

Update on Social Security Overpayment Policies

Kate Lang, Justice in Aging

John S. Whitelaw, Community Legal Aid Society, Inc. (Delaware)

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Logistics

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

About Justice in Aging

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we've focused our efforts primarily on populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

About Community Legal Aid Society

Community Legal Aid Society, Inc. (CLASI) (Delaware) is a statewide, nonprofit law firm in Delaware whose mission is to combat injustice through creative and persistent advocacy on behalf of vulnerable and underserved Delawareans. CLASI is also Delaware's designated Protection and Advocacy agency for individuals with disabilities.

Key Lessons

- The Social Security Administration made significant beneficial changes to its overpayment policies in 2024.
- Changes in the first half of 2024 included reduction in default withholding for Title II overpayments, extended repayment period, and administrative waivers.
- Today we will be focusing on additional changes to overpayment waiver policies made in November 2024.

POMS

Program Operations Manual System (POMS) Table of Contents

- [RM - Records Maintenance](#)
- [**GN - General**](#)
- [RS - Retirement and Survivors Insurance](#)
- [DI - Disability Insurance](#)
- [SI - Supplemental Security Income](#)
- [HI - Health Insurance](#)
- [NL - Notices, Letters and Paragraphs](#)
- [VB - Special Veterans Benefits](#)
- [PR - Title II Regional Chief Counsel Precedents](#)
- [PS - Title XVI Regional Chief Counsel Precedents](#)
- [SL - State and Local Coverage Handbook](#)
- [DX - Data Exchange](#)

Overview of Overpayments

Overpayments

- An overpayment occurs when a beneficiary receives more benefits than the amount they are entitled to, in a given month
- If the individual is currently receiving SSA benefits, SSA will withhold funds from current benefits to repay
- Overpayments can occur for both Title II: Retirement, Survivors, and Disability Insurance (RSDI) and Auxiliary benefits; and Title XVI: SSI

Why Overpayments Happen

- **SSI:** Over income or resource limit, in-kind support and maintenance (ISM), marriage, institutionalized/ outside U.S. for a calendar month or 30 days or more
- **SSDI:** Work incentive rules, workers' comp, incarceration
- **Retirement/Survivors:** Offsets due to other pension entitlement like Windfall Elimination Provision/Government Pension Offset (WEP/GPO), “excess” earnings above limit before full retirement age

Overpayment Options

- Appeal the overpayment (request “Reconsideration”)
- Request a waiver
- Negotiate a lower repayment amount
- Do nothing

NCLER Trainings and Resources

- [Overpayments and Appeals](#)
- [Social Security Overpayments](#) (Jan. 16, 2024)

2024 Changes to Overpayment Policies

Decrease Default Withholding (1 of 2)

TITLE II (RSDI)	TITLE XVI (SSI)
10% (or \$10, whichever is greater) – previously 100%	Up to 10% of monthly benefit – \$96.70 maximum for 2025

Decrease Default Withholding (2 of 2)

- EM-24011: Change in Title II Overpayment Default Rate of Benefit Withholding
- Went into effect in March 2024; systems updated in June 2024
- By September 2024, letter sent to all current RSDI beneficiaries with existing overpayment paying more than 10%
- RSDI beneficiaries can call or visit local office to request adjustment to 10% at any time

Repayment Time Frame

- Expanded from 36 months to 60 months
- Easier to lower repayment amount without having to complete Form 634 or provide financial documentation
- [POMS GN 02210.030 - Request for Change in Overpayment Recovery Rate](#)
- [POMS SI 02220.026 - Request for a Change in Recovery Rate - SSI](#)

Recent Changes to Waiver Policies

Administrative Waiver

- Level increased from \$1,000 to \$2,000 (May 2024)
- Individual must request waiver, but not required to complete Form 632
- Presumption that individual was not “at fault” in causing overpayment
- Does not apply where original overpayment was greater than \$2,000 but is now below because of recoupment
- [POMS GN 02250.350 Administrative Tolerance for Overpayments \\$2,000 or Less - Title II and Title XVI](#)

Requirements for Waiver

- Without Fault **AND**
 - Defeat the purpose of the Act (financial hardship) **OR**
 - Be against equity and good conscience

Shifting Burden in Showing “Without Fault”

- First step in every request that overpayment be waived – showing individual was “without fault” in causing overpayment
- Burden had been on individual to prove they were “blameless”
- SSA has now shifted assessment of fault to be more neutral, balanced, and fair – many more presumptions of “not at fault”

Current “Without Fault” Standard

- We can find an individual at fault **only after** we first find that there is evidence that the overpayment occurred because the individual:
 - made an incorrect statement they knew or should have known was correct,
 - failed to furnish information that they knew or should have known was material, or
 - accepted payments that they knew or should have known was incorrect.
- Unless we have evidence that one of these has occurred, the individual is not at fault.

[POMS GN 02250.005](#)

“Without Fault”

- Factors to consider:
 - understanding of the reporting requirements;
 - agreement to report events affecting payments;
 - knowledge of the occurrence of events that should have been reported;
 - efforts to comply with the reporting requirements;
 - opportunities to comply with the reporting requirements;
 - understanding of the obligation to return checks which were not due; and
 - ability to comply with the reporting requirements.

[POMS GN 02250.005](#)

Presumptions of Not At Fault

- 20 different circumstances given, including:
 - Timely reporting (reported or attempted to report)
 - Continued payments after reported change
 - Minor children and legally incompetent adults
 - Cash surrender value of life insurance (SSI)
 - Medical institutionalization (SSI)

[POMS GN 02250.016](#)

Fault Determinations for Common Situations

- 12 common situations when determining fault, including:
 - Subsequent overpayments for same reason
 - Misunderstanding policies on eligibility or entitlement
 - Conditional SSI payments
 - Incarceration
 - Overpaid individual with representative payee

[POMS GN 02250.021](#)

Other New POMS Sections on Fault

- [POMS GN 02250.023](#): Fault Presumptions When an Overpayment was due to an Incorrect Benefit Rate or Computation of Insured Status
- [POMS GN 02250.025](#): Fault Determinations When Overpayment is Due to Earnings - Title II
- [POMS GN 02250.090](#): SSI Overpayment Waiver When Recipient's Countable Resources Exceed the Limit

“Defeat the Purpose”

- Recovering the overpayment would deprive the overpaid individual of the income and resources required for ordinary and necessary living expenses
 - Income does not exceed living expenses by more than \$250 per month
 - No more than \$6,000 in resources (\$10,000 if one other household member, additional \$1,200 in resources for each additional member)
 - Excluded resources include ABLE accounts

[POMS GN 02250.100](#)

Deemed to Defeat the Purpose

1. If overpaid individual or any household member currently receives needs-based assistance:
 - Supplemental Security Income (SSI);
 - Temporary Assistance for Needy Families (TANF);
 - Veterans Affairs service and non-service related disability pension based on need;
 - **Supplemental Nutrition Assistance Program (SNAP); or**
 - **Medicare Part D Extra Help Program (Low-Income Subsidy)***
2. Household income at or below 150 percent of the Federal Poverty Level (FPL) and limited resources

[POMS GN 02250.110](#)

*[POMS GN 02210.030 C Exception](#)

“Against Equity and Good Conscience”

- An individual relied on notice of payments or relied on the incorrect payment itself, and their financial position changed for the worse or they relinquished a valuable right
- For Title II, auxiliary beneficiary lived in separate household and didn't receive the benefits that resulted in overpayment
- For Title XVI, spouse lived in separate household/legally separated and didn't receive the benefits that resulted in overpayment

[POMS GN 02250.150](#)

Deemed to be Against Equity and Good Conscience

- SSA unable to locate documents or determine cause of overpayment ([GN 02250.011](#))
- Overpaid individual relied on misinformation from official source ([GN 02250.061](#))
- Individual reasonably believed SSA counted net earnings rather than gross earnings ([GN 02250.025 B.5.](#))
- Overpayment due to Family Maximum Rule ([GN 02250.016 B.15.](#))
- Adult individual overpaid as minor child with representative payee ([GN 02250.150 D.](#))
- Other situations listed in [GN 02250.150](#)

Potential for Easier Waiver Application

- Streamlining [Form 632](#), Request for Waiver of Overpayment Recovery
- SSA has developed two-page form with minimal financial information required
- New form not released yet

Subsequent Waiver Requests

- If the same individual files multiple waiver requests for the same overpayment, raises no new issues, and provides no new and material evidence, SSA will apply “res judicata” and adopt the prior determination to deny the waiver
 - Same facts
 - Same issues
 - Same parties
 - Prior determination is final
 - Prior “at fault” finding is correct
- Remember that financial circumstances can change so that a prior denial based on financial hardship may be “fixable” if financial circumstances have changed

[POMS GN 02250.303](#)

Nuclear Option Still Exists

- Consider bankruptcy where overpayment is very large and client cannot get waiver or a satisfactory repayment agreement, and no fraud or similar fault

[POMS GN 02215.185](#), [SI 02220.040](#)

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