2901 Provisions of the Act and the Regulations

2901.01 The Act

See sections 2(d) and 5(a), (b), (c), (d), (e) and (f) of the RUIA.

2901.02 Regulations

See Part 320, Initial Determinations Under the Railroad Unemployment Insurance Act and Reviews of and Appeals from such Determinations. Also, see Part 340, Recovery of Benefits, regarding waiver of recovery.

2902 Introduction

A claimant may request reconsideration of an initial determination which denies in whole or in part a claim for benefits, or which results in a reduction of benefits previously approved, i.e. an overpayment. A claimant may also request waiver of recovery of an overpayment that exceeds 10 times the maximum daily benefit rate that is in effect at the time of the request, and is not covered by one of the exceptions listed in section 2910.08. The time limit for requesting reconsideration and/or waiver of recovery is 60 days from the date of the initial determination.

A denial of benefits made by a field office is to be reviewed by the field office manager upon a request for reconsideration by the claimant and, if not reversed in full, by Field Service (FS). An adverse determination resulting in the recovery of benefits is to be reviewed by the field service manager and, if not reversed in full, by FS if the recovery involves an issue other than remuneration. Requests for reconsideration of adverse determinations made by personnel in the Sickness and Unemployment Benefits Section (SUBS) and those made by a field office which result in a recovery of benefits due to remuneration are to be forwarded to the Reconsideration Section. All requests for waiver of recovery, including those that also involve a request for reconsideration or involve debts that are less than or equal to 10 times the maximum daily benefit rate, are to be forwarded to the Bureau of Fiscal Operations - Debt Recovery Section (BFO-DRS) for a decision and/or adjustment of the FMIS record. DRS will forward the case to the Reconsideration Section (RS) if a decision is needed for reconsideration. If their review confirms the overpayment, RS will return the case to DRS to consider the waiver request.

The reviewing official is responsible for a complete review of the initial determination. If additional development is needed, the reviewing official is responsible for obtaining the additional information. When the record has been completed to the satisfaction of the reviewing official, he or she must decide whether to sustain or reverse, in whole or in part, the determination and, if appropriate, whether recovery of an overpayment may be waived. The reviewing

official is to notify the claimant of the decision in writing within 15 days of the date of the decision. In waiver cases, no recovery action is to be taken within the 15 days following release of the notice of decision.

The claimant may appeal an adverse reconsideration decision, including a decision denying waiver, to the Bureau of Hearings and Appeals within 60 days of the date of the reconsideration decision. If there is an issue of fact, the appellant is entitled to a hearing before a hearings officer of the Bureau of Hearings and Appeals. The hearings officer will notify all potential parties of the appeal and of their right to participate in the hearing. The appellant and other parties are allowed to state their case, present additional evidence, review the evidence of record, and ask questions concerning the adjudication of the claim.

If employer status or creditability of compensation is at issue, the hearings officer will receive evidence and issue a report to the Board Members with recommendations. In all other cases, the hearings officer will consider and decide the appeal. If the hearings officer's decision is favorable to the claimant, benefits will be paid in accordance with the decision; if the decision is adverse, in whole or in part, the claimant may appeal within 60 days to the Board Members. An adverse decision of the Board Members may be appealed by filing a petition for review within 90 days in the appropriate Federal Court of Appeals.

Section 5(c)(3) of the RUIA provides base year employers the right to request, within 60 days, review of a determination to pay benefits to an employee. Determinations made by SUBS are reviewed by the Reconsideration Section; field office determinations are reviewed by field offices. If after review the determination allowing benefits is sustained, the base year employer is to be notified in writing and advised of the right to appeal within 60 days. No notice need be sent to the claimant. If the determination allowing benefits is reversed, the employer and claimant are to be notified of the decision, and the claimant advised that benefits are recoverable (if awarded erroneously) and that he or she has the right to request reconsideration and/or waiver of recovery. An employer that appeals and is aggrieved by a decision of the hearings officer may appeal to the three-member Board within 60 days. If the Board's decision is adverse, the employer may petition the U.S. Court of Appeals within 90 days.

2903 Basis for Initial Determination

An initial determination with respect to each claim for benefits is to be made by the adjudicating office (field office or SUBS) on the basis of the application and claim, any supplemental statements, the facts of record and any relevant information furnished by the claimant's employer(s). Initial determinations are to be made in accordance with instructions and advice issued by the Director of Policy and Systems.

2904 Notice of Initial Determination

Written notice of an initial determination which denies in whole or in part a claim for benefits is to be sent to the claimant by the adjudicating office within 15 days after the date the determination is made. The notice is to be in the form of a prescribed form letter or a special letter, and is to include a statement of the basis for the denial and notice of the right to request reconsideration within 60 days. The notice is considered to have been communicated to the claimant when it is mailed to him or her at the latest address in the agency's records. If benefits are determined payable for a claim, no notice to the claimant of the determination is required.

Notice to the claimant's base year employer(s) of a benefit payment is to be furnished by Form Letter ID-4E, by an electronic data interchange (EDI) equivalent, or by a web based application.

2905 Request for Reconsideration

2905.01 General

Each letter advising a claimant of a determination to recover benefits is to include Form UI-68, Your Rights to Reconsideration and Waiver. Form UI-68 recommends that a claimant requesting reconsideration or waiver return the form with his or her request so it can be distinguished from other types of correspondence. However, because some requests are submitted without Form UI-68, care must be taken to recognize requests for reconsideration and requests for waiver of recovery. A letter which expresses dissatisfaction or disagreement with a determination to deny or recover benefits, but does not explicitly request reconsideration, is to be regarded as a request for reconsideration. A letter in which the claimant states that he or she is without fault for causing a debt or cannot repay a debt, but does not explicitly mention waiver, is to be regarded as a request for waiver of recovery.

2905.02 Referral to Reviewing Official

When a request for reconsideration and/or waiver of recovery is received at an office of the RRB, the office is to date stamp the request, determine the appropriate reviewing official, and refer the request to that official. Always attach the envelope with the reconsideration and/or waiver request. The post mark date shows the date of mailing and can be used to verify timeliness.

In general, requests involving unemployment or sickness claims processed by field offices are to be reviewed by the field office that made the initial determination. Exceptions include adverse determinations involving ability to work, separation allowances, social insurance, and pay for time lost awards, which are to be reviewed by the Reconsideration Section. Cases involving denial or recovery of benefits by Operations - SUBS are to be referred to them for

review and possible referral to the Reconsideration Section. All requests for waiver of recovery are to be referred to BFO-DRS.

2905.03 Reconsideration of an Adverse Determination

A request for reconsideration and/or waiver of recovery received within 60 days of the date of the notice of the initial determination is to be considered a timely request. The reviewing official is to conduct a complete examination of all relevant information, including any additional evidence received with the request. If additional evidence is needed that may affect the decision, including information from employers, other RRB offices or the claimant, the reviewing official is to attempt to obtain the information. Once all relevant information is obtained, or is determined to be unobtainable, the reviewing official is to consider the evidence and make a decision to sustain or reverse, in whole or in part, the initial determination. No interest or penalties are to be charged for the period during which a determination to recover benefits is under reconsideration.

Once a decision on the request for reconsideration is made, the reviewing official is to prepare and release a written decision within 15 days. If a field office review is adverse to the protester, whether claimant or employer, the field office is to prepare the RRAILS form ID-29, which includes the grounds for sustaining the original decision and forward the case to FS. The field office may, however, release decisions that are not adverse and do not reduce benefits. FS is to release notice of a decision within 7 days of completing a review of a field office decision. Copies of decisions are to be sent to any other properly interested parties such as attorneys or union officials representing the protester. If the case involves an employer protest which results in a recovery of benefits, the claimant is to be sent an initial recovery letter with Form UI-68. The claimant's base year employer is to be sent a copy of the letter with a brief transmittal letter. All letters sustaining an adverse determination are to include notice of the protester's right to appeal the reconsideration determination within 60 days to the Bureau of Hearings and Appeals. Unless requested by the protester, appeal forms are not to be enclosed with reconsideration decisions.

Any corollary issues raised by the claimant or employer are to be addressed thoroughly upon reconsideration. Also, if a claimant requests copies of items in the RRB's possession needed to prepare a protest, e.g. claims or wage records, every effort is to be made to provide the copies. If copies cannot be obtained, the claimant is to be so advised. Copies of an employee's claims or other records may be furnished to the base year employer upon request if the employer has filed a proper and timely protest and requests the records to complete the already-established protest proceedings. Medical records may be released by the Chief of Sickness and Unemployment Benefits Section directly to base year employers under these narrow circumstances. If the reviewing official reverses, in whole or in part, a determination to deny or recover benefits, corrective action is to be taken promptly to approve benefits or cancel the debt, as appropriate.

Despite an employer's request for reconsideration, benefits awarded are to be paid, subject to recovery if the benefits are subsequently determined to have been awarded erroneously.

2905.04 Request Received After 60 Days

If the reviewing official determines that a request for reconsideration was received at an RRB office more than 60 days after the date of the letter advising of the adverse determination, the official is to briefly review the case. If it is clear the adverse determination is incorrect, e.g. the claimant submits a letter from his or her employer stating pay was incorrectly attributed, the official is to reverse the determination and advise the protester. Otherwise, the official is to prepare a letter advising the protester that the right to further review has been forfeited because the request was received more than 60 days after the date of the initial determination notice. The letter is also to advise the protester that reconsideration of the late filing determination may be requested within 60 days.

If the reviewing official in BFO-DRS determines that a request for waiver of recovery was received at an RRB office more than 60 days after the date of the letter advising of the debt, the official may, at his or her discretion, investigate further if a brief review of the case indicates an obvious injustice in pursuing collection. Because the vast majority of debts involve some degree of fault on the part of the claimant, waiver of recovery is rarely granted. Accordingly, waiver requests received after 60 days will generally be immediately denied for late filing. In some cases, however, particularly those where recovery is sought from the survivors of a deceased claimant, the facts of the case may suggest that recovery would be against equity or good conscience. If the reviewer determines that may be the case, he or she may investigate further. If further investigation indicates that the debt should be collected, however, the request for waiver should be denied for late filing, not on the merits of the case, in order to foreclose the possibility of further appeal.

2905.05 Review of Late Filing Determination

The reviewing official who issues a determination that a protester has forfeited the right to reconsideration and/or waiver of recovery because the request was received late is also responsible for considering any request for review of the late filing determination. If the request is received within 60 days of the date of the late filing determination and the protester provides a statement indicating that a timely protest was prevented by valid circumstances beyond the protester's control, the request for reconsideration and/or waiver of recovery is to be regarded as timely filed, and the reviewing official is to consider the request in accordance with section 2905.03.

If the reviewing official determines that the reason for late filing is not valid, or if no reason for late filing is provided, the reviewing official is to advise the protester in writing that the original determination of late filing has been sustained. The

protester is also to be informed that the late filing determination may be appealed within 60 days by filing Form HA-1.

If the reviewing official determines that the request for review of the late filing determination was received more than 60 days after the date of the letter notifying the protester of the forfeiture of review rights, the reviewing official is to notify the protester that he or she has again forfeited the right to further review. The protester is also to be advised of his or her right to appeal the second late filing decision within 60 days.

2906 Receipt of Appeal Form

Instructions on Form HA-1, Appeal under the Railroad Retirement Act or the Railroad Unemployment Insurance Act, advise the protester to send the completed form to the Bureau of Hearings and Appeals. On occasion, however, a form may be received at another RRB office. A copy of the Form HA-1 and the envelope with postmark should be imaged. The original Form HA-1 and envelope should be forwarded to the Director of Hearings and Appeals. Include any additional evidence the individual may supply, but do not hold Form HA-1 pending receipt of additional evidence. If the individual plans to submit additional evidence, annotate the HA-1 with that information.

2907 Action by the Bureau of Hearings and Appeals

2907.01 The Hearing

Once a timely appeal is received in the Bureau of Hearings and Appeals, the case is assigned to a hearings officer. The hearings officer will request the claimant's entire file from all offices that have been involved with the case and send a letter acknowledging receipt of the appeal to the appellant and notification to other parties. A party that fails to respond to the notification within 30 days is barred from further participation in the appeal and forfeits further rights to review. The case is then docketed for a hearing or teleconference, as appropriate. In cases that involve a legal interpretation but no factual dispute, no hearing is held.

The parties are allowed the opportunity to review the file before a hearing or teleconference. At the hearing, the parties and/or their representatives provide responses to the hearings officer's inquiries, may present additional evidence, and may ask questions concerning the adjudication of the claim. After the hearing, the parties may be allowed an additional period of time to submit evidence.

2907.02 Decision of the Hearings Officer

After the hearing has been held or, if no hearing is held, after all evidence has been submitted, the hearings officer will consider the facts of the case, precedent decisions, and applicable law and regulations, and reach a decision. The

decision will address the central issue and related issues that arise during the course of the hearing. The appellant and any other parties are notified of the decision within 15 days. If the decision is favorable to the appellant, the case is returned to the SUBS for appropriate action. If the decision is not favorable, in whole or in part, the hearings officer notifies the appellant of the right to appeal the determination to the Board Members within 60 days.

2907.3 Contact with Hearings Officers

To avoid the appearance of improper influence on hearings officers, RRB employees needing information about an appeal are to direct inquiries to the Director of Hearings and Appeals and are not to contact the hearings officer.

2908 Appeals to the Board Members

A claimant or employer dissatisfied with a decision of the Bureau of Hearings and Appeals and who elected to participate in the appeal may, within 60 days of the date of the notification letter, appeal the decision to the Board Members by filing Form HA-1. Any office in receipt of a Form HA-1 that appeals a hearings officer's decision should date-stamp and promptly forward the form and relevant files directly to the Bureau of Hearings and Appeals. BHA will then forward the appeal and case file to the Secretary to the Board. The Board Members will consider the appeal. The Board Members may appoint an employee to obtain additional information, or to conduct additional investigation or research. The Board Members will then vote to reach a decision on the appeal. When a decision has been reached, the claimant or employer and interested parties are advised in writing within 15 days. The case file is to be returned to the SUBS for any appropriate action. In the event of an adverse decision, the claimant or employer is advised of the right to request judicial review in the U. S. Court of Appeals within 90 days.

2909 Employer Status or Creditability of Compensation

2909.01 Hearings Officer's Report

In cases involving employer status or creditability of compensation, the hearings officer will submit a report to the Board Members. The report will contain a statement of (a) the issue or issues raised, (b) the evidence submitted, (c) finding of facts, (d) conclusions of law and (e) recommendations as to the decision to be made by the Board. Copies of the report and of the transcript of the hearing, if any, are mailed to each interested party. Any party to the proceeding may, within 20 days after the mailing of the report, file with the Board any exceptions to the hearing officer's findings of fact and conclusions of law.

2909.02 Decision of the Board

After submission of a report by a hearings officer, the Board Members will make a decision on the basis of the record established after consideration of any exceptions taken to the report. Notice of the decision, together with Board's findings of fact and conclusions of law, are mailed to the parties within 15 days from the date on which the decision is made. The decision of the Board is final and conclusive for all purposes, subject only to judicial review in accordance with section 5(f) of the Act.

2910 Waiver of Recovery

2910.01 General

Section 2(d) of the RUIA provides that there is to be no recovery of benefits where the claimant is without fault for the overpayment and where recovery would be contrary to the purpose of the Act or would be against equity or good conscience. A claimant is to be notified of his or her right to request waiver of recovery when he or she is notified of an overpayment determination. Such requests are to be forwarded to the Bureau of Fiscal Operations - Debt Recovery Section, who will prepare a decision. An adverse decision may be appealed to the Bureau of Hearings and Appeals and, if sustained, to the three-member Board.

2910.02 Time Limitations

If a request for waiver of recovery is received within 60 days of the initial debt letter, action to recover the debt, including withholding of subsequent benefits due, should be suspended until a decision has been reached, unless one of the four circumstances for non-deferral described in section 2910.07 is found to exist. If a request for waiver is received after 60 days, subsequent benefits payable may be withheld, but other collection efforts are to be suspended.

2910.03 Fault

The term "fault" means a defect of judgment or conduct arising from inattention or bad faith. Judgment or conduct is defective when it deviates from a prudent standard of care taken to comply with the entitlement provisions of the RUIA. Conduct includes both action and inaction. Unlike fraud, fault does not require a deliberate intent to deceive. Whether an individual is at fault for an overpayment depends on all relevant circumstances, including his or her ability to understand reporting requirements and to realize that he or she is being overpaid. The claimant's comprehension, memory and health are relevant, as are the causes of non-entitlement to benefits and the number of claims on which the claimant made erroneous statements or omitted information. Circumstances indicating claimant fault include, but are not limited to:

a. Failure to furnish information which the claimant knew or should have known was material;

b. An incorrect statement made by the claimant which he or she knew or should have known was incorrect (including furnishing an opinion or conclusion when asked for fact); and

c. Failure to return a payment which the claimant knew or should have known was incorrect.

2910.04 Contrary to Purpose of the Act

The purpose of the Act is to replace some earnings lost because of sickness or unemployment. That purpose is defeated if an erroneous payment is recovered from income and resources the individual needs to meet ordinary and necessary living expenses. Income includes funds available for the individual's use, regardless of their source. Income to the individual's spouse or dependents is available if the spouse or dependents live with the individual at the time waiver is considered. Types of income include governmental benefits, wages, self-employment income, regular payments such as rent or pensions, and investment income. Resources include liquid assets such as cash, savings accounts, stocks and bonds, and certain non-liquid assets.

Whether an individual can meet ordinary and necessary living expenses depends on both income and whether the expenses are truly "ordinary and necessary." While the level of ordinary and necessary expenses may vary between individuals, it must be held at a level reasonable for an unemployed or sick individual, and the expenses must not be primarily discretionary. Ordinary and necessary expenses include fixed living expenses such as food, rent, mortgage payments, utilities, clothing, insurance, and taxes. Such expenses also include medical expenses, support for which the individual is legally responsible, and miscellaneous expenses (e.g. newspaper, haircuts, etc.). Care must be taken, however, to distinguish between necessary expenses related to a primary residence as opposed to discretionary expenses such as utilities, rent, mortgage payments or taxes related to a vacation home, or payments or insurance on a recreational motor home. Where full recovery would make an individual unable to meet ordinary and necessary living expenses but partial recovery would not, recovery of the lesser amount does not defeat the purpose of the Act.

2910.05 Against Equity or Good Conscience

Recovery is against equity or good conscience when the claimant, in reliance upon benefits or notice that benefits will be paid, relinquishes a valuable right or changes his or her position for the worse. For example, a claimant who irrevocably relinquishes rights to state unemployment benefits in favor of RUIA benefits that later are determined to have been erroneously paid due to an RRB mistake has given up a valuable right to state benefits in detrimental reliance

upon RUIA benefits. The fact that an individual's financial circumstances may permit repayment without hardship is not material to a finding that recovery is against equity or good conscience and does not prevent waiver of recovery in such circumstances.

2910.06 Notice to Employer

Most requests for waiver are denied because, to some degree, the claimant is at fault for causing the debt. However, if an initial review of the request indicates the claimant may meet the requirements for allowing waiver, the base-year employer and the most recent employer, if different, must be notified of the request and permitted to submit information relevant to the case. Send a brief letter to the employer(s) advising that the claimant has requested waiver of recovery and giving a brief description of how the debt occurred. Explain that the employer(s) may submit relevant information, within 30 days, which will be considered when the determination is made. When a reply is received, or 30 days have passed without reply, process the request in accordance with section 2910.07.

2910.07 Processing Requests for Waiver Consideration

The Supervisory Debt Specialist has authority to waive recovery of overpayments under the RUIA. Requests for waiver are to be date stamped and routed to the Bureau of Fiscal Operations - Debt Recovery Section.

Waiver consideration is a category of reconsideration subject to the same 60-day time limit for filing other types of requests for reconsideration. If a request is filed within 60 days debt recovery actions are to be deferred, except under these circumstances:

a. The amount of the erroneous payment does not exceed 10 times the current maximum daily benefit rate;

b. The claimant admits he or she was at fault in causing the overpayment;

c. The claimant is found to have committed fraud; or

d. The claimant authorizes recovery by offset or agrees to repayment.

Debt collection efforts are to be suspended, where appropriate, during consideration of the waiver request. When it appears that the claimant is without fault for the overpayment but the claimant has not made a successful case based on equity or good conscience, BFO-DRS is to obtain a completed Form DR-423, Financial Disclosure Statement, from the claimant to determine if recovery would cause financial hardship. If the Supervisory Debt Specialist approves waiver of recovery, BFO-DRS is to notify the claimant and adjust the claimant's FMIS record. DRS will then forward the case to SUBS who will adjust the claimant's

RUIA record and refund any amounts recovered that are included in the amount waived. Notice of the waiver determination is not to be provided to the employer(s) because they have no right to appeal waiver determinations.

If waiver is denied, the Supervisory Debt Specialist will advise the claimant in writing and notify the claimant of the right to appeal to the Bureau of Hearings and Appeals by filing Form HA-1 within 60 days. Further recovery action is to be deferred for 15 days from the date of the Supervisory Debt Specialist's adverse determination. If the claimant files a timely appeal, recovery action is to be deferred pending the outcome of the appeal, unless the case meets one of the four conditions above that permit immediate recovery. A claimant may appeal an adverse decision of the hearings officer to the three-member Board within 60 days.

2910.08 Circumstances Where Waiver Not Permitted

Part 340 of the RRB's regulations prohibits granting waiver of a debt which:

a. is equal to or less than 10 times the current maximum daily benefit rate in effect at the time the waiver request is filed;

b. is caused by entitlement to an annuity under the Railroad Retirement Act and may be recovered from the accrued annuity or a residual lump sum payable under the Railroad Retirement Act;

c. is recoverable up to the amount of any accrued Federal benefits payable to the debtor by any executive agency of the United States (i.e. an award from the Social Security Administration). This means that recovery from an accrual does not deprive the debtor of funds for necessary living expenses. However, waiver may be granted for the amount of debt exceeding the accrual, provided the debtor meets the standards for waiver in Part 320; or

d. is recoverable from a third-party (such as from a party liable for an injury who pays damages or an employer who pays for time lost).

Note: if at least one of the above applies, the waiver denial should be based upon Part 340 of the regulations and not because he or she was at fault.

2911 Deceased Cases

2911.01 General

Any person from whom collection of an RUIA debt is sought may request reconsideration and/or waiver of recovery. A deceased person's estate is considered a "person" under the law.

2911.02 Survivors

A survivor (usually a spouse) of a debtor is entitled to the same rights to request reconsideration and/or waiver of recovery as the debtor, but is also bound by the debtor's actions or inaction. If the debtor was properly informed of but did not exercise his or her right to review, or did not exhaust all administrative remedies, the survivor is considered to have forfeited rights to further review. If the debtor was at fault in connection with the overpayment, waiver may not be granted to the survivor. Also, if the survivor was at fault in connection with the debt (while conducting the debtor's personal affairs, for example), a waiver may not be granted.

2911.03 Estates

As with a survivor, an estate may request reconsideration and/or waiver of recovery, but is bound by the debtor's actions or inaction. If the debtor was properly informed of but did not exercise review rights, the estate will have no further appeal rights, and if the debtor was at fault in connection with the debt, waiver may not be granted. If it is established that the debtor was without fault, waiver may be granted to the estate only if recovery would be against equity and good conscience (see AIM 2910.05), because recovery from an estate cannot be said to deprive the estate of income needed to meet normal living expenses.

2911.04 Divorced Spouses

Recovery may not be made from the divorced spouse of a deceased debtor. In such cases, a debt should be declared uncollectible, unless there are reasonable prospects of recovering the debt from a third party, such as a liable party in a personal-injury case.

2912 Reconsideration and Waiver Cases Involving Fraud

If there is an indication that a reconsideration and/or waiver case that involves fraud has been submitted and accepted by the United States Attorney for criminal prosecution, all reconsideration and waiver determinations are to be suspended pending the outcome. If the U.S. Attorney declines the case for prosecution, reconsideration and/or waiver determinations may then resume.

2913 Forms Prescribed

The following forms and form letters are prescribed:

DR-423, Financial Disclosure Statement

ID-29, RUIA Reconsideration Request

ID-29B, Notice on Request for Reconsideration

UI-68, Your Right to Reconsideration and Waiver