

# Updates on Social Security Overpayments

Practice Update • January 2025

Kate Lang, Justice in Aging

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

NATIONAL  
CENTER ON  
**LAW &  
ELDER  
RIGHTS**

## Introduction

For low-income individuals, receiving a notice that they have been overpaid by the Social Security Administration (SSA) often causes alarm and confusion, and great concern about how repayment will affect their ability to pay their ordinary living expenses. An overpayment occurs when the total amount of benefits an individual received from SSA for any period exceeds the amount which should have been paid for that period.<sup>1</sup> Overpayments can occur in both Social Security (Retirement, Survivor, and Disability Insurance (RSDI) or Title II) and Supplemental Security Income (SSI or Title XVI) programs. Once a final determination on the overpayment is made, the amount is a debt the individual owes to the federal government.<sup>2</sup>

When an individual receives a notice of an alleged overpayment from SSA, they have three options (other than doing nothing and paying back the full amount)<sup>3</sup>:

1. The individual can use the SSA appeals process to challenge the fact or the amount of the overpayment determination.
2. The individual can accept the overpayment determination, and seek a waiver of SSA's right to recover the overpayment.
3. The individual can seek to negotiate a lower monthly amount of repayment.

In 2024, SSA made significant beneficial changes to its policies on overpayments. This tip sheet provides an overview of these updates.

## Update 1: Decreased Default Withholding for RSDI Overpayments

SSA decreased the default withholding for an overpayment of RSDI benefits. Previously, if SSA found there had been an overpayment of RSDI benefits, and the beneficiary did not respond to the notice of overpayment, SSA would withhold their full monthly benefit. This proved catastrophic to many individuals and families, and there were many examples of beneficiaries losing their shelter and becoming unhoused as a result of the loss of their only source of income.

In March 2024, SSA announced a change of the default withholding rate for RSDI overpayments to 10% of monthly benefits, or \$10 per month, whichever is more.<sup>4</sup> SSA changed its systems to reflect the new default withholding rate at the end of June 2024. Most newly posted RSDI overpayments now default to the 10% benefit withholding for recovery. Between July and September 2024, SSA issued a one-time notice to all individuals with an RSDI overpayment who were repaying at a rate greater than 10%, giving them the option to contact SSA and request a 10% recovery rate.

<sup>1</sup> 42 USC § 404, § 1383(b); 20 CFR § 404.501, § 416.537

<sup>2</sup> [POMS GN 02201.001](#), [SI 02201.005](#)

<sup>3</sup> Individuals can also discharge an overpayment debt by filing a bankruptcy petition in federal court, but that doesn't involve the SSA administrative process. [POMS GN 02215.185](#), [SI 02220.040](#). Unless SSA proves an individual had acquired the overpayment debt through fraud at an adversary proceeding, it would be discharged as an unsecured debt like credit card debt or medical bills.

<sup>4</sup> [EM-24011: Change in Title II Overpayment Default Rate of Benefit Withholding](#). This only applies when the overpaid individual does not respond to the notice of overpayment and SSA automatically begins withholding from their current benefits. The overpaid individual has other options to accepting this default rate, including contacting SSA and trying to negotiate a repayment rate that is less than 10%.

## Update 2: Increased Repayment Time Frame

If an individual is unable to meet their ordinary and necessary living expenses because of the amount SSA is collecting from them, the individual can request a lower rate of recovery. SSA attempts to negotiate a repayment rate for an overpayment that will permit the recovery of all outstanding amounts within 12 months, or at the most within 60 months.<sup>5</sup> Before February 2024, SSA had sought to negotiate a rate of recovery that would permit recovery of the outstanding amount within 36 months. The individual does not need to complete a Form SSA-634, Request for Change in Overpayment Recovery Rate, if they agree to a repayment rate that will allow SSA to recover the total debt within 60 months. Completing the SSA-634 is a significant burden on overpaid individuals and their advocates, and being able to obtain a resolution without completing this form may well make the difference between obtaining a manageable repayment rate and continuing at the default rate.

## Update 3: Increased Level for Administrative Waiver

Administrative waiver is a mechanism where, upon request, SSA will waive the overpayment without the overpaid individual having to complete the Form SSA-632, Request for Waiver of Overpayment Recovery, for small overpayments. In May 2024, SSA increased the tolerance for an administrative waiver from \$1,000 to \$2,000.<sup>6</sup> When the original overpayment amount is \$2,000 or less, SSA will presume that the individual was not at fault in causing the overpayment, and will waive the overpayment because recovery would impede the efficient administration of the Social Security Act.

## Update 4: Changes to Waiver Policies

In November 2024, SSA announced updates to their overpayment waiver policies to ensure fairer outcomes and reduce administrative hurdles.

### Shifting Burden in Showing “Without Fault”

Previously, SSA imposed the burden on the individual to prove that they were “blameless” in causing the overpayment at the first step of each waiver determination. SSA has shifted assessment of fault to be more neutral, balanced, and fair. Now SSA will not find an individual at fault in causing the overpayment unless the agency first finds that there is evidence that the overpayment occurred because the individual:

- made an incorrect statement they knew or should have known was incorrect;
- failed to furnish information that they knew or should have known was material; or
- accepted a payment that they knew or should have known was incorrect.

Unless SSA has evidence that one of these has occurred, the individual must be found to be not at fault in causing the overpayment.<sup>7</sup> SSA must consider the individual’s specific circumstances when determining whether they were at fault, including their age, comprehension, education, memory, physical and mental conditions (which may include medical institutionalization during part or all of the overpayment period), linguistic limitations (including any lack of facility with the English language), etc.<sup>8</sup>

<sup>5</sup> [POMS GN 02210.030](#), [SI 02220.026](#)

<sup>6</sup> [POMS GN 02250.350](#)

<sup>7</sup> [POMS GN 02250.005](#)

<sup>8</sup> Id.

SSA has developed 20 different circumstances where they will presume an overpaid individual is not at fault for their overpayment, including:

- Timely reporting (reported or attempted to report)
- Continued unchanged payments after reported change
- Minor children and legally incompetent adults
- Cash surrender value of life insurance (SSI)
- Medical institutionalization (SSI)<sup>9</sup>

SSA has also developed a new section of the POMS that provides guidance on making fault determinations in 12 common situations that SSA employees may encounter when processing waiver applications, including:

- Subsequent overpayments for the same reason
- Misunderstanding policies on eligibility or entitlement
- Conditional SSI payments
- Incarceration
- Overpaid individual with representative payee<sup>10</sup>

Finally, there are three new sections of the POMS that address fault in specific situations:

- Fault Presumptions When an Overpayment was due to an Incorrect Benefit Rate or Computation of Insured Status<sup>11</sup>
- Fault Determinations When Overpayment is Due to Earnings - Title II<sup>12</sup>
- SSI Overpayment Waiver When Recipient's Countable Resources Exceed the Limit<sup>13</sup>

## Expansion of “Defeat the Purpose”

At the second step of the waiver process, SSA considers whether recovery of the overpayment would “defeat the purpose of the Social Security Act,” which means that it would cause financial hardship to the individual to repay the overpayment.<sup>14</sup> SSA now considers individuals unable to repay an overpayment if their resources are within expanded limits and their income does not exceed their ordinary and necessary household expenses by more than \$250 per month.

9 [POMS GN 02250.016](#)

10 [POMS GN 02250.021](#)

11 [POMS GN 02250.023](#)

12 [POMS GN 02250.025](#)

13 [POMS GN 02250.090](#)

14 [POMS GN 02250.100](#)

It is presumed that recovery would cause financial hardship to the individual if they, or any member of their household, currently receives certain means-tested public assistance benefits:

- 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)

SSA will also now presume an inability to repay for people with household income at 150 percent or below the Federal Poverty Level (FPL) and resources within the established limits.<sup>15</sup>

### “Against Equity and Good Conscience”

In the alternative to showing that repayment would be a financial hardship, there are certain situations where SSA will find that it would be unfair to require repayment of the overpayment. Generally, SSA will find that overpayment recovery is unfair, or “against equity and good conscience,” when the overpaid individual, relying on the incorrect payments, changed their financial position for the worse or relinquished a valuable right.<sup>16</sup> Crucially, if an individual qualifies for waiver because recovery would be against equity and good conscience, they do not need to show financial hardship. There are now specific situations where SSA will deem recovery to be against equity and good conscience, including:

- SSA is unable to locate documentation to support there was an overpayment<sup>17</sup>
- The overpaid individual relied on misinformation from official source<sup>18</sup>
- The overpaid individual reasonably believed SSA counted net earnings rather than gross earnings in calculating benefit payments<sup>19</sup>
- The overpayment was due to the Family Maximum Rule<sup>20</sup>
- An adult individual was overpaid as a minor child with a representative payee<sup>21</sup>

Other additional situations are listed in the POMS at GN 02250.150.

## Conclusion

In 2024, SSA made several significant updates to its overpayment policies that will be beneficial for overpaid individuals. However, all of these changes were made in the POMS, on a sub-regulatory basis. That means that these policies can be changed again without notice. Advocates should always check the current version of the POMS, to ensure that they are relying on SSA’s most up-to-date policy.

<sup>15</sup> [POMS GN 02250.110](#)

<sup>16</sup> [POMS GN 02250.150 B.](#)

<sup>17</sup> [POMS GN 02250.011](#)

<sup>18</sup> [POMS GN 02250.061](#)

<sup>19</sup> [POMS GN 02250.025 B.5.](#)

<sup>20</sup> [POMS GN 02250.016 B.15.](#)

<sup>21</sup> [POMS GN 02250.150 D.](#)

---

## Additional Resources

- Regulations
  - » 20 C.F.R. §§ 404.502 – 545 (Title II)
  - » 20 C.F.R. §§ 416.550 – 590 (Title XVI)
- Program Operations Manual System (POMS)
  - » GN 02201.000 et seq.
  - » SI 02201.000 et seq. (Title XVI)
- SSA Publication: [Overpayments](#)
- SSA Video: [What can I do if I'm notified that I have an overpayment?](#)
- NCLER: [Legal Basics: Social Security Overpayments](#) (January 2024)

---

**Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at [ConsultNCLER@acl.hhs.gov](mailto:ConsultNCLER@acl.hhs.gov).**

---

*This Chapter Summary was supported by contract with the National Center on Law and Elder Rights, contract number HHS75P00121C00033, from the U.S. Administration on Community Living, Department of Health and Human Services, Washington, D.C. 20201.*