

Requesting that the Social Security Administration Waive an Overpayment

PRACTICE TIP • June 2019

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For low-income Social Security beneficiaries and Supplemental Security Income (SSI) recipients, receiving a notice from the Social Security Administration (SSA) that they have been overpaid often causes alarm and confusion, and great concern about how repayment will affect their ability to pay ordinary living expenses.

In response to a notice of overpayment, the individual may:

- Use the appeal process to challenge the overpayment
- Ask the agency to waive the overpayment
- Ask the agency for a lower monthly repayment amount

This Practice Tip focuses on the option of **asking the agency to waive the overpayment**. Note that asking for a waiver is only one option to respond to an overpayment, and there are situations where an individual may instead decide to file an appeal or negotiate a repayment plan. Additional resources on when these other options may be used are provided at the end of this Practice Tip.

A waiver asks SSA not to require repayment of an overpayment. SSA will waive recovery of an overpayment if both of the following are true:

1. The individual must be without fault in causing the overpayment; **and**
2. Recovery would either “defeat the purpose of the Social Security Act” **or** “be against equity and good conscience.”¹

“Without fault”: A finding regarding fault is a threshold matter in all waiver cases, and the individual must be found to be without fault in causing the overpayment before the second step is evaluated.² “Without fault” generally requires a showing that the individual was blameless in the creation of the overpayment. SSA must consider all circumstances, including the individual’s disability (if any), age, education, English language proficiency, and comprehension of reporting requirements when evaluating whether they were “without fault.” Pay attention to fact development of exactly how and why the overpayment occurred from the recipient’s perspective, and also consider whether and how the individual’s circumstances affect a finding of fault.

“Defeat the purpose of the Act”: This is construed as whether recovery would cause financial hardship to the individual.³ It is presumed to be met for those currently receiving SSI benefits and other sources of public assistance. SSA will presume that recovery would be a financial hardship if the individual uses substantially all of their current income to meet “ordinary and necessary living expenses,” and if repayment

1 42 USC § 404(b), § 1383(b)(1)(B); 20 CFR §§ 404.506 – 404.512, §§ 416.550 – 416.556

2 POMS GN 02250.005, SI 02260.010

3 POMS GN 02250.100, SI 02260.020

would reduce their assets below certain levels. Careful and complete documentation of expenses is helpful to show that substantially all current income is needed to meet living expenses.

“Against equity and good conscience”: This is an alternative to showing that repayment would be a financial hardship, for situations where it would be unfair to require repayment of the overpayment. In its policies, SSA defines “equity and good conscience” narrowly, as whether the individual, in relying on the overpayment, relinquished a valuable right or changed position for the worse.⁴

The individual has the burden of proof to demonstrate all aspects of the waiver test by a preponderance of evidence.⁵

An individual should use SSA’s form “Request for Waiver of Overpayment Recovery or Change in Repayment Rate” ([Form SSA-632](#)), as the completed form will provide SSA with the information necessary to process the waiver request.⁶ Those currently receiving SSI or other forms of public assistance, as well as those claiming it would be “against equity and good conscience” to repay the overpayment, should only complete the first four sections of the form and sign it. Others must complete all of the income, assets, and expenses portions of the form, and attach documentation regarding their financial situation, including bills, rent receipts, etc.

SSA may approve a waiver when the individual files the waiver form. If SSA cannot issue a favorable decision, it must schedule a personal conference before making a decision.⁷ The next step in the appeal process varies depending on whether the overpayment is for Social Security or SSI benefits. Recoupment begins once the waiver application is denied. If the individual declines a personal conference, recoupment begins upon that refusal. After a waiver request is denied, an individual can file a request for reconsideration or hearing on the waiver denial within 60 days of receipt of the written denial. However, recoupment of the overpayment will happen while the appeal is pending.⁸

Tips for a Waiver Application

A waiver may be requested at any time. This means that a waiver may be requested even after the overpayment has already been fully or partially repaid.⁹ Once a request for waiver is made, the recoupment should stop while a decision on the request is pending. If the waiver request is made within 30 days of receipt of the overpayment notice, recoupment should not begin while a decision on the request is pending.¹⁰

If the amount of the original overpayment is \$1,000 or less, SSA will grant an administrative waiver of the debt without further development when the individual or their representative makes a specific written or oral request for waiver or reconsideration, unless SSA believes there is an indication of fault on the part of the overpaid individual.

4 POMS GN 02250.150, SI 02260.025.

5 See e.g., *Sipp v. Astrue*, 641 F.3d 975, 981 (8th Cir.2011).

6 POMS GN 02250.002, SI 02260.005. SSA released a new version of this form in April 2019.

7 20 CFR § 404.506(c); POMS GN 02270.000 et seq.; 20 CFR § 416.557.

8 POMS GN 02201.011(C).

9 POMS GN 02201.019, SI 02201.005(H)(3) and SI 02260.001(A)(3).

10 20 CFR § 404.506(b).

Helping a client with overpayment questions? Justice in Aging provides legal professionals with advice on SSI and Social Security as part of NCLER's case consultation service. Through this service, Justice in Aging, the National Consumer Law Center, and the ABA Commission on Law and Aging provide free case consultations to legal and aging network professionals on a range of legal issues impacting older adults.

Please contact ConsultNCLER@acl.hhs.gov for free case consultation assistance. Sign up for our email list and access more resources at NCLER.acl.gov.

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