data was not sufficiently reliable due to a lack of internal controls within the 12(o) lien process. RMA identified the following reasons:

1. RRB's policies for establishing liens may not have captured the entire universe of potential liens;
2. RRB lacked policies to ensure codes used to track liens were properly updated; and
3. RRB did not effectively monitor the open liens.

While this data was not sufficiently reliable, RMA determined that it was useful as a general indicator of persistent issues within this process. Our findings using the data demonstrated the issues within the process that oftentimes were the direct cause or result of insufficient data reliability.

¹⁶ L-2001-06 Legal Opinion, July 22, 2011.

¹⁷ Audit of the Impact of a New Legal Opinion Related to RUIA Section 12(o) Liens, RRB OIG Report No. 12-09, September 25, 2012.

¹⁸ GAO, *Assessing Data Reliability*, GAO-20-283G, December 2019.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We conducted our fieldwork at RMA headquarters in Arlington, Virginia from July 2022 through May 2023.

Background

RRB is an independent agency in the Federal Government's Executive Branch, created in the 1930s, that provides insurance benefit programs to railroad workers and their families under the Railroad Retirement Act (RRA)¹⁹ and the RUIA.²⁰ During the 1930s, railroad workers young and old were faced with increasing uncertainty about their job security and pension plans. RRB served to administer benefits and income protection provided under the two acts, such as retirement benefits, unemployment insurance, and sickness insurance, in case of death or disability.

Qualified railroad employees can receive sickness benefits under the RUIA,²¹ payable for periods of infirmity, whether or not job-related. Sickness benefits are paid out of RRB's Railroad Unemployment Insurance Trust Fund. RRB pays sickness benefits to the railroad employee during the period of infirmity. Federal law codified at 45 United States Code (U.S.C.) §362(o),²² requires that RRB shall be reimbursed from any sum or damages paid or payable to the extent that it will have paid or will pay benefits for days of sickness resulting from such infirmity. RRB refers to its right to reimbursement as a 12(o) lien. RRB implemented regulations at 20 C.F.R. § 341.5²³ which provide additional parameters for recovery. Between October 2015 and September 2021, a total of six years, RRB paid approximately \$477.2 million in gross sickness benefits.

If a railroad employee was injured on the job, they could hold their employer liable for their injury. While pursuing that settlement, they could apply for and receive benefits from RRB. If the railroad employee lost the lawsuit, then they would not be required to repay any amount to RRB. However, if the railroad employee was awarded a settlement because their employer was deemed liable, the railroad employee would be required to repay RRB either the total amount of benefits that RRB had paid them for that period of infirmity or their total settlement minus legal and medical fees, whichever was less.

¹⁹ Railroad Retirement Act of 1974, October 16, 1974.

²⁰ RUIA, June 25, 1938.

²¹ 45 USC Section 352(a)(1)(B)(i), 1996.

²² 45 U.S.C §362(o), Liability of third-party for sickness.

²³ 20 C.F.R. § 341.5, Amount of reimbursement, January 5, 1984.

As an example, RMA reviewed a case in which a railroad employee suffered arm pain after a work-related injury and pursued a settlement against their railroad employer. This case was tracked as a potential 12(o) lien and their railroad employer was found liable. Once the employee was awarded a settlement, RRB was able to recover the benefits that had been paid to the employee from that settlement.

In another case, a railroad employee was injured in a non-work-related car accident and held the other driver liable for their injuries. RRB has tracked the case as a 12(o) lien but as the case has yet to settle, RRB has not recovered any of the benefits paid to this individual.

RRB is led by a three-member Board appointed by the President with the advice and consent of the Senate. Beneath the Board are eight bureaus, each responsible for a separate facet of RRB's functions. The Office of Programs (OP) is one of those bureaus and contains within it the Unemployment and Programs Support Division (UPSD). UPSD's Sickness and Unemployment Benefits Section (SUBS) is responsible for the identification, monitoring, and establishment of 12(o) debts within the agency's financial system.

Results of Audit

RMA found that RRB lacked comprehensive controls for the 12(o) lien process during the scope of our audit. The findings and recommendations detailed in this performance audit are similar to a prior performance audit conducted by the RRB OIG in 2012.²⁴ In particular, RRB OIG recommended that RRB "implement a comprehensive tracking system for 12(o) liens." Though this recommendation was closed in 2013, the condition returned during the scope of this audit as the controls and systems were insufficient to ensure that all 12(o) cases were identified, monitored, and collected.

While RMA identified multiple issues within the 12(o) lien process, certain processes were compliant with federal regulations and followed by claims examiners. Specifically for **Objective 8**, RMA tested RRB's compliance with 20 C.F.R. § 341.9²⁵ and found no exceptions.

The assessment of the remaining audit objectives for this performance audit of the 12(o) lien process follows:

- **Objective 1:** RRB's OP did not know the financial magnitude of the 12(o) lien process and as such could not adequately determine the dollar value of sickness benefits that could potentially be recovered; specifically, the dollar value of 12(o) liens eligible for recovery from the universe of sickness benefits.

²⁴ Audit of the Impact of a New Legal Opinion Related to RUIA Section 12(o) Liens, RRB OIG Report No. 12-09, September 25, 2012.

²⁵ 20 C.F.R. § 341.9 Board as a party; attorney's fee, January 5, 1984.

- **Objective 2:** RRB’s process was not in compliance with federal regulations to ensure all 12(o) liens were identified, monitored, and collected in the agency’s receivable system. Federal regulations for the 12(o) lien process required specific policies that RRB did not have. In addition, the monitoring of the process was neither cohesive nor comprehensive.
- **Objective 3:** RRB’s documented policies and procedures were neither current nor complete:
 1. RRB continued to accept outdated versions of forms from railroads that were meant to request lien information or report settlements and had not distributed to all railroad employers the latest version of this form. Additionally, RRB failed to reflect the transition from the Program Accounts Receivable System (PARS) to the financial management system at the time of this audit, the Financial Management Integrated System (FMIS), in sections of its Field Operating Manual (FOM) and Division of Program Operations Manual (DPOM).
 2. Policies were not complete as:
 - a. RRB did not validate third-party settlement information after the agency was informed of a settlement with a third-party (nonrailroad) entity, including the result of the lawsuit or awarded settlement amount.
 - b. RRB also did not validate that claimants were not pursuing a settlement with a third-party if the claimant left the related question blank on the sickness application.
 - c. RRB did not require a periodic review of total lien amounts established in the agency’s financial system by claims examiners.
 - d. Claims examiners failed to follow documented policies.
- **Objective 4:** RRB’s implementation of their documented internal controls for the 12(o) lien process was not in accordance with GAO Standards.²⁶
 1. **Identification:** RMA noted that the policy for how cases were coded in the Railroad Unemployment Claims System (RUCS), the system used to track open liens, left RRB open to unnecessary risk.
 2. **Monitoring:** The monitoring process required multiple follow-ups with claimants to ensure RRB was provided with accurate and up-to-date information on the status of the case. However, RRB did not send follow-up documents to railroad employers during the scope of this audit. Additionally, for third-party cases, 20 of the 55 sampled documents had not received the necessary follow-up referrals. When RMA inquired about the missing documents, we were informed that the automatic referral system, which RRB used to ensure that follow-ups happened, was not functional, and RRB could not provide an estimate for how long the automatic referral system had not been functioning.

²⁶ GAO Standards, GAO-14-704G, September 10, 2014.

3. **Collection:** When testing the recovery of liens, RRB was unable to provide the completeness of their actions to collect liens. There was no control to ensure that all cases were transferred from the system used to track open liens, the RUIA Daily Claims Processing System, to FMIS.
- **Objective 5:** RRB OP did not ensure that 12(o) lien receivables information was entered into the RRB's financial management systems timely. When RMA questioned OP, they could not provide the timeliness of their actions to establish 12(o) lien receivables in FMIS.
 - **Objective 6:** RRB's OP actions were not sufficient to ensure that all 12(o) liens were collected since RMA could not verify that all settled cases were transferred from RUCS, the system used to monitor ongoing cases, to the agency's financial system, FMIS. Debts were moved between these systems using ORCS with additional information stored on the RUIA Daily Claims Processing System. The RUIA Daily Claims Processing System's primary purposes were to process unemployment and sickness claims, maintain a record of actions taken on each claim, accumulate data, and automatically generate forms and letters to send to claimants. The RUIA Daily Claims Processing System stored the information entered into RUCS and generated daily lists that detail the information transferred to ORCS. The process of transferring the daily list generated by the RUIA Daily Claims Processing System to ORCS and then to FMIS occurred automatically with no oversight of the resultant information transferred to FMIS from an OP employee.
 - **Objective 7:** RMA determined that while 12(o) waivers were not used at the RRB, 12(o) lien reductions fulfilled a similar objective. OP reported that waivers could only be granted in instances when the claimant did not have the funds to repay the lien; which, by default, could not happen, as the claimant would have just received a settlement. Lien reductions were described in the C.F.R.²⁷ as the subtraction of medical and legal expenses by the claimant before RRB was entitled to collect their lien. Lien reductions could reduce the lien amount partially or wholly and were subject to their own process at RRB.

RRB's controls were neither sufficient nor effective to ensure that liens were reduced in accordance with applicable policies and criteria. RMA found multiple instances where the necessary documents were not sent to claimants as part of the lien reduction process, and additional instances where claimants were sent the incorrect documents that informed them their liens had been reduced to zero. Specifically, OP did not send the following required letters per agency policies and procedures: the letter to request copies of billing documents as proof that the claimant paid the medical expenses related to the infirmity for which the employer was held liable; the letter to notify the employer that the claimant had provided RRB with evidence to result in a lien reduction; and the letter to notify the claimant of an investigation into medical expenses for a potential lien reduction.

²⁷ 20 C.F.R. § 341.5, Amount of reimbursement, January 5, 1984.

As part of the lien reduction process, OP generated forms to calculate the lien reduction and notify the claimant of the lien amount after the lien reduction calculation. In five samples, RMA found that the claims examiner correctly calculated the lien amount but sent the wrong form to the claimant, telling them that the lien amount had been reduced to zero.

RMA's analysis of the audit objectives revealed the following findings regarding aspects of RRB's 12(o) lien process:

1. Lack of Comprehensive Controls for the 12(o) Lien Process
2. Inability to Determine Financial Magnitude
3. Failure to Comply with Applicable Criteria
4. Insufficient Documented Policies and Procedures
5. Lack of Internal Controls
6. Inability to Provide Timeliness of Establishing Actions
7. Inability to Determine Completeness of Collection
8. Lack of Controls in Lien Reductions

The following section details these eight findings and provides recommendations to assist RRB in remediating them.

Lack of Comprehensive Controls for the 12(o) Lien Process

RRB's OIG performed an audit in 2012 titled, "Audit of the Impact of a New Legal Opinion Related to RUIA Section 12(o) Liens" (RRB OIG Report Number 12-09).²⁸ The OIG was particularly concerned with the impact of a new legal opinion on the lien reduction process but observed the entire 12(o) lien process from identification to collection. The OIG recommended that RRB "implement a comprehensive tracking system for 12(o) liens" to address the following condition:

The lien reduction data was not readily available because agency management does not track the lien reductions granted, the existing systems do not record lien reduction transactions, and the information to identify lien reductions resides in multiple systems. The agency does not have a comprehensive tracking system for 12(o) liens.

OP concurred with this recommendation and submitted their corrective actions to OIG for review in August 2013. OIG closed the recommendation in September 2013.

To close this recommendation, OP stated that it had created a new form that would document all net settlement calculations and allow for a comprehensive report of lien reductions to be generated.

²⁸ Audit of the Impact of a New Legal Opinion Related to RUIA Section 12(o) Liens, RRB OIG Report No. 12-09, September 25, 2012.

Additionally, OP stated that they were able to “readily identify” all open and closed liens using a Query of the Master File (QMF) which would allow them to retrieve any necessary information about the 12(o) cases quickly.

While the recommendation was closed in 2013, RMA determined the condition returned. As of May 2023, OP’s controls and systems were insufficient to ensure that all 12(o) cases were identified, monitored, and collected. While RMA acknowledges that OP’s management and claims examiners handled some cases properly, it could not ensure that all cases were identified, monitored, and collected.

According to the RUIA, “[t]he Board shall have a lien upon such right or claim, any judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way of reimbursement.”²⁹ RRB’s policies, at the time of this audit, were not sufficient to ensure that this requirement was met.

The specific failures associated with the identification, monitoring, and collection of 12(o) liens include the inability to determine the financial magnitude, failure to comply with applicable criteria, insufficient documented policies and procedures, lack of internal controls, inability to provide timeliness of establishing actions, inability to determine the completeness of collection, and lack of controls in lien reductions.

Without a comprehensive tracking system for 12(o) liens, as we are recommending in recommendation Number 2 below, RRB could not calculate the portion of the net sickness benefits paid that were eligible for recovery through 12(o) liens. Therefore, RMA determined that the entire total of all net sickness benefits paid during the scope of our audit, \$358.8 million, (as reported in the RRB’s annual reports for fiscal years (FY) 2016 through 2021) could possibly have been eligible to be recovered from 12(o) liens, and as a result, were considered unsupported questioned costs.³⁰ (See **Appendix III: Total Potential Unsupported Questioned Cost: Lack of Comprehensive Tracking System for 12(o) Lien Process**).

Recommendations

RMA recommends that the Office of Programs:

1. Develop and document a comprehensive set of controls over the entirety of the 12(o) lien process and consolidate those controls into a singular location so that they are both easily referenced and tested.
2. Implement a comprehensive tracking system for 12(o) liens to ensure that all 12(o) liens are identified, monitored, and collected.

²⁹ RUIA, June 25, 1938, page 45, Section 12(o).

³⁰ The IG Act of 1978, revised December 27, 2022, Section 405(a)(4)(b) defines “questioned costs” - *the term “questioned cost” means a cost that is questioned by the Office because of...(B) a finding that, at the time of the audit, the cost is not supported by adequate documentation.*”

Management's Comments

RRB's Office of Programs concurred with recommendations 1 and 2 with the following statement for both recommendations:

Concur. At this time, the RRB cannot provide an estimated completion date. The agency is currently in a multi-year agency wide modernization effort. Current RUIA processes, as well as controls, will be reengineered.

RMA's Response

RMA appreciates the concurrence and suggests developing action plans as part of the reengineering of RUIA processes to ensure completion of each recommendation.

Inability to Determine Financial Magnitude

Because the RRB lacked a comprehensive tracking system for 12(o) liens, they could not determine the total financial magnitude of the 12(o) lien process and as such could not adequately determine the dollar value of sickness benefits that could potentially be recovered. Specifically, the dollar value of 12(o) liens eligible for recovery from the universe of sickness benefits.

Principle 10 in the GAO Standards³¹ requires that management clearly document all transactions in a manner that allows for them to be readily available for examination, which was not the case with this process.

According to the RUIA, "[t]he Board shall have a lien upon such right or claim, any judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way of reimbursement."³² RRB's policies, at the time of this audit, were not sufficient to ensure that this requirement was met.

RRB's policies and systems associated with the 12(o) lien process were not designed to capture a total dollar value the agency may collect from 12(o) liens. More specifically, RRB's Unemployment Payment Control (UPC) system, used to track benefit payments, did not allow payments to be tallied for potential liens; rather, it was built for accounts to be viewed individually. As such, RRB would need to manually calculate the total financial magnitude of the payments identified as 12(o) liens.

Additionally, RRB lacked policies and procedures for the process of differentiating between infirmaries subject to 12(o) liens and those infirmaries not subject to 12(o) liens, and thus could not validate if RRB employees were accurately recording and collecting the appropriate dollar value.

³¹ GAO Standards, GAO-14-704G, Principle 10, *Design Control Activities*, September 10, 2014.

³² RUIA, June 25, 1938, page 45, Section 12(o).

Finally, RRB did not have internal controls in place to update entries (i.e., mark them as a code 6³³ or 7³⁴) in RUCS when RRB was provided settlement information. As such, there was no reliable method for generating a list of open 12(o) liens. In total, 14 of the cases against railroad employers and 6 of the cases against third-parties had multiple differing codes (See **Appendix IV: Sampling Methodology**, Objective 4: Monitoring of Railroad Employer Cases Number 3 and Objective 4: Monitoring of Third-Party Cases Number 3).

As a result, OP did not have the ability to calculate the dollar value of 12(o) liens eligible for recovery from the universe of sickness benefits and was at risk of not collecting the full amount.

Recommendations

RMA recommends that the Office of Programs:

3. Develop a system that calculates and tracks the portion of sickness payments subject to be recovered from potential 12(o) liens.
4. Develop policies and procedures to validate that employees are accurately differentiating between infirmaries and Railroad Unemployment Insurance Act benefits subject to 12(o) liens and those not subject to 12(o) liens for beneficiaries.
5. Develop controls to ensure that Railroad Unemployment Claims System codes are properly updated after the report of settlement.

Management's Comments

RRB's Office of Programs did not concur with recommendation 3 with the following statement:

Non concur. Development of a new system is unnecessary since all sickness payments could be subject to section 12(o) of the Railroad Unemployment Insurance Act. The RUIA processes currently track benefits paid to claimants. A separate system would be fruitless and not cost-effective to the agency.

RRB's Office of Programs concurred with recommendations 4 and 5 with an estimated completion date of December 2025.

³³ According to the updated FOM, revised January 27, 2014, Section 2-165.30.1, code 6 refers to cases where a "Lien notice [was] sent to railroad employer, but subsequently section 12(o) was determined not applicable, or the lien amount has been recovered." According to the DPOM Article 10, revised November 10, 2015, Section 1001.02.6, code 6 "indicate[s] that the previous 12(o) determinations with respect to on-the-job injuries or third-party liability are no longer applicable."

³⁴ According to the updated FOM, revised January 27, 2014, Section 2-165.30.1, code 7 refers to cases where a "Lien notice [was] sent to a person or company other than a railroad employer, but subsequently 12(o) was determined not applicable or the lien amount has been recovered." According to the DPOM Article 10, revised November 10, 2015, Section 1001.02.6, code 7 "indicate[s] that the previous 12(o) determinations with respect to on-the-job injuries or third-party liability are no longer applicable."

RMA's Response

RMA appreciates the concurrence with recommendations 4 and 5 and suggests developing action plans to ensure completion by December 2025.

Regarding the nonconcurrence with recommendation 3, RMA was tasked with determining the financial magnitude of the 12(o) lien process as part of this performance audit. While RMA understands that all sickness payments could be subject to section 12(o), RRB does not track all sickness payments within the 12(o) lien process. There are policies with which RRB determines the cases most likely to be subject to section 12(o). Were RRB to track payments subject to recovery from those cases, it would provide a better understanding of the program's financial magnitude.

Failure to Comply with Applicable Criteria

When assessing the overall compliance with applicable criteria, RMA determined that the RRB OP was not in compliance with federal regulations to ensure all 12(o) liens were identified, monitored, and collected in the agency's receivable system. Federal regulations for the 12(o) lien process required specific policies that RRB did not have.

In addition, the monitoring of the 12(o) process was neither cohesive nor comprehensive. RMA has provided specific instances in which internal controls were missing or ineffective in the finding titled **Insufficient Documented Policies and Procedures** starting on page 13, and the failures within the lien reduction process in the finding titled **Lack of Controls in Lien Reductions** starting on page 20.

According to the RUIA, "[t]he Board shall have a lien upon such right or claim, any judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way of reimbursement."³⁵ Policies, at the time of this audit, were not sufficient to ensure that this requirement was met.

C.F.R. Title 20 Part 341.8³⁶ – *Statutory Lien Where Sickness Benefits Paid* requires that:

Section 341.8 (c) If, in the case of an oral report, the written confirmation as described in paragraph (b) of this section is not received within five days, the Sickness and Unemployment Benefits Section shall take steps within five additional working days to verify whether there has been a settlement or final judgment. If there has been no settlement or final judgment, the payment of sickness benefits shall be reinstated.

³⁵ RUIA, June 25, 1938, page 45, Section 12(o).

³⁶ 20 C.F.R. § 341.8, *Statutory Lien Where Sickness Benefits Paid*, September 8, 2006.

Section 341.8 (d) Within five days of the notification of a settlement or final judgment, the Board shall inform the employee of the report of the settlement or final judgment. The notice to the employee shall state how the employee may inform the Board that there has not been a settlement or final judgment. If the employee states that there has not been a settlement or final judgment, the adjudicating office shall, within 10 days after the receipt of such a statement, make a determination as to the employee's rights to future sickness benefits and shall notify him or her accordingly.

RRB did not translate the two 12(o) requirements defined in Title 20, Section 341.8, C and D³⁷ to their policies and procedures, and the absence of these controls increased the risk that procedures in the 12(o) lien process could be followed incorrectly or misunderstood by both RRB employees and claimants. OP stated that they believed their existing policies were sufficient to address these requirements, but as they did not contain references to the timeline in which actions must occur, RMA determined that they were not sufficient. As a result, the RRB was at risk for not collecting all the sickness benefits to which the agency was potentially entitled to recover.

Recommendation

RMA recommends that the Office of Programs:

6. Update its policies and procedures to address the two 12(o) lien requirements defined in Code of Federal Regulations Title 20 Section 341.8, Termination of sickness benefits due to a settlement, dated September 8, 2006.

Management's Comments

RRB's Office of Programs concurred with recommendation 6 with an estimated completion date of December 2025.

RMA's Response

RMA appreciates the concurrence and suggests developing an action plan to ensure completion by December 2025.

Insufficient Documented Policies and Procedures

In addition to missing criteria, RRB's OP did not maintain comprehensive documented 12(o) policies and procedures. Specifically, OP continued to accept outdated versions of forms from railroads that were meant to request lien information or report settlements and had not distributed to all railroad employers the latest version of this form. Additionally, OP and Field Service failed to reflect the transition from the PARS to the financial management system at the time of this audit, FMIS, in certain sections of its procedures contained in the FOM and DPOM.

³⁷ 20 C.F.R. § 341.8, Statutory Lien Where Sickness Benefits Paid, September 8, 2006.

Policies were not complete as OP did not validate third-party settlement information after the agency was informed of a settlement with a third-party (nonrailroad) entity, including the result of the lawsuit or awarded settlement amount. OP did not validate that claimants were not pursuing a settlement with a third-party, if the claimant left the related question blank on the sickness application (**Appendix VII: Form SI-1a and SI-1b**). Finally, OP did not require a periodic review of the total lien amounts established in the agency's financial system by claims examiners.

Furthermore, OP's claim examiners failed to follow documented policies and distribute the required 12(o) monitoring documents. This is documented in the finding titled **Lack of Internal Controls** starting on page 16 and **Lack of Controls in Lien Reductions** starting on page 20.

The GAO Standards principles 10,³⁸ 12,³⁹ and 13⁴⁰ require that management design appropriate control activities, periodically review those control activities, and use quality information, respectively.

According to the RUIA, "[t]he Board shall have a lien upon such right or claim, any judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way of reimbursement."⁴¹ Policies, at the time of this audit, were not sufficient to ensure that this requirement was met.

The OP allowed the use of outdated forms involved in the 12(o) lien process and failed to properly update their forms because of the focus on ongoing cases. Additionally, OP's failure to update its manuals to correctly reference the financial management system at the time of this audit, FMIS, occurred because of a lack of periodic reviews of policies and procedures.

The OP did not validate third-party settlement information because they relied on information provided by attorneys for both the settlement outcome and the amount. Additionally, OP did not require that the claimant provide supporting information to validate the settlement outcome or amount. Claims examiners did not validate a claimant's sickness application when a question was left blank regarding third-party settlements because of specific policies. These policies required that an examiner should mark the claimant as not pursuing settlement, if the claimant stated that they were not injured on-site and did not answer the follow-up question on the sickness application that asked if they were pursuing a settlement. Finally, OP did not require a periodic review of total lien amounts in FMIS because they had no internal controls to ensure that totals established in FMIS accurately reflect the correct lien amount.

³⁸ GAO Standards, GAO-14-704G, Principle 10, *Design Control Activities*, September 10, 2014.

³⁹ GAO Standards, GAO-14-704G, Principle 12, *Implement Control Activities*, September 10, 2014.

⁴⁰ GAO Standards, GAO-14-704G, Principle 13, *Use Quality Information*, September 10, 2014.

⁴¹ RUIA, June 25, 1938, page 45, Section 12(o).

The absence of adequate internal controls increased the risk that procedures in the 12(o) lien process could be followed incorrectly or misunderstood by both RRB employees, claimants, and railroad employees. While the older forms contain the same information, if a claims examiner was unfamiliar with the old form, they could be mislabeled. Thus, the information would be unavailable to future employees. As a result, RRB was at risk for not recovering the total sickness benefits to which the agency was potentially entitled to recover.

Recommendations

RMA recommends that the Office of Programs:

7. Formally request that railroads stop using outdated forms in the 12(o) lien process to ensure consistency and accuracy of all transactions with outside entities, and to promote a uniform 12(o) lien process.
8. Work with the Bureau of Field Service, to update the Field Operating Manual to correctly reference the financial management system at the time of this audit, Financial Management Integrated System, and remove references to obsolete systems, such as the Program Accounts Receivable System.
9. Update the Division of Program Operations Manual to correctly reference the financial management system at the time of this audit, Financial Management Integrated System, and remove references to obsolete systems, such as the Program Accounts Receivable System.
10. Develop controls to independently verify the outcome of a claimant's settlement.
11. Update policies to require claims examiners to request additional information when claimants indicate that they were not injured at work, but do not specify whether they are pursuing a settlement in the sickness application.
12. Develop a control to require a review of the total lien value established in the agency's financial system.

Management's Comments

RRB's Office of Programs concurred with recommendation 7 with an estimated completion date of December 2024.

RRB's Office of Programs concurred with recommendations 8, 9, 11, and 12 with an estimated completion date of December 2025.

RRB's Office of Programs did not concur with recommendation 10 with the following statement:

Non concur. RRB staff cannot independently verify the outcome of a settlement. No amount of system modernization will have the ability to program an outcome of a claimant's settlement.

RMA's Response

For recommendations 7, 8, 9, 11, and 12, RMA appreciates the concurrence and suggests developing action plans to ensure completion by the respective due dates.

With regard to recommendation 10, GAO Standards⁴² require that entities obtain reliable data “that [is] reasonably free from error and bias.” Allowing claimants and their legal representation to present the final settlement amount without evidence or documentation does not provide a reasonable assurance that the information provided is free from error or bias. While RMA understands that RRB is not concerned with verifying this information in cases where RRB has been reimbursed in full, that should not be the case when RRB is unable to collect the full amount.

Lack of Internal Controls

The RRB's OP's implementation of their documented internal controls for the 12(o) lien process was not in accordance with GAO Standards.⁴³

RMA divided RRB's internal controls into three sections: Identification, Monitoring, and Collection for ease of examination. Within the “identification” set of controls, RMA noted that the policy in place during the scope of this audit for how cases were coded in the RUCS, the system used to track open liens, left RRB open to unnecessary risk. This issue is addressed in the finding titled **Insufficient Documented Policies and Procedures** starting on page 13.

As part of the “monitoring” process, OP was required to send multiple follow-ups to claimants to ensure RRB was provided with accurate and up-to-date information on the status of the case. However, OP had not sent follow-up documents to railroad employers since 2017. Additionally, for third-party cases, 20 of the 55 sampled documents had not received the necessary follow-up referrals (monitoring documents). When RMA inquired about the missing documents, we were informed that the automatic referral system, which OP used to ensure that follow-ups happen, was not functional, and OP could not provide an estimate for how long the automatic referral system had not been functioning.

When testing the recovery of liens, RRB was unable to provide the completeness of their actions to collect liens. There was no control to ensure that all cases were transferred from the system used to track open liens to FMIS, the agency's financial management system. This issue is addressed in the finding titled **Inability to Determine Completeness of Collection** starting on page 19.

The GAO Standards principles 4⁴⁴ and 17⁴⁵ require that management properly train employees and document and address any internal control deficiencies, respectively.

⁴² GAO Standards, GAO-14-704G, Principle 13.04, *Use Quality Information*, September 10, 2014.

⁴³ GAO Standards, GAO-14-704G, September 10, 2014.

⁴⁴ GAO Standards, GAO-14-704G, Principle 4, *Demonstrate Commitment to Competence*, September 10, 2014.

⁴⁵ GAO Standards, GAO-14-704G, Principle 17, *Evaluate Issues and Remediate Deficiencies*, September 10, 2014.

According to the RUIA, “[t]he Board shall have a lien upon such right or claim, any judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way of reimbursement.”⁴⁶ Policies, at the time of this audit, were not sufficient to ensure that this requirement was met.

OP’s monitoring of the 12(o) lien process was ineffective because OP was unaware of the prolonged failure of its automatic referral system. The failure was identified during audit testing when RMA requested monitoring documents. Additionally, OP did not follow its own policy. RRB policy required that annual status reports requesting an update on claimant cases must be sent for each case open against a railroad for more than three years.

OP’s collection of liens was ineffective because 12(o) lien claims were processed incorrectly by claims examiners. During testing, RMA identified 69 errors specific to mistakes made by claims examiners rather than general system failures. Claims examiner failed to distribute the necessary monitoring documents in accordance with their monitoring procedures three times in cases against railroad employers and 62 times in cases against third-parties (See **Appendix IV: Sampling Methodology**, Objective 4: Monitoring of Railroad Employer Cases Number 1 and Objective 4: Monitoring of Third-Party Cases Number 1). In one case, the claims examiner failed to create the necessary form used to finalize lien totals and in three cases, claims examiners failed to place the necessary stop on benefits (See **Appendix IV: Sampling Methodology**, Objective 4: Payment Collection of 12(o) Liens). The remaining ten errors occurred in the lien reduction process (See **Appendix IV: Sampling Methodology**, Objective 7: Lien Reduction Process Number 1 and 2). In nine instances, the necessary lien calculation forms were not created and in one instance the letter informing the claimant of the outcome of the lien reduction was not sent.

RMA also identified system failures within the audit, specifically that RRB did not send the necessary status requests to railroad employers for 28 cases opened for more than three years and that they did not contact the claimant for over three years in 32 cases against third-parties (See **Appendix IV: Sampling Methodology**, Objective 4: Monitoring Railroad Employer Cases Number 2 and Objective 4: Monitoring Third-Party Cases Number 2).

The absence of adequate internal controls increased the risk that procedures in the 12(o) lien process could be followed incorrectly or misunderstood by both RRB employees and claimants. As a result of claims examiners’ inability to follow RRB’s policies and procedures, RRB had inaccurate information on file for multiple 12(o) lien cases. This inaccurate information put RRB at risk of not collecting the total sickness benefits to which the agency was potentially entitled.

⁴⁶ RUIA, June 25, 1938, page 45, Section 12(o).

Recommendations

RMA recommends that the Office of Programs:

13. Develop controls to monitor the output generated from the automatic referral system.
14. Update their policies to ensure the annual status reports are sent for each case open against a railroad employer for more than three years, in accordance with policies.
15. Formalize a training curriculum so employees can correctly handle 12(o) lien casework and maintain the integrity of data and records on file in all 12(o) lien cases, thereby recovering all funds to which the agency is entitled to reimbursement.

Management's Comments

RRB's Office of Programs concurred with recommendations 13, 14, and 15 with an estimated completion date of December 2025.

RMA's Response

RMA appreciates the concurrence and suggests developing action plans to ensure completion by December 2025.

Inability to Provide Timeliness of Establishing Actions

RMA assessed the timeliness with which RRB established 12(o) liens in their financial management system. In doing so, RMA determined that OP did not ensure that 12(o) lien receivables information was entered into the RRB's financial management systems timely. When RMA questioned OP, they could not provide the timeliness of their actions to establish 12(o) lien receivables in FMIS. This was because OP's employees do not record the date on which they receive the settlement notification.

The C.F.R.⁴⁷ requires that RRB perform certain actions within 5 days of receiving notice of settlement, and GAO Standards principle 13⁴⁸ requires that organizations use quality information.

According to the RUIA, "[t]he Board shall have a lien upon such right or claim, any judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way of reimbursement."⁴⁹ Policies, at the time of this audit, were not sufficient to ensure that this requirement was met.

⁴⁷ 20 C.F.R. § 341.6A, Report of settlement or judgment, September 8, 2006.

⁴⁸ GAO Standards, GAO-14-704G, Principle 13, *Use Quality Information*, September 10, 2014.

⁴⁹ RUIA, June 25, 1938, page 45, Section 12(o).

Without the ability to assess timeliness, RRB could not determine the effect of its actions to establish 12(o) lien receivables in the agency's financial management system, FMIS. Delays in the timely establishment of receivables increased the risk that these 12(o) receivables would not be recovered, thereby jeopardizing the total sickness benefits to which the agency was potentially entitled.

Recommendations

RMA recommends that the Office of Programs:

16. Develop a method for recording the date the Railroad Retirement Board is notified of a 12(o) lien settlement.
17. Develop an internal control to ensure that 12(o) lien receivables are established and collected timely, in accordance with applicable criteria.

Management's Comments

RRB's Office of Programs concurred with recommendation 16 with an estimated completion date of December 2026.

RRB's Office of Programs concurred with recommendation 17 with an estimated completion date of December 2025.

RMA's Response

RMA appreciates the concurrence and suggests developing action plans to ensure completion by the respective due dates.

Inability to Determine Completeness of Collection

OP's actions were not sufficient to ensure that all 12(o) liens were collected, since RMA could not verify that all settled cases were transferred from RUCS, the system used to monitor ongoing cases, to the agency's financial management system, FMIS. Debts were moved between these systems using ORCS with additional information stored on the RUIA Daily Claims Processing System. The RUIA Daily Claims Processing System's primary purposes were to process unemployment and sickness claims, maintain a record of actions taken on each claim, accumulate data, and automatically generate forms and letters to send to claimants. The RUIA Daily Claims Processing System stored the information entered into RUCS and generated daily lists that detail the information transferred to ORCS. The process of transferring the daily list generated by the RUIA Daily Claims Processing System to ORCS and then to FMIS occurred automatically with no oversight of the resultant information transferred to FMIS from an OP employee.

The GAO Standards principle 16⁵⁰ states that management is responsible for ensuring the effectiveness of internal controls over the assigned processes performed by service organizations.

According to the RUIA, “[t]he Board shall have a lien upon such right or claim, any judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way of reimbursement.”⁵¹ Policies, at the time of this audit, were not sufficient to ensure that this requirement was met.

OP relied on a contractor’s tool, ORCS, to transfer daily reports generated from the RUIA Daily Claims Processing System to FMIS with no additional oversight from an OP employee.

The lack of control activities resulted in OP not verifying that the settled debts were transferred to FMIS accurately and completely and opened OP to the risk that they would not collect the full amount to which the agency was entitled. As a result, RRB was at risk for not collecting the total sickness benefits to which the agency was potentially entitled to recover.

Recommendation

RMA recommends that the Office of Programs:

18. Develop an internal control to verify that all debts referenced on the daily lists generated by the RUIA Daily Claims Processing System are transferred to the Financial Management Integrated System by the Railroad Retirement Board’s contracted service provider.

Management’s Comments

RRB’s Office of Programs concurred with recommendation 18 with an estimated completion date of December 2025.

RMA’s Response

RMA appreciates the concurrence and suggests developing an action plan to ensure completion by December 2025.

Lack of Controls in Lien Reductions

After a claimant reported that their settlement had been awarded, they could request their lien to be reduced. Our objective asked us to examine the use of waivers. RMA determined that while 12(o) waivers were not used at RRB, 12(o) lien reductions fulfilled a similar process. OP reported that waivers could only be granted in instances when the claimant did not have the funds to repay the lien; which, by default, could not happen, as the claimant would have just received a settlement.

⁵⁰ GAO Standards, GAO-14-704G, Principle 16, *Perform Monitoring Activities*, September 10, 2014.

⁵¹ RUIA, June 25, 1938, page 45, Section 12(o).

Lien reductions were described in the C.F.R.⁵² as the subtraction of medical and legal expenses by the claimant before RRB was entitled to collect their lien. Lien reductions could reduce the lien amount partially or wholly, and were subject to their own process at RRB.

RRB's controls were neither sufficient nor effective to ensure that liens were reduced in accordance with applicable policies and criteria. RMA found multiple instances where the necessary documents were not sent to claimants as part of the lien reduction process, and additional instances where claimants were sent the incorrect documents that informed them that their liens had been reduced to zero. Specifically, OP did not send the following required letters per agency policies and procedures: the letter to request copies of billing documents as proof that the claimant paid the medical expenses related to the infirmity for which the employer was held liable; the letter to notify the employer that the claimant had provided RRB with evidence to result in a lien reduction; and the letter to notify the claimant of an investigation into medical expenses for a potential lien reduction.

As part of the lien reduction process, claims examiners generate forms used to calculate the lien reduction and notify the claimant of the lien amount after the lien reduction calculation. In 5 out of 45 samples, RMA found that the claims examiner correctly calculated the lien amount but sent the wrong form to the claimant, telling them that the lien amount had been reduced to zero.

The GAO Standards principles 10⁵³ and 12⁵⁴ require that RRB design appropriate control activities, including the segregation of duties, and periodically review the effectiveness of those control activities.

According to the RUIA, “[t]he Board shall have a lien upon such right or claim, any judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way of reimbursement.”⁵⁵ Policies, at the time of this audit, were not sufficient to ensure that this requirement was met.

OP did not maintain policies and procedures that specifically reference the lien reduction process in DPOM. OP regularly issued lien reductions but made no reference to them in policies and procedures or related internal controls. In contrast, they referenced waivers. During testing, RMA also found nine instances within 45 samples in which the approver of the form used to determine the amount of the remaining lien was also the creator of that form, demonstrating a lack of segregation of duties⁵⁶ in the lien reduction process (See **Appendix IV: Sampling Methodology**, Objective 7: Lien Reduction Process Number 4).

⁵² C.F.R. § 341.5(a) Amount of reimbursement, January 5, 1984.

⁵³ GAO Standards, GAO-14-704G, Principle 10, *Design Control Activities*, September 10, 2014.

⁵⁴ GAO Standards, GAO-14-704G, Principle 12, *Implement Control Activities*, September 10, 2014.

⁵⁵ RUIA Section 12(o), March 11, 2021.

⁵⁶ The GAO Standards, revised September 2014, principle 10.03 page 47 or 53 of 86 in PDF *Design of Appropriate Types of Control Activities* explains that to provide adequate segregations of duties “*Management divides or segregates key duties and responsibilities among different people to reduce the risk of error, misuse, or fraud. This includes separating the responsibilities for authorizing transactions, processing and recording them, reviewing the transactions, and handling any related assets so that no one individual controls all key aspects of a transaction or event.*”

RMA also determined that OP had no process in place to validate that the correct letters were sent to claimants to inform them whether a lien reduction will be granted and to inform the claimant of the final amount of their lien. Finally, OP did not send all claimants the required letters per agency policies and procedures in 35 cases (See **Appendix IV: Sampling Methodology**, Objective 7: Lien Reduction Process Number 3). While their manuals required that the letters requesting copies of billing documents were sent “[w]hen a claimant or their attorney requests a reduction in the RRB’s lien amount,” OP had stated that they only sent those letters to railroads covered in the 1975 Health and Welfare Agreement, as those were the cases in which “the situation warrants.”

In five instances, an employee sent the wrong letter to a claimant notifying them of their final lien reduction amount, four of which were never added to FMIS and resulted in RRB not collecting their lien from a settled case. In total, RRB failed to collect \$9,576.82 (See **Appendix IV: Sampling Methodology**, Objective 7: Lien Reduction Process Number 5).

Specific errors associated with the issues identified above can be found in **Appendix IV: Sampling Methodology**, Objective 7: Lien Reduction Process.

The absence of adequate internal controls increased the risk that procedures in the 12(o) lien process could be followed incorrectly or misunderstood by RRB employees, which increased the likelihood of insufficient or excess lien reductions.

Recommendations

RMA recommends that the Office of Programs:

19. Update the language in its Division of Program Operations Manual to reflect terminology consistent with the lien reduction process in lieu of the term “waivers.”
20. Update their policies for sending the letter requesting copies of billing documents as proof that the claimant paid the medical expenses related to the infirmity for which the employer was held liable; the letter to notify the employer that the claimant has provided evidence to result in a lien reduction; and the letter to notify the claimant of an investigation into medical expenses for a potential lien reduction to reflect the practice at the time of this audit.
21. Develop internal controls to require supervisory approval for the submission of the letters sent to inform inquirers of the amount of Railroad Retirement Board’s claim to reimbursement once the supervisor has approved the reconciliation form calculating the amount owed by the claimant.

Management’s Comments

RRB’s Office of Programs concurred with recommendations 19, 20, and 21 with an estimated completion date of December 2025.

RMA's Response

RMA appreciates the concurrence and suggests developing action plans to ensure completion by December 2025.

Appendix I: Management's Comments



UNITED STATES GOVERNMENT

Memorandum

FORM G-115F (01-92)

RAILROAD RETIREMENT BOARD
CHICAGO, IL

JULY 27, 2023

TO : Shanon E. Holman
Assistant Inspector General for Audit

FROM : Arturo Cardenas
Director of Programs

SUBJECT: Response to the Office of Inspector General's Draft Report of the Audit of 12(o) Lien Process Does Not have Sufficient Controls to Identify, Monitor, and Collect Liens

ARTURO CARDENAS
Digitally signed by
ARTURO CARDENAS
Date: 2023.07.27
12:03:48 -05'00'

Thank you for the opportunity to comment on the referenced draft report that we received on July 6, 2023. The following is management's response to your findings and related recommendations:

Finding - Lack of Comprehensive Controls for the 12(o) Lien Process

RMA recommends that the Office of Programs:

Recommendation No. 1: "Develop and document a comprehensive set of controls over the entirety of the 12(o) lien process and consolidate those controls into a singular location so that they are both easily referenced and tested":

Management Response No. 1: Concur. At this time, the RRB cannot provide an estimated completion date. The agency is currently in a multi-year agency wide modernization effort. Current RUIA processes, as well as controls, will be reengineered.

Recommendation No. 2: "Implement a comprehensive tracking system for 12(o) liens to ensure that all 12(o) liens are identified, monitored, and collected":

Management Response No. 2: Concur. At this time, the RRB cannot provide an estimated completion date. The agency is currently in a multi-year agency wide modernization effort. Current RUIA processes, as well as controls, will be reengineered.

Finding - Inability to Determine Financial Magnitude

RMA recommends that the Office of Programs:

Recommendation No. 3: "Develop a system that calculates and tracks the portion of sickness payments subject to be recovered from potential 12(o) liens":

Management Response No. 3: Non concur. Development of a new system is unnecessary since all sickness payments could be subject to section 12(o) of the Railroad Unemployment Insurance Act. The RUIA processes currently track benefits paid to claimants. A separate system would be fruitless and not cost-effective to the agency.

UNITED STATES RAILROAD RETIREMENT BOARD - 2

Recommendation No. 4: “Develop policies and procedures to validate that employees are accurately differentiating between infirmaries and Railroad Unemployment Insurance Act benefits subject to 12(o) liens and those not subject to 12(o) liens for beneficiaries”:

Management Response No. 4: We are uncertain as to what is expected in this recommendation, specifically “**validate** that employees are accurately differentiating between infirmaries and Railroad Unemployment Insurance Act benefits subject to 12(o) liens and those not subject to 12(o) liens for beneficiaries”. Further explanation is needed by RMA.

- a. **Management’s Request for Additional Clarification:** *Thanks for the opportunity to clarify. Situations may occur when employees are out of work for concurrent or subsequent infirmities. What we are asking for are policies to be developed (or written down as the policies may exist informally) that allow for RRB to ensure that they are only charging for the applicable period of infirmary in cases of subsequent injuries.*
- b. **RRB Management Action:** *In the management response, may I request a concur / non-concur?*

Management Response No. 4: Concur; estimated completion date: December 2025

Recommendation No. 5: “Develop controls to ensure that Railroad Unemployment Claims System codes are properly updated after the report of settlement”:

Management Response No. 5: Concur; estimated completion date: December 2025

Finding - Failure to Comply with Applicable Criteria

RMA recommends that the Office of Programs:

Recommendation No. 6: “Update its policies and procedures to address the two 12(o) lien requirements defined in Title 20, Section 341.8, C and D”:

Management Response No. 6: Concur; estimated completion date: December 2025

Finding - Insufficient Documented Policies and Procedures

RMA recommends that the Office of Programs:

Recommendation No. 7: “Formally request that railroads stop using outdated forms in the 12(o) lien process to ensure consistency and accuracy of all transactions with outside entities, and to promote a uniform 12(o) lien process.”

Management Response No. 7: Concur; estimated completion date: December 2024

Recommendation No. 8: “Work with the Bureau of Field Service, to update the Field Operating Manual to correctly reference the financial management system at the time of this audit, Financial Management Integrated System, and remove references to obsolete systems, such as the Program Accounts Receivable”:

Management Response No. 8: Concur; estimated completion date: December 2025

Recommendation No. 9: “Update the Division of Program Operations Manual to correctly reference the financial management system at the time of this audit, Financial

UNITED STATES RAILROAD RETIREMENT BOARD - 3

Management Integrated System, and remove references to obsolete systems, such as the Program Accounts Receivable”:

Management Response No. 9: Concur; estimated completion date: December 2025

Recommendation No. 10: “Develop controls to independently verify the outcome of a claimant’s settlement”:

Management Response No. 10: Non concur. RRB staff cannot independently verify the outcome of a settlement. No amount of system modernization will have the ability to program an outcome of a claimant’s settlement.

Recommendation No. 11: “Update policies to require claims examiners to request additional information when claimants indicate that they were not injured at work, but do not specify whether they are pursuing a settlement in the sickness application”:

Management Response No. 11: Concur; estimated completion date: December 2025

Recommendation No. 12: “Develop a control to require a review of the total lien value established in the agency’s financial system”:

Management Response No. 12: Concur, estimated completion date: December 2025

Finding - Lack of Internal Controls

RMA recommends that the Office of Programs:

Recommendation No. 13: “Develop controls to monitor the output generated from the automatic referral system”:

Management Response No. 13: Concur; estimated completion date: December 2025

Recommendation No. 14: “Update their policies to ensure the annual status reports are sent for each case open against a railroad employer for more than three years, in accordance with policies”:

Management Response No. 14: Concur; estimated completion date: December 2025

Recommendation No. 15: “Formalize a training curriculum so employees can correctly handle 12(o) lien casework and maintain the integrity of data and records on file in all 12(o) lien cases, thereby recovering all funds to which the agency is entitled to reimbursement”:

Management Response No. 15: Concur; estimated completion date: December 2025

Finding - Inability to Provide Timeliness of Establishing Actions

RMA recommends that the Office of Programs:

Recommendation No. 16: “Develop a method for recording the date RRB is notified of a lien settlement”:

Management Response No. 16: Concur; estimated completion date: December 2026

Recommendation No. 17: “Develop an internal control to ensure that 12(o) lien receivables are established and collected timely, in accordance with applicable criteria”:

UNITED STATES RAILROAD RETIREMENT BOARD - 4

Management Response No. 17: Concur; estimated completion date: December 2025

Finding - Inability to Determine Completeness of Collection

RMA recommends that the Office of Programs:

Recommendation No. 18: “Develop an internal control to verify that all debts referenced on the daily lists generated by RUIADaily are transferred to the Financial Management Integrated System by the shared service provider”:

Management Response No. 18: Non concur. This audit is specifically for 12(o) liens, not all debts. The recommendation should address 12(o) lien debts.

Revised to **Recommendation No. 18:** “Develop an internal control to verify that all 12(o) lien debts referenced on the daily lists generated by RUIADaily are transferred to the Financial Management Integrated System by the shared service provider”:

Management Response No. 18: Concur; estimated completion date: December 2025

Finding - Lack of Controls in Lien Reductions

RMA recommends that the Office of Programs:

Recommendation No. 19: “Update the language in its Division of Program Operations Manual to reflect terminology consistent with the lien reduction process in lieu of the term “waivers”:

Management Response No. 19: Concur; estimated completion date: December 2025

Recommendation No. 20: “Update their policies for sending the letter requesting copies of billing documents as proof that the claimant paid the medical expenses related to the infirmity for which the employer was held liable; the letter to notify the employer that the claimant has provided evidence to result in a lien reduction; and the letter to notify the claimant of an investigation into medical expenses for a potential lien reduction to reflect the practice at the time of this audit”:

Management Response No. 20: Concur; estimated completion date: December 2025

Recommendation No. 21: “Develop internal controls to require supervisory approval for the submission of the letters sent to inform inquirers of the amount of RRB’s claim to reimbursement once the supervisor has approved the reconciliation form calculating the amount owed by the claimant”:

Management Response No. 21: Concur; estimated completion date: December 2025

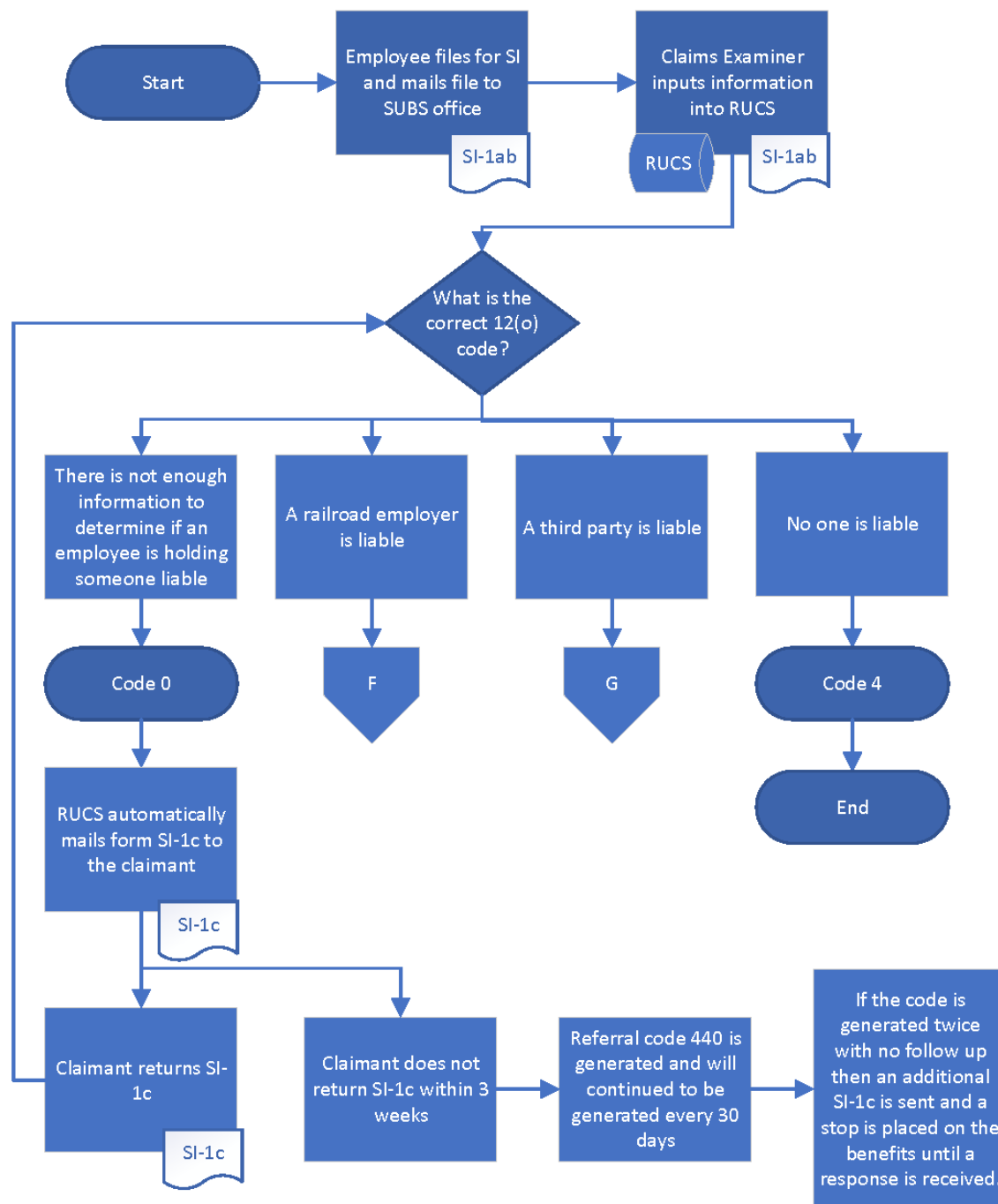
cc: Shawna R. Weekley, Chief Financial Officer/CEC
Ana M. Kocur, General Counsel
Micheal T. Pawlak, Deputy Director of Programs
Chiquita Lowery, Director of Audit Affairs & Compliance
Mario M. Moreno Jr., Deputy Chief Financial Officer
Randolph J. Hayden, Director of Policy and Systems
Parris Washington, Debt Recovery Manager
Lee R. Easterday, Assistant Director of UPSD for SUBS
Guadalupe Contreras, Chief of RUIA, Internet and Support

4

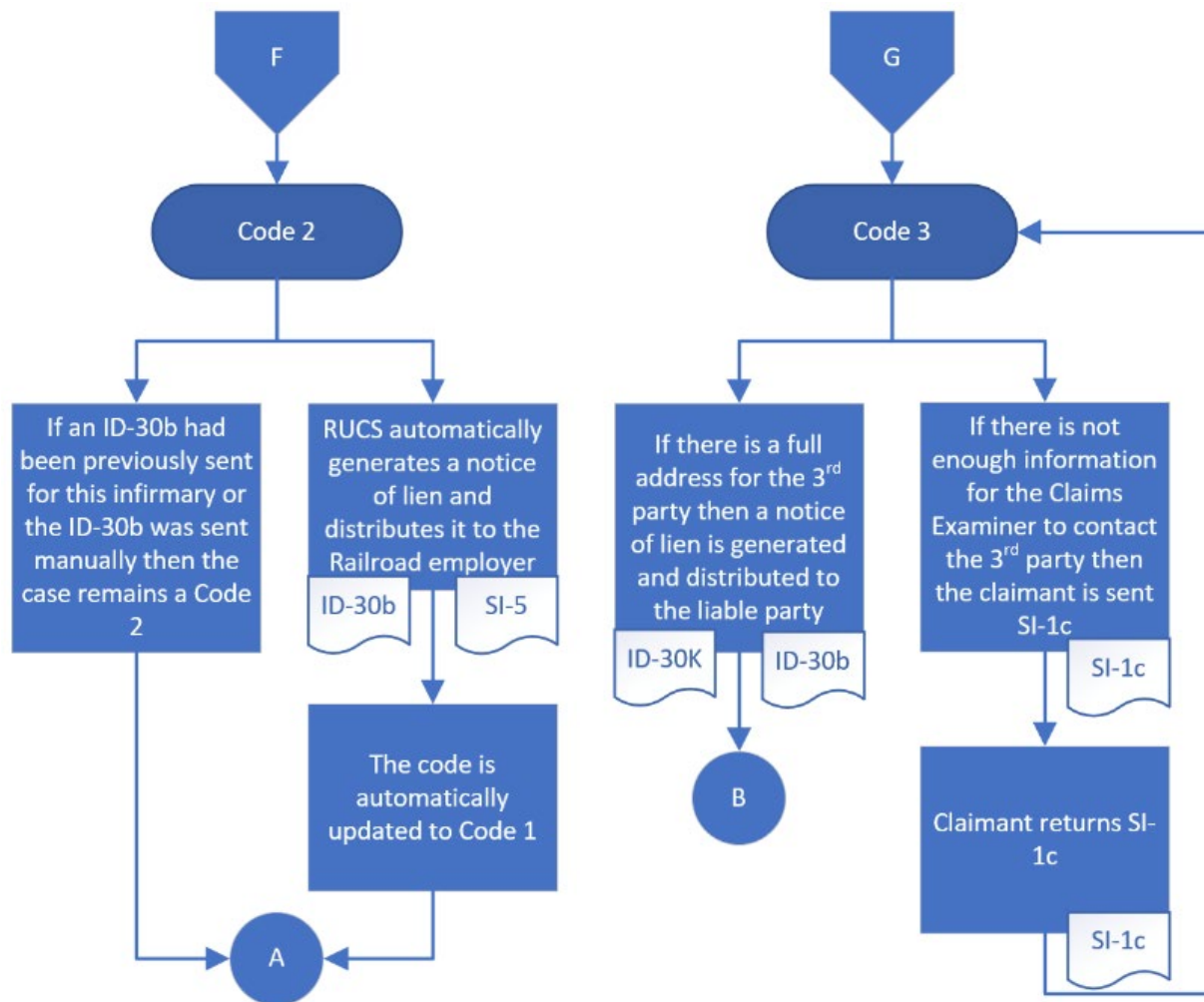
Appendix II: Process Map

Establishment and Identification Process for 12(o) Liens

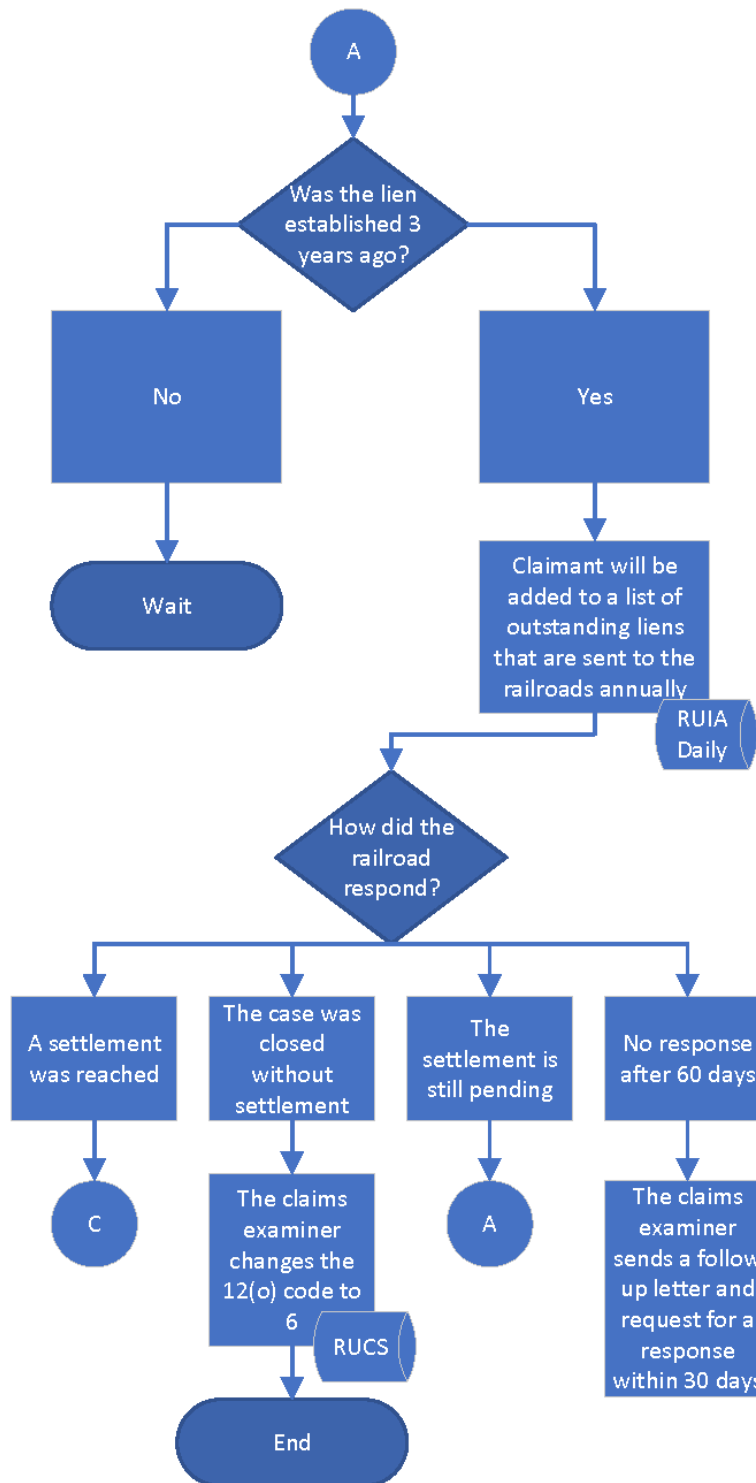
Forms and terms used in these process maps can be found in **Appendix VI: Glossary of Forms**.



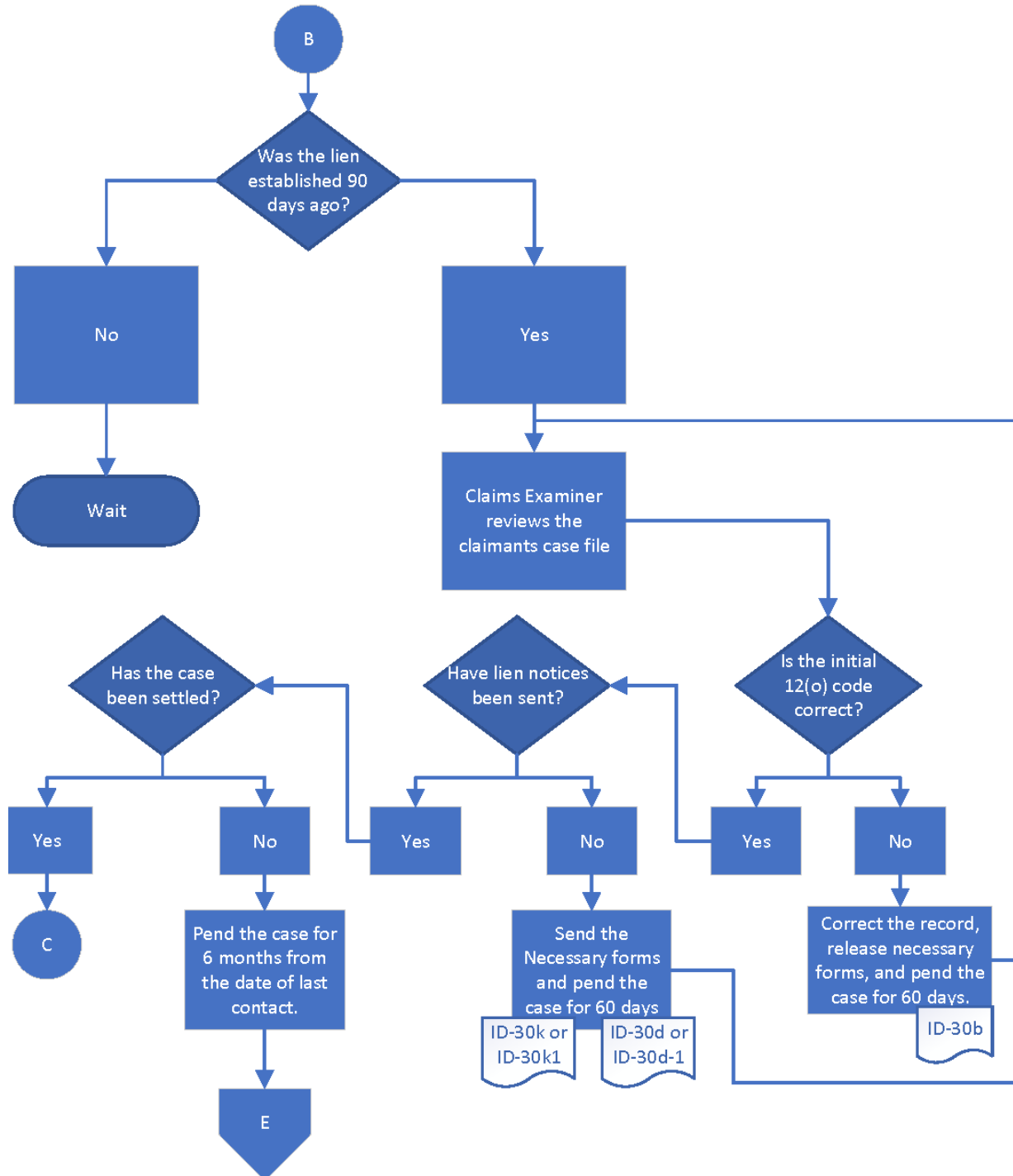
Establishment and Identification Process for 12(o) Liens (Continued)



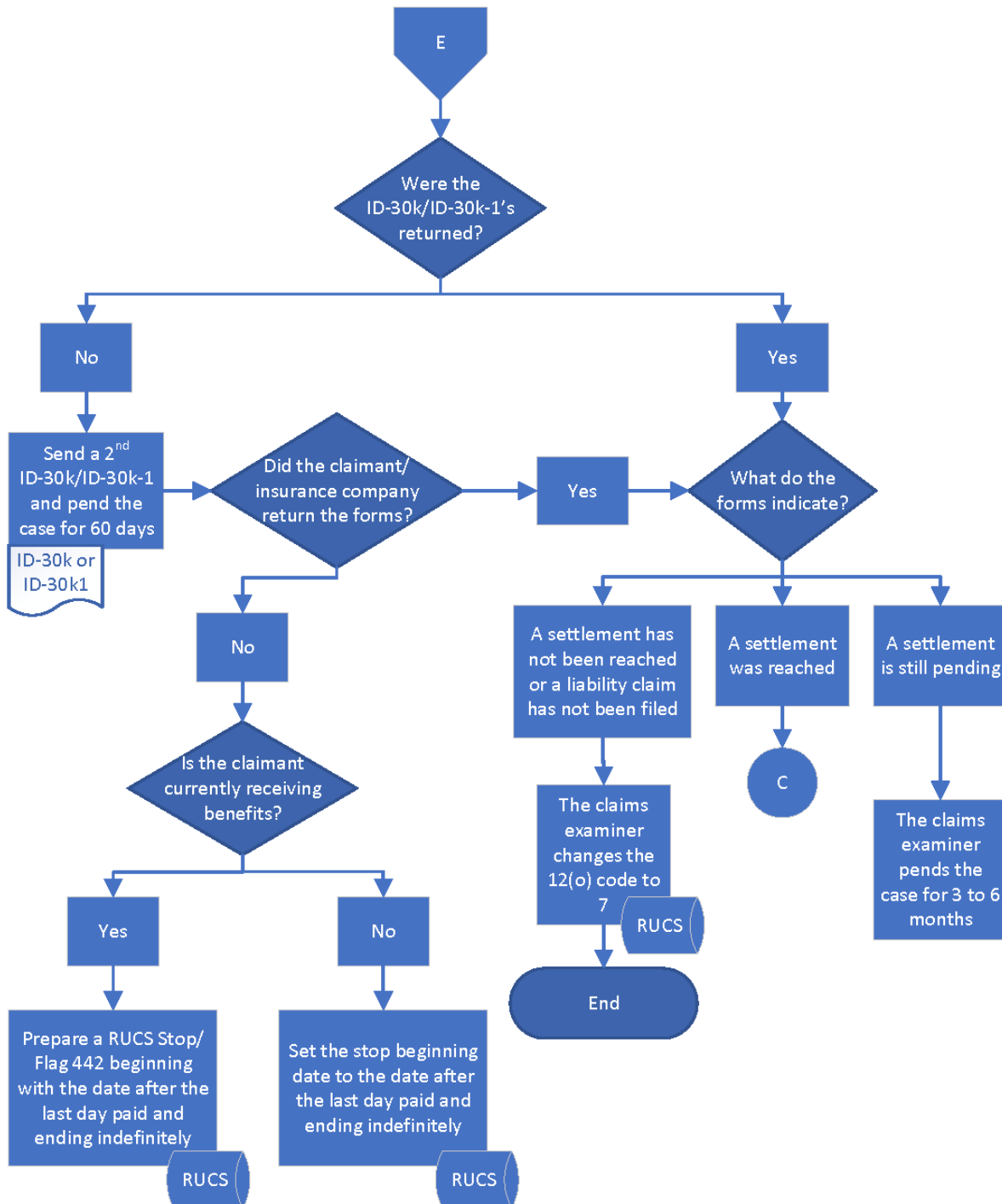
Monitoring Process for 12(o) Liens



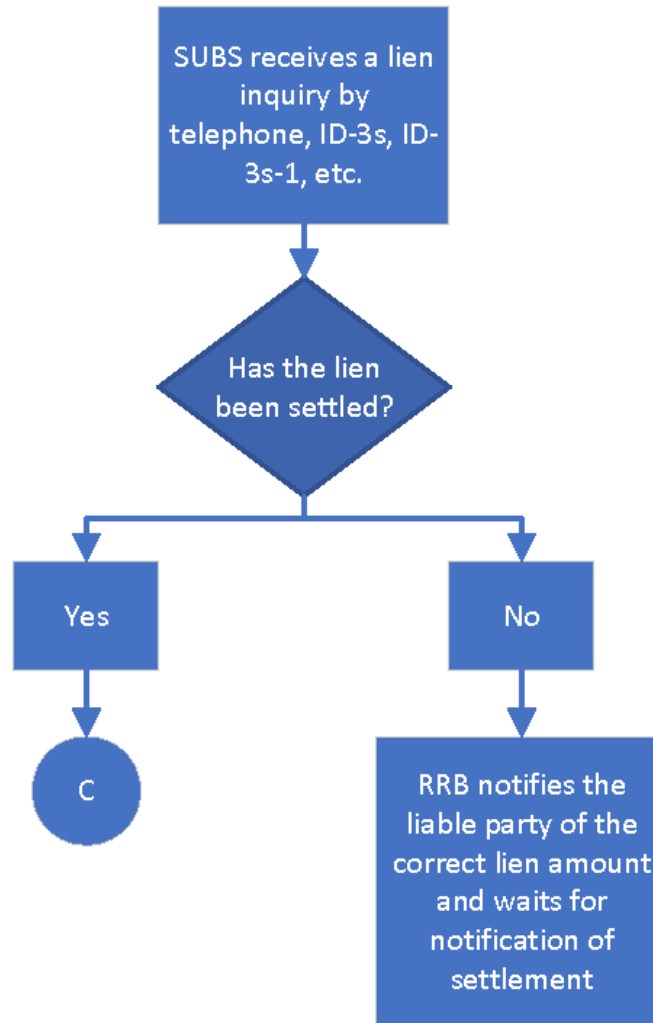
Monitoring Process for 12(o) Liens (Continued)



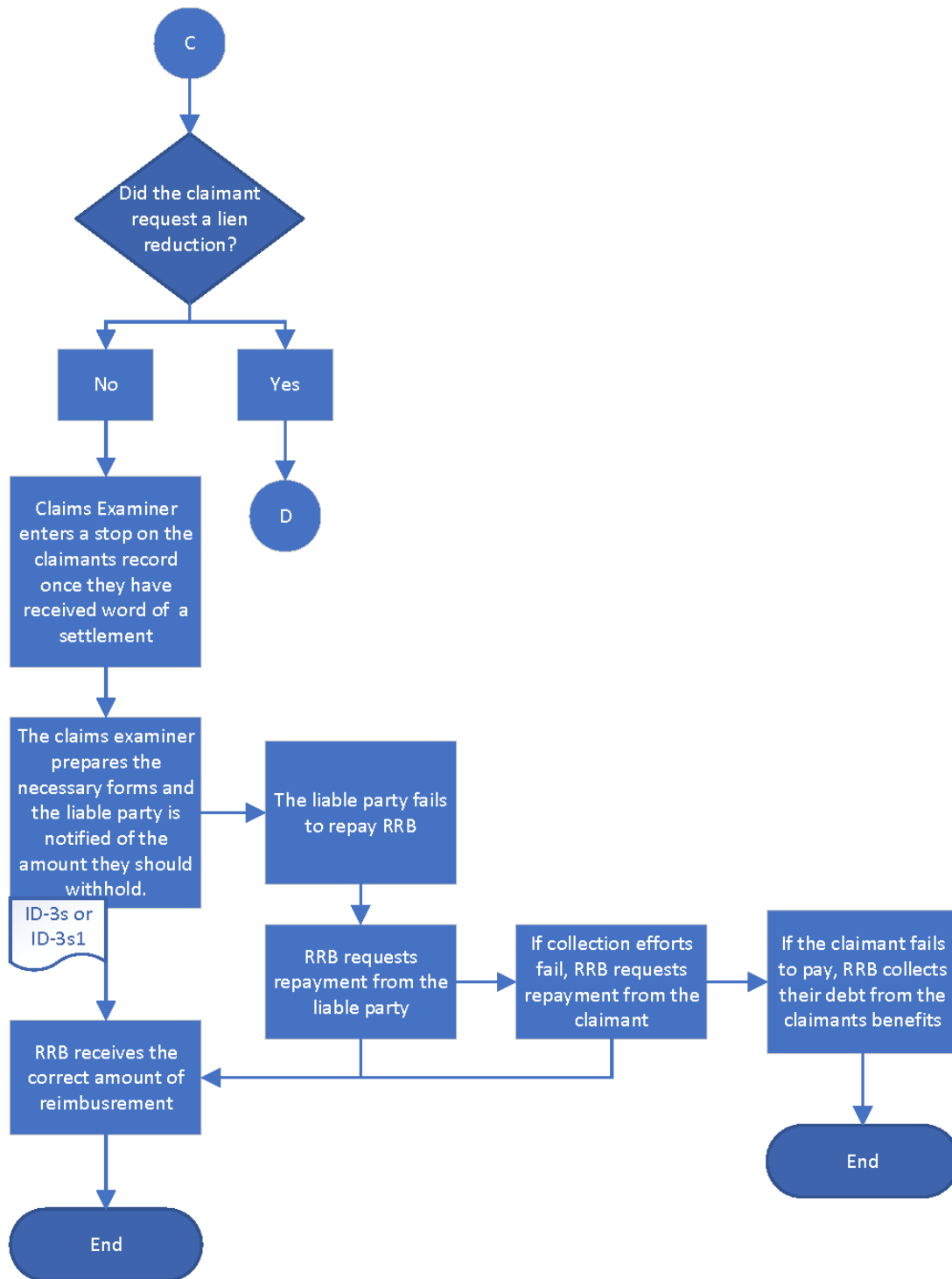
Monitoring Process for 12(o) Liens (Continued)



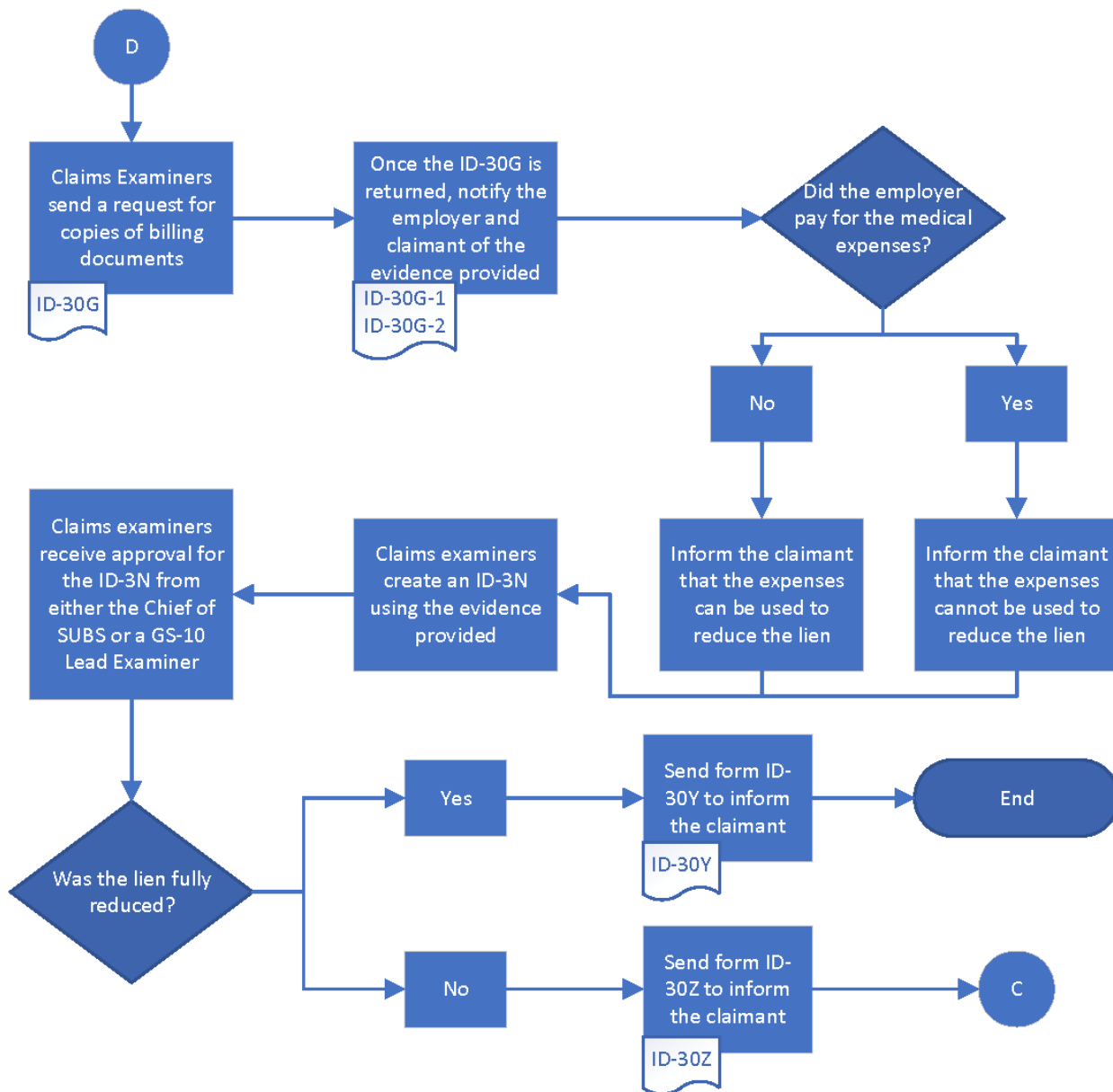
Settlement and Reimbursement Process for 12(o) Liens



Settlement and Reimbursement Process for 12(o) Liens (Continued)



Lien Reduction Process



Appendix III: Total Potential Unsupported Questioned Cost: Lack of Comprehensive Tracking System for 12(o) Lien Process

RRB's Sickness Benefits by Annual Report		
Benefit Years	Gross Sickness Benefits Paid	Net Sickness Benefits
10/2015 – 09/2016 ⁵⁷	\$73.9M	\$54.5M
10/2016 – 09/2017 ⁵⁸	\$77.1M	\$59.8M
10/2017 – 09/2018 ⁵⁹	\$77.3M	\$56.2M
10/2018 – 09/2019 ⁶⁰	\$73.5M	\$50.7M
10/2019 – 09/2020 ⁶¹	\$80.0M	\$59.2M
10/2020 – 09/2021 ⁶²	\$95.4M	\$78.4M
Total	\$477.2M	\$358.8M

The IG Act of 1978 defined the term “questioned cost”⁶³ as “a cost that is questioned by the Office because of –

- (A) an alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds;
- (B) a finding that, at the time of the audit, the cost is not supported by adequate documentation; or
- (C) a finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable.”

There were two sickness benefits figures available via RRB’s Annual Reports: The *gross* sickness benefits were the total benefits paid, and the *net* sickness benefits were the gross benefits minus the benefits repaid as part of injury settlements. The gross sickness benefits paid out between the 2015/2016 and 2020/2021 benefit years totaled \$477.2 million, and the net sickness benefits in the

⁵⁷ 2017 Annual Report, pg. 32.

⁵⁸ 2018 Annual Report, pg. 32, August 11, 2018.

⁵⁹ 2019 Annual Report, pg. 32, November 4, 2019.

⁶⁰ 2020 Annual Report, pg. 32, October 5, 2020.

⁶¹ 2021 Annual Report, pg. 32, September 21, 2021.

⁶² 2022 Annual Report, pg. 32, October 5, 2022.

⁶³ The IG Act of 1978, revised December 27, 2022, Section 405(a)(4)(b) defines “questioned costs” – *the term “questioned cost” means a cost that is questioned by the Office because of... (B) a finding that, at the time of the audit, the cost is not supported by adequate documentation.*”

same time period totaled \$358.8 million. For this audit, RMA used the net sickness benefit total to reflect the maximum possible financial magnitude of the program since it considered benefits already recovered.

Without a comprehensive tracking system for 12(o) liens, as we are recommending in recommendation Number 2 in **Lack of Comprehensive Controls for the 12(o) Lien Process**, RRB could not calculate the portion of the net sickness benefits paid that were eligible for recovery through 12(o) liens. Therefore, RMA determined that the entire total of all net sickness benefits paid during the scope of our audit, \$358.8 million, (as reported in the RRB's annual reports for FY 2016 through 2021) could possibly have been eligible to be recovered from 12(o) liens, and as a result, were considered unsupported questioned costs.

Appendix IV: Sampling Methodology

RMA chose a simple random sampling approach to assess the entire population. This technique allowed us to select a random sample representative of the population (this technique was based on the distribution of the items of the population; thus, the distribution of the random sample was very similar to the universe from which the sample was pulled). The population files did not include dollar amounts or other characteristics of interest; therefore, a simple random sampling was one of the most appropriate techniques, especially to detect any errors in the population or any indication of problems or controls not in place for a specific program. RMA had initially intended to use the sample to project a dollar value across the entire population but as sampling progressed, the data was determined to be unreliable. In summary, the sample was used to assess the adequacy of controls as opposed to projecting a dollar value across the entire population.

Objective 4: Identification of 12(o) Lien Cases

Our first sample test was designed to assess the identification process within the 12(o) lien process. The sample population was a subset of all the cases that had been marked as potential 12(o) cases between FY 2016 and FY 2021. For this sample, we reviewed the SI-1ABs submitted by claimants when applying for sickness benefits. Our test sought to confirm that claims examiners were following the necessary processes when determining whether to mark cases as potential 12(o) cases and add them to the list of cases to be monitored. We sampled 100 cases from the universe of 134,889 cases and found no errors, as a result, we have 95% confidence that this applies to the population as a whole.

Objective 4: Monitoring of Railroad Employer Cases

The second sample was created to test the monitoring processes for cases that had been filed against railroad employers. The monitoring process begins after RRB has determined that the case could potentially become a 12(o) lien and has coded the case as such internally. This sample population was taken from cases that had been coded in RUCS as a “2” initially, as that code denotes that the case was with a railroad employer. While the scope of the audit was FY 2016 through FY 2021, for this sample population we chose to review cases that had been established prior to May 1, 2018, to account for the time needed for the monitoring procedures to begin. RMA reviewed that the ID-30b had been sent for each case as they were required to be sent as notification of the lien. RMA also attempted to review the follow-up communications between the railroad employers and claimants but was informed that those communications had not been sent since 2017. This sample testing was done in support of our review of the policies and procedures throughout the entire 12(o) lien process. We sampled 54 cases from the universe of 9,425 cases and found 36 cases contained errors. Within those 36 cases, we identified 45 errors:

1. OP did not send an ID-30b letter to the claimant in 3 of the 54 cases sampled (See **Lack of Internal Controls**);
2. OP did not send the necessary status update requests to the railroads for any of the 28 cases opened after three years (See **Lack of Internal Controls**); and

3. OP failed to update the RUCS codes for 14 of the 37 cases with multiple entries which meant that those 14 cases had varying codes across multiple entries (See **Inability to Determine Financial Magnitude**).

As a result of this sampling, we have 95% confidence that this applies to the population as a whole.

Objective 4: Monitoring of Third-Party Cases

Our third sample was used to test the monitoring process for cases involving a third-party such as an automobile accident or other off-duty accidents. This sample population was taken from cases that had been coded in RUCS as a “3” initially, as that code denotes that the cases were with a third-party. While the scope of the audit was FY 2016 through FY 2021, for this sample population we chose to review cases that had been established prior to October 2, 2021, to account for the time needed for the monitoring process to begin. RMA reviewed the ID-30b series letters, ID-30S, ID-30E, ID-30D series letters, and ID-30K series letters for each case as those were the required forms for monitoring. RMA also asked to see any additional follow-up communications sent to claimants and was informed that in their efforts to collect these documents RRB had discovered that their automatic referral system used to generate referrals when claims examiners need to follow up with claimants was not functional. This sample testing was done in support of our review of the policies and procedures throughout the entire 12(o) lien process. We sampled 55 cases from the universe of 1,324 cases and found that 40 cases contained errors. Within those 40 cases, we identified 100 errors:

1. OP did not send the necessary follow-up documents to the claimant or liable party in 20 cases of the 55 sampled, totaling 62 errors (See **Lack of Internal Controls**), specifically:
 - a. OP did not send the ID-30b series letters to the claimant and liable party in 18 cases;
 - b. OP did not send the ID-30S letter in 15 cases;
 - c. OP did not send the ID-30E letter in 16 cases;
 - d. OP did not send the ID-30D series letters or ID-30K series letters in 13 cases;
2. OP had not contacted the claimant or liable party in the last three years in 32 of the 43 cases opened at the time of this audit (See **Lack of Internal Controls**); and
3. OP failed to update the RUCS codes for 6 of the 26 cases with multiple entries which meant that those 6 cases had varying codes across multiple entries (See **Inability to Determine Financial Magnitude**).

As a result of this sampling, we have 95% confidence that this applies to the population as a whole.

Objective 4: Payment Collection of 12(o) Liens

The fourth sample was used to test the collection process for liens that the claimant or liable party reported settled. This sample population was taken from cases that had been reported settled by the claimant or liable party, transferred to FMIS, and were not listed as having outstanding debts or subject to a lien reduction. RMA sampled cases from the entire scope of the audit, FY 2016 through FY 2021, and used the ID-3Rs to determine if the correct amounts had been established in the agency's financial management system and if a stop had been placed on the benefits. This sample testing was done in support of our review of the policies and procedures throughout the entire 12(o) lien process. We sampled 100 cases from the universe of 6,960 cases and found that 4 cases contained errors:

1. OP did not generate an ID-3R for 1 case of the 100 cases sampled (See **Lack of Internal Controls**); and
2. OP did not place the necessary stop on benefits prior to or upon notice of settlement in 3 cases of the 86 cases in which a stop should have been placed (See **Lack of Internal Controls**).

As a result, we have 95% confidence that this applies to the population as a whole.

Objective 7: Lien Reduction Process

The fifth sample was done in support of our testing of the lien reduction process. RRB provided us with a list of cases in which the claimant had requested a lien reduction between FY 2016 and FY 2021 from which RMA was able to select our sample population. RMA reviewed the ID-3Ns, ID-30Z/ID-30Ys, and ID-30G series letters which were the required documents for the process. This testing supported one of our audit objectives which specifically asked that we test the waiver process. Initially, RMA intended to test the waiver process at RRB but after discussions with management revealed that waivers were no longer used at RRB, RMA turned to lien reductions as they filled a similar purpose. We sampled 45 cases from the universe of 253 cases and found that 41 cases contained errors. Within those 41 cases, we identified 59 errors:

1. OP did not sign and approve the ID-3N, used to calculate RRB's final claim to reimbursement in nine cases of the 45 cases sampled (See **Lack of Internal Controls**);
2. OP did not send the ID-30Z in 1 case of the 45 cases sampled (See **Lack of Internal Controls**);
3. OP did not send the ID-30G series letters in 35 cases of the 45 cases sampled (See **Lack of Controls in Lien Reductions**);
4. The ID-3N was both created and signed by the same individual, demonstrating a lack of segregation of duty in 9 cases of the 45 cases sampled (See **Lack of Controls in Lien Reductions**); and

5. The final lien amount sent in the ID-30Y/ID-30G letters sent to claimants did not match the total calculated in the ID-3Ns in 5 cases of the 36 cases in which an ID-3N was created (See **Lack of Controls in Lien Reductions**).

As a result, we have 95% confidence that this applies to the population as a whole.

Objective 8: Payment of Legal Fees

The final sample was used to test whether RRB had provided any payment for any legal fees that had been generated within the 12(o) lien process. RMA sampled cases that had been marked as closed and then removed any case that appeared as an outstanding debt or collected payment. RRB provided a screenshot proving that no UI-39s had been generated for each sample case. UI-39s were the forms used to provide manual payments and the only way payments could be provided to a third-party. This sampling was done in support of our review of RRB's compliance with C.F.R. section 341.9⁶⁴ which states that RRB should not be held liable for any attorney's fees relating to 12(o) liens. We sampled 100 cases from the universe of 656 cases and found no errors, as a result, we have 95% confidence that this applies to the population as a whole.

⁶⁴ C.F.R. § 341.9 Payment or redemption after death of owner, April 28, 1977.

Appendix V: Glossary of Acronyms

C.F.R. – Code of Federal Regulations

DPOM – Division of Program Operations Manual

FMIS – Financial Management Integrated System

FOM – Field Operating Manual

FY – Fiscal Year

GAGAS – Generally Accepted Government Auditing Standards

GAO – Government Accountability Office

GAO Standards – *GAO Standards for Internal Controls in the Federal Government*

IG – Inspector General

OIG – Office of Inspector General

OP – Office of Programs

ORCS – Overpayment Recovery Correspondence System

PARS – Program Accounts Receivable System

QMF – Query of the Master File

RMA – RMA Associates, LLC

RRA – Railroad Retirement Act

RRB – Railroad Retirement Board

RUCS – Railroad Unemployment Claims System

RUIA – Railroad Unemployment Insurance Act

SUBS – Sickness and Unemployment Benefits Section

UPC – Unemployment Payment Control

UPSD – Unemployment and Programs Support Division

U.S.C. – United States Code

Appendix VI: Glossary of Forms

Template	Title	Last Updated
SI-5	Report of Payments to Employee Claiming Sickness Benefits Under The Railroad Unemployment Insurance Act	12/1993
ID-30E-1	Explanation of Enclosed Notice of Lien	04/1998
ID-30E-2	Explanation of Enclosed Notice of Lien	04/1998
ID-30S	Notice of Repayment of Benefits	04/1998
ID-30B	Notice of Lien for Railroad Employers	02/1999
ID-30B-3	Notice of Lien for the Owner of the Automobile Involved in an Accident with Claimant	02/1999
ID-30Z	Notification to Claimant of Remaining Lien Amount after Lien Reduction	10/2000
ID-30Y	Notification to Claimant that their Lien Amount has been Reduced to Zero	10/2000
ID-30K	Notice to Request Supplemental Information on Injury or Illness	03/2002
ID-30D	Request for Information on Injury or Illness	04/2006
ID-30D-1	Request for Information on Injury or Illness	04/2006
ID-3s	Request for Lien Information Report Settlement	03/2009
UI-39	Record of Manual Underpayment	04/2009
SI-1AB	Application for Sickness Benefits	03/2012
ID-3N	Net Settlement Worksheet	11/2012
ID-30G	Request for Copies of Billing Documents	08/2014
ID-30G-1	Notification to Railroad Employer that the Claimant has Provided Medical Evidence	08/2014
ID-30G-2	Notification to Claimant that RRB is Investigating their Medical Expenses	08/2014
ID-3R	Computation Worksheet	11/2014
SI-1C	Request for Information on Accident and Insurance	04/2017
ID-3S-1	Lien Information Under Section 12(o) of the Railroad Unemployment Insurance Act	08/2017
ID-30B-1	Notice of Lien for Third-Party Insurers	08/2017
ID-30B-2	Notice of Lien for the Driver Involved in Automobile Accident with Claimant	08/2017
ID-30K-1	Notice to Request Supplemental Information on Injury or Illness	08/2017

Appendix VII: Form SI-1a and SI-1b

The form below was a sample sickness application. Section C, circled in red, determined a claimant's 12(o) lien status. The answer to question 14 determines who would be held liable and the answer to question 15 determines if anyone will be held liable.

United States of America Railroad Retirement Board		Form Approved OMB No. 3220-0039	
Application for Sickness Benefits			
Section A Identifying Information			
1. Employee's Name (First, Middle Initial, and Last)		2. Social Security Number	
3. Employee's Street Address, City, State and ZIP Code (Including Apartment Number)		4. Date of Birth	
		5. Sex	
		<input type="checkbox"/> Male	
		<input type="checkbox"/> Female	
		6. Telephone Number (Include Area Code) ()	
Section B Infirmity and Employment Information			
7. Date You Became Sick or Injured _____			
8. Date You Last Worked for a Railroad _____			
9. Last Railroad Employer (Name of Company) _____			
10. Location of Last Railroad Employment (City/State) _____			
11. Last Railroad Occupation _____			
12. Department _____			
13. If you worked for a nonrailroad employer after the date shown in Item 8, complete Items A, B, and C, below. Otherwise, go to Item 14.			
A. Last Nonrailroad Employer (Name of Company) _____			
B. Last Occupation After Railroad Work _____			
C. Date Last Worked After Railroad Work _____			
Section C Accident and Insurance Information			
14. Are you applying for sickness benefits because you were injured at work or have a work-related illness? <input type="checkbox"/> Yes <input type="checkbox"/> No			
15. Have you filed or do you expect to file a lawsuit or claim against any person or company for personal injury?			
<input type="checkbox"/> Yes - Complete Items A-D, below <input type="checkbox"/> No - Go to Item 16			
A. Furnish the name and complete address of the person or company.			
Name _____			
Address _____			
City, State, ZIP Code _____			
B. Give the place where the injury occurred. _____			
C. Were you injured in an automobile accident? <input type="checkbox"/> Yes <input type="checkbox"/> No - Go to Item 16			
D. If you were injured in an automobile accident, provide information about all the vehicles, <i>other than your own</i> , that were involved in the accident that caused your injury. Information about your vehicle and insurance company is not needed. If you need more space attach a separate sheet of paper.			
Owner of Car (other vehicle)		Driver (other vehicle)	
Name _____		Name _____	
Address _____		Address _____	
City, State, ZIP Code _____		City, State, ZIP Code _____	
Insurance Company (other vehicle)		Policy Information (other vehicle)	
Name _____		Policy Number _____	
Address _____		Claim Number _____	
City, State, ZIP Code _____			

Continued on Reverse Side

SI-1a (03-12)

Section D Claim for Sickness Benefits Information	
16. Enter the earliest date you wish to claim sickness benefits. _____	
17. Are you claiming all the days of sickness beginning with the date you entered in Item 16? (Note: You may claim rest days if you were unable to work and did not receive pay from your employer.) <input type="checkbox"/> Yes - Go to Item 19 <input type="checkbox"/> No - Go to Item 18	
18. Enter any dates that you do not wish to claim. _____	
19. Enter the date you returned to work (if applicable). _____	
20. You must complete all boxes to indicate if you have received or will receive any of the following payments for your days of sickness. If you check "YES" for any item, be sure to provide the requested information.	
A. WAGES (Include Railroad and Nonrailroad Wages)	
YES NO If "YES," show the dates for which you were paid in Month/Day/Year format below.	
<input type="checkbox"/> YES <input type="checkbox"/> NO	Regular Wages..... _____
<input type="checkbox"/> YES <input type="checkbox"/> NO	Vacation Pay..... _____
<input type="checkbox"/> YES <input type="checkbox"/> NO	Holiday Pay..... _____
<input type="checkbox"/> YES <input type="checkbox"/> NO	Military Reservist Pay..... _____
<input type="checkbox"/> YES <input type="checkbox"/> NO	Wage Continuation Pay..... _____
<input type="checkbox"/> YES <input type="checkbox"/> NO	Earnings from Self-Employment... _____
<input type="checkbox"/> YES <input type="checkbox"/> NO	Sick Pay from Your Employer... _____
(but not payments supplementing Railroad Retirement Board (RRB) benefits. See Booklet UB-11)	
B. GOVERNMENTAL PAYMENTS (Not RRB Sickness Benefits)	
YES NO If "YES," enclose copy of award letter and complete Items 1 - 3 below.	
<input type="checkbox"/> YES <input type="checkbox"/> NO	Sickness or Unemployment Benefits Under Any Other Law 1. Beginning Date of Payment _____
<input type="checkbox"/> YES <input type="checkbox"/> NO	Social Security Benefits 2. Gross Amount of Payment \$ _____
<input type="checkbox"/> YES <input type="checkbox"/> NO	Railroad Retirement or Disability Annuity 3. How often do you receive the payment?
<input type="checkbox"/> YES <input type="checkbox"/> NO	Military Retirement Pay <input type="checkbox"/> Weekly <input type="checkbox"/> Monthly <input type="checkbox"/> Yearly
<input type="checkbox"/> YES <input type="checkbox"/> NO	Worker's Compensation <input type="checkbox"/> Other: _____
<input type="checkbox"/> YES <input type="checkbox"/> NO	Retirement Payments Under Another Law
C. OTHER PAYMENTS	
YES NO If "YES," complete Items 1 and 2.	
<input type="checkbox"/> YES <input type="checkbox"/> NO	Settlement, Judgment or Damages for Personal Injury 1. Date of Payment _____
<input type="checkbox"/> YES <input type="checkbox"/> NO	Advances 2. Paid By: _____
<input type="checkbox"/> YES <input type="checkbox"/> NO	Separation Allowance (Buyout, Severance Pay)
21. If the date you are submitting this form is more than 30 days after the date you entered in Item 16, answer the following:	
A. Why did it take more than 30 days to submit this form? If more space is needed, attach a separate sheet of paper. _____	
B. How did you obtain this form? _____	
C. Who provided this form to you? _____	
D. On what date did you obtain the form? _____	
E. Furnish the name and title of any person from whom you asked for help in completing and filing the forms.	
NAME _____	TITLE _____
Section E Direct Deposit Information	
22. Benefits are normally paid by Direct Deposit to your bank, savings and loan, credit union, or other financial institution. To provide the information we need to correctly deposit your payments, attach a voided personal check and go to Item 23 , or call your financial institution for the information you need to complete Items A-E.	
A. Routing Transit Number <input style="width: 100px; border: 1px solid black;" type="text"/>	B. Account No. _____
C. Account Type: <input type="checkbox"/> Checking <input type="checkbox"/> Saving	D. Name of Financial Institution: _____
E. Telephone No. (Include Area Code) (_____) _____	
Section F Certification and Signature	
23. I waive any "doctor-patient privilege" I may have with respect to the disclosure of information concerning the period of sickness or injury on which my claim is based. I certify that I understand and agree to the requirements in Booklet UB-11. I know that disqualification and civil and criminal penalties may be imposed on me for false or fraudulent statements or claims or for withholding information to get benefits from the RRB. I affirm that the information given on this form is true, correct and complete. NOTE: If the sick or injured employee is unable to sign this form, sign your name and complete Section 1 of the attached Form SI-10, Statement of Authority to Act for Employee.	
SIGNATURE _____	DATE _____

United States of America
Railroad Retirement Board

Form Approved
OMB No. 3220-0039

Statement of Sickness

Instructions: This form is to be executed by (1) a doctor trained in medical, surgical, dental or psychological diagnosis of the infirmity described, (2) a certified nurse/midwife in cases of pregnancy or childbirth, (3) a supervisory official of a hospital or similar institution, (4) a chiropractor, (5) a Physician Assistant - Certified, or (6) a nurse practitioner. This form should be completed and returned to the patient immediately for prompt mailing; otherwise he/she may lose benefits. Supplementary medical information may be attached or furnished directly to the Railroad Retirement Board (RRB) at the address shown below. If such information is furnished, please include the patient's social security number and name on the report. Please complete section 2 on the reverse side if patient is incapable of signing forms.

The RRB is not liable for any charge in connection with completing this form.

1. Patient's Name (First, Middle, and Last)	2. Patient's Social Security Number
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3. Have you examined or treated the patient for his or her injury or illness? Yes No – Go to Item 9

a. Date patient became sick or injured	b. List all dates of examination and treatment for this infirmity
c. Probable date of next examination	

4. Diagnosis and concurrent conditions

5. Does the patient's condition require surgery? Yes No – Go to Item 6

a. Date on which surgery was or will be performed	b. Surgical procedure that was or will be performed
---	---

6. Does the patient's condition require hospitalization?

Yes – Enter the period of hospital confinement From _____ To _____

No

7. If patient is not working because of maternity or childbirth, complete 7a and 7b.

a. Date patient became unable to work ▶	b. Estimated or actual date of delivery ▶
---	---

8. Give the date you believe the patient became or will become able to resume work in his or her occupation. (If indefinite or unknown, please give an estimated date.) ▶

9. I certify that the information I am giving is true, complete, and correct. I understand that criminal and civil penalties may be imposed on me for false or fraudulent statements or for withholding information to cause or prevent payment of benefits by the RRB.

Please print or type:

Name of Doctor	Signature of Doctor	Degree/Title
Address	Office Telephone Number (Include Area Code) ()	Date
	National Provider Identifier	

PAPERWORK REDUCTION ACT NOTICE TO DOCTOR

Medical evidence is needed to support the payment of claims for sickness benefits under the Railroad Unemployment Insurance Act (RUIA). The RRB is authorized to collect this information under section 12(i) of the RUIA. You are not required to furnish this information. If you do not, however, no benefits can be paid to your patient. We estimate this form and the form on the back of this page take an average of 8 and 6 minutes to complete, respectively. The estimates include the time for reviewing the instructions, getting the needed data, and reviewing the completed forms. Federal agencies may not conduct or sponsor, and respondents are not required to respond to, a collection of information unless it displays a valid OMB number. If you wish, send comments regarding the accuracy of our estimate or any other aspect of this form, including suggestions for reducing completion time, to the Chief of Information Resources Management, Railroad Retirement Board, 844 N Rush Street, Chicago, Illinois, 60611-2092. Send completed forms to:

**U.S. RAILROAD RETIREMENT BOARD
OFFICE OF PROGRAMS—OPERATIONS
POST OFFICE BOX 10695
CHICAGO, ILLINOIS 60610-0695**

Doctor: See Reverse Side

FORM SI-1b (06-09)