

SSI OVERPAYMENTS

What Is An SSI Overpayment?

It is a payment(s) made to you by the Social Security Administration ("SSA") that SSA says was more than you were entitled to receive.

How is the Amount of Overpayment Calculated?

It is the difference between what you received and the amount SSA says you should have received.



What Causes an Overpayment?

When you fail to report an event *within 10 days after the month the change occurred*, that affects the amount of SSI you get or eligibility. If SSA does not get the information in time, it cannot adjust your check. A change in January reported by February 10th is supposed to be reflected in your March check. , Examples that can cause an overpayment include:

- Failure to report earned and unearned income;
- Failure to report changes in earned and unearned income;
- Failure to report a change in your living situation such as a change in residence or a change in the composition of your household;
- SSA says that you and the person you live with are holding yourselves out to the public as married so that you are treated as married;
- Divorce, marriage or separation;
- Failure to report improvements to your health;
- Eligibility for other benefits;
- Becoming a fleeing felon, violating parole or probation; and

- Admission to a physical or mental health facility when you do not have a home to go back to or your doctor thinks you will be there for more than 90 days.

Not reporting events will cause SSA to figure your SSI benefit amount on incomplete or incorrect information.

If you told SSA of changes and SSA still says you were overpaid, see the section below on requesting a Waiver.

Who is Responsible for an Overpayment?



It can be:

- You, the overpaid person;
- Your Representative Payee (Rep. Payee);
- If the overpaid amount was misused by your Rep. Payee, she/he will be personally liable;
- If payments were used for your support and maintenance and your payee knew or should have known of the overpayment, you and your Rep. Payee will be responsible. You may be able to get a Waiver;
- If the funds were not used for your support or maintenance, then the Rep. Payee will be solely responsible for the overpayment, regardless of whether he/she knew of the overpayment;
- Under certain circumstances, your sponsor, if you are an alien receiving SSI;
- Your spouse if during the period of the overpayment you were living together and SSA can't recover from you; and
- Your estate and/or that of your Rep. Payee, spouse or sponsor.

What Does the Notice of Overpayment Have To Contain?

The notice must include:

- Why there is an overpayment;
- The amount of the overpayment;
- The months in which the overpayment occurred;
- A list outlining what amounts were paid and what should have been paid;
- The rate of adjustment to your SSI check if you do not pay in full and continue to receive SSI. (usually 10%);
- The right to request a waiver and/or appeal either by requesting a reconsideration or a hearing in front of an Administrative Law Judge ("ALJ"); and
- How to request a waiver, reconsideration, or hearing.

A notice will also be sent to your representative payee and/or a legal representative.

What Will Happen to My SSI If I Have an Overpayment?

SSA will ask you to pay the full amount within 30 days.

To keep getting your SSI without any changes, you must send in your appeal **within 10 days of receipt of the notice of overpayment**. SSA figures you will "receive" the notice no later than five days after the date on the notice. For example, if your notice is dated January 1st, SSA will assume you received it by the January 5th. Your appeal must be filed by January 15th). SSA will not reduce your benefit amount until a decision is made.

If you do not appeal within 10 days, you can still request an appeal within 60 days of receipt of the notice of overpayment.

If SSA denies your request for reconsideration, you can appeal by asking for a hearing in front of an ALJ.

How Much Will SSA Take Out?



SSA will take the lesser of 10% of your total monthly countable income or your entire monthly income if you do not:

- Appeal at all and fail to repay the entire amount within 30 days of receiving the notice of overpayment, or
- Appeal in time to continue to get your SSI without any changes.

SSA will start taking money out 60 days after you receive notice of the overpayment.

NOTE: except under certain circumstances such as where there has been fraud, **you can always negotiate a different rate of pay at any time.**

What Can I Do To Avoid Having To Repay SSA?



A. APPEAL

File an appeal either by requesting reconsideration or in certain circumstances, a hearing before an ALJ if:

- You do not believe you owe as much as SSA says you owe;
- You believe you were not overpaid, or
- You are not responsible for repayment (examples, if you are the representative payee, spouse etc...).

We recommend that you ask for a reconsideration by informal conference so that you will be able to meet with someone from SSA to

go over your case with you. If you do not understand why SSA says you were overpaid, the SSA person will be able to explain it to you.

B. WAIVER

Request a waiver of the overpayment if you agree that you were overpayment but feel that the overpayment was **not your fault** *and* one of the following apply:

- It would be a financial hardship to pay the money back (you need the money to meet your ordinary living expenses). Be ready to submit bills to show that your monthly bills use up all of your income;
- In continuing eligibility cases, repayment would defeat the reason why SSI was established: This is where your income does not exceed the maximum SSI/SSP benefit limit plus \$85; or
- Repayment would be "against equity and good conscience"; for example:
- Where you relied on your payment and gave up a valuable right or changed your position for the worse,
- Where you had excess resources of \$50 or less, including deemed resources, and this is the sole cause of the overpayment. Your waiver request will be approved unless you knowingly or willfully failed to report your resources or the value of your resources timely or accurately; or
- Where the amount of overpayment \$500.01 or less. This can be used for each individual overpayment period. That is, separate overpayment periods are not added together to figure out if the overpayment is less than \$500.01.

Factors SSA will look at in considering whether you are "without fault" include whether you:



- Understood the obligation to return payments which you should not have received;
- Understood that you had an overpayment at the time it occurred;
- Understood SSA's reporting requirements. SSA will look at your reading ability, level of education, whether English is your second language, or whether you have a disability that makes it difficult to understand things;
- Agreed to report events affecting your benefit amount or eligibility;
- Were aware of events that should have been reported;
- Attempted to comply with reporting requirements;
- Complied with the reporting requirements;
- Had the ability and opportunity to comply with reporting requirements;
- Received incorrect or misleading information from an official source such as an SSA employee, publication etc...; and
- Were aware of the need to report an event but believed it to be so insignificant and would not have any material effect on your benefit amount or eligibility.

Factors which indicate fault include whether:

- You knew you gave SSA incorrect information;
- You received and cashed duplicate checks;
- You received a conditional payment and did not comply;
- Conditional payments are made by SSA pursuant to a written agreement with the SSI recipient where the recipient indicates a full understanding of the consequences (for example, to repay SSA) if certain conditions are not met. Let's

say that on January 1st, an SSI recipient agrees in writing to spend down resources to \$2,000 by March 31st and is advised that if he does not do this by March 31st he will have to back pay the money SSA made from January 1st through March 31st. If he does not spend down by March 31st, he will have an overpayment and will be found at fault; and

- You have had similar overpayments in the past.

NOTE: Fault or knowledge of another cannot be charged to the person asking for the waiver. For example, in the case of a child receiving SSI, the failure of her parent to report an event that can affect the child's SSI benefit amount or eligibility cannot be imposed on the child. The child will be without fault. This does not mean that the parent, as representative payee, is without fault and not responsible for repayment.

NOTE: Remember, you can ask for a waiver for any part of an overpayment. For instance, you did not report a change within the first 10 days of the following month but did so before the end of the month. You could ask for a waiver of all of the overpayment except for overpayment for month one.

The Waiver process:

SSA will review your request and make a decision. HINT: attach to the Request for Waiver form all documents you think will support your position (ex. bills, bank statements, correspondence from SSA...).

You will not have to pay the money back if SSA grants your waiver.

If SSA denies your waiver, you can ask that an ALJ hear your matter.

If you are denied a waiver because SSA says it would not be a hardship to pay back the overpayment and you have a change in circumstances

(your financial situation gets bad) you may be able to show that it would be a hardship to repay the overpayment.

A Request for Waiver Form and Instructions are attached to the back of this flyer.



When to file a Waiver:

There is no time limit. You can ask for a waiver at any time. You can also request a waiver after you paid off the overpayment.

C. WAIVER AND RECONSIDERATION

If you are not sure what to do, appeal and ask for a waiver.

D. COMPROMISED PAYMENT

You can offer to pay SSA a lesser amount than the totaled owed as payment in full. Factors SSA will consider include:

- Your ability to pay the entire debt;
- The possibility of adjustment now or in the future;
- The amount of your offer versus what you owe;
- Other compromised settlements you've had and the circumstances surrounding those; and
- The cost to SSA of taking you to court to recover the overpayment

E. BANKRUPTCY:

You can petition the bankruptcy court to include the SSI overpayment as an unsecured debt which can be discharged. If you want to go this route, you should consult with someone specialized in bankruptcy law.

How to Avoid an Overpayment

- Report all changes in your life that can affect the amount of Social Security benefits you receive or your eligibility. It is best to report changes to SSA in writing and keep a copy of what you mailed or dropped off. On your copy write down when you put it in the mail. If you report by telephone, write down the date, time, telephone number you called and the name of the person you talked to. NOTE: If you are receiving *both* Supplemental Security Disability Income (SSDI) and SSI, you must report any changes to both the SSI case worker and the SSDI case worker.
- Do not spend money you receive from SSA if you suspect you should not have received it. Report this to SSA. If SSA refuses to give you written confirmation, contact your U.S. Senator or Member of Congress and ask the person who handles Social Security issues at that office for help. If you are unable to return it to SSA, do not spend it. Keep it in your bank until the issue is resolved.
- Understand what In-Kind Support and Maintenance (ISM) is and how this "income" can affect your benefit amount or eligibility. For information on ISM see our publication on this subject (www.disabilityrightscsca.org) or go to SSA's website: www.ssa.gov.

Where to get information on avoiding an overpayment:

www.ssa.gov: Go to "Publications", then to "Benefit Publications", then to "Supplemental Security Income Program- SSI", then to:

- "SSI Spot lights" - Rights and Responsibilities, Reporting Your Earnings, Living Arrangements and 2) "How Workers' Compensation and Other Disability Payment May Affect Your Benefits."

Also

- go to "Publications", then to "Social Security Handbook", then to, "Table of Contents", then to "Supplemental Security Income", then to Section 2126

Sources of Law Regarding Overpayments and Waivers:

- Sections 1621(e) & 1631 (b)(1) of the Social Security Act, 42 U.S.C. Sections 1382j and 1383.
- Title 20 Code of Federal Regulations Sections 416.535, .537-.538, .543-.570, .550-.590.

Publications available at <http://www.disabilityrightsca.org/pubs>

- Employed Person: Reporting Changes in Earned Income to Social Security, Disability Rights California Publication No. 5205.01
- Independent Contractor or Self-Employed: Reporting Earned Income to Social Security, Disability Rights California Publication No. 5405.01

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