



*California's Protection & Advocacy System  
Toll-Free (800) 776-5746*

## SSI Overpayments

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This fact sheet provides information about Supplemental Security Income (SSI) overpayments: what they are, what can cause them, who is responsible for them, and what your options are if you have an SSI overpayment. This fact sheet does not address overpayments of other kinds of Social Security benefits, such as Social Security Disability Insurance (SSDI).

### **1. What Is An SSI Overpayment?**

An SSI overpayment is an SSI payment made to you by the Social Security Administration ("SSA") that was more than the amount SSA says is actually due to you.<sup>1</sup> The amount of the overpayment is the difference between what you received and the amount SSA says you should have received.<sup>2</sup>

### **2. What Can I Do if SSA Says I Have an Overpayment and I Think They Are Wrong?**

If SSA says you have an overpayment, you have a right to appeal. See questions 10, 12, and 18 below. Alternatively, you also have the right to request waiver of the overpayment. See questions 13-18 below.

### **3. What Can Cause an Overpayment?**

There are several ways that overpayments can happen. Sometimes overpayments happen because someone failed to report information that

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<sup>1</sup> 20 C.F.R. Section 416.525(a); 20 C.F.R. Section 416.537(a)

<sup>2</sup> 20 C.F.R. Section 416.538(a)

they were required to report to SSA. Sometimes people do the report that they are required to do, but SSA fails to make an adjustment in the SSI payment. See questions 4 and 5 for more information about reporting.

#### **4. What Reporting Should I Do to Reduce the Possibility of an Overpayment?**

You are required to report certain events that can affect the amount of your SSI check, or your eligibility for SSI, *within 10 days after the month the change occurs.*<sup>3</sup> It takes SSA one month from the date of your report to take whatever information you provided into account and adjust your check. For example, a change in January, which you report by February 10th, is supposed to be reflected in your March check. If SSA does not get the information in time, it cannot adjust your check, and you may end up with an overpayment.

You are required to report the following information:<sup>4</sup>

- Earned and unearned income;
- Changes in earned and unearned income;
- A change in your living situation, such as a change in residence or a change in the composition of your household;
- Divorce, marriage or separation;
- 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.

Failure to report events means that your SSI benefit amount will be based on missing or wrong information. If you told SSA about changes and SSA

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<sup>3</sup> 20 C.F.R. Section 416.708; 20 C.F.R. Section 416.714

<sup>4</sup> 20 C.F.R. Section 416.708

still says you were overpaid, see questions 13-18 below about requesting a Waiver.

## **5. Why is SSA Charging Me with an Overpayment Even Though I Did Report a Change in a Timely Manner?**

Unfortunately, sometimes, people report changes to SSA as explained in question 4, but SSA fails to take the change into account. For example, some people continue to receive a full SSI check after they return to work, even though they are due a reduced amount, or they are ineligible for SSI. Often they don't realize that they are being overpaid until they receive a notice from SSA months or even years later. In this situation, the person was actually overpaid, but through no fault of his or her own. A waiver may be the best option in this situation. See questions 13-18 below.

## **6. Who Can Be Responsible to Pay back an Overpayment?**

The following people can be responsible to pay back an overpayment:<sup>5</sup>

- You, the person who receives SSI;
- Your Representative Payee (Rep. Payee). For more information, see question 7 below;
- Under certain circumstances, your sponsor, if you are an alien receiving SSI<sup>6</sup>;
- Your spouse if during the period of the overpayment you were living together and SSA can't recover from you<sup>7</sup>; or
- Your estate and/or that of your Rep. Payee, spouse or sponsor.<sup>8</sup>

## **7. When Can My Rep. Payee Be Personally Liable for an Overpayment?**

If the overpaid amount was misused by your Rep. Payee, she/he will be personally liable.<sup>9</sup> If the funds were not used for your support or

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<sup>5</sup> 20 C.F.R. Section 416.570; POMS SI 02201.020 B.1

<sup>6</sup> 42 U.S.C. Section 1382j(e); POMS SI 02201.005.F

<sup>7</sup> 42 U.S.C. Section 1383(b); POMS SI 02201.005.F

<sup>8</sup> 20 C.F.R. Section 416.537(a); POMS SI 02201.005.F

<sup>9</sup> POMS SI 02201.005.G.2.c, d

maintenance, then the Rep. Payee will be solely responsible for the overpayment, regardless of whether he/she knew of the overpayment;<sup>10</sup>

If the SSI payments were used for your support and maintenance and your payee knew or should have known of the overpayment, then you and your Rep. Payee will both be responsible for the overpayment.<sup>11</sup> However, if the SSI payments were used for your support and maintenance, and your payee did not know about the facts surrounding the overpayment, you are responsible for the overpayment.<sup>12</sup>

## **8. What Does the Notice of Overpayment Have To Contain?**

You have a right to receive a written notice if SSA thinks you have an overpayment. The notice must include the following information:<sup>13</sup>

- Why there is an overpayment;
- The amount of the overpayment;
- The month(s) 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%);
- Your right to request a waiver and/or reconsideration (appeal) (see question 8 below)
- How to request a waiver and/or reconsideration (appeal)
- A notice will also be sent to your representative payee and/or a legal representative.

If a letter or a person from SSA tells you that you have an overpayment, but you did not receive the actual overpayment notice, ask SSA to send you one.

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<sup>10</sup> POMS SI 02201.005.G.2.b

<sup>11</sup> POMS SI 02201.005.G.2.

<sup>12</sup> POMS SI 02201.005.G.2.a

<sup>13</sup> 20 C.F.R. Section 416.558; POMS SI 02201.025

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

SSA will ask you to pay the full amount of the overpayment within 30 days. If you don't do this, and you are still eligible for SSI, then SSA will take the lesser of 10% of your total monthly countable income or your entire monthly income.<sup>14</sup> SSA will start taking money out 60 days after you receive notice of the overpayment. You can always negotiate a different rate of pay at any time. For example, you can ask SSA if you can pay back \$20 per month if that's all you can afford. However, where Social Security thinks there has been fraud, they will not agree to a reduced payment.<sup>15</sup>

## 10. Can I Appeal an Overpayment and Stop Reductions from Happening?

Yes, you can. To keep getting your SSI without any changes, you must send in your appeal **within 10 days of receipt of the notice of overpayment**.<sup>16</sup> 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 1<sup>st</sup>, SSA will assume you received it by January 5<sup>th</sup>. Your appeal must be filed by January 15<sup>th</sup>. If you appeal within 10 days, 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.<sup>17</sup> But the amount of your SSI will be reduced during the appeal. See questions 12 and 18 for information on filing an **Appeal**. For information on the steps in an appeal, see SSA's Publication on appeals, found at: <http://www.socialsecurity.gov/pubs/10041.html> .

## 11. What Can I Do To Avoid Having To Re-pay SSA for an Overpayment?

There are five different ways to try to avoid having to repay SSA: Request for reconsideration (Appeal), Waiver of overpayment recovery (Waiver),

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<sup>14</sup> 20 C.F.R. Section 416.570; 20 C.F.R Section 416.571

<sup>15</sup> 20 C.F.R. Section 416.571

<sup>16</sup> 20 C.F.R. Section 416.1336(b)

<sup>17</sup> 20 C.F.R. Section 416.1409

Appeal and Waiver (together), Compromised Payment, and Bankruptcy. Each of these options is explained below.

## **12. When Does it Make Sense for Me to APPEAL?**

File an appeal if:<sup>18</sup>

- The overpayment notice states your income incorrectly
- The overpayment notice states your benefit amount incorrectly
- 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 (i.e., if you are the representative payee, spouse, etc).<sup>19</sup>

We recommend that you ask for reconsideration by “informal conference” so that you will be able to meet with someone from SSA to go over your case with you.<sup>20</sup> If you do not understand why SSA says you were overpaid, the SSA person will be able to explain it to you.

If you miss the 60-day deadline to appeal, you may still appeal if you have “good cause.”<sup>21</sup>

## **13. What is a WAIVER, and When Does it Make Sense for Me to File a WAIVER?**

A waiver is a recognition that you really have an overpayment, and you request not to have to pay it back. You will not have to pay back the overpayment if SSA grants your waiver request.<sup>22</sup> If SSA denies your waiver request, you can appeal that denial.<sup>23</sup>

Request a waiver of the overpayment ONLY if you agree that you have an overpayment or you have lost an appeal challenging the existence of the

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<sup>18</sup> 20 C.F.R. Section 416.1408

<sup>19</sup> POMS SI 02201.005

<sup>20</sup> 20 C.F.R. Section 416.1413

<sup>21</sup> 20 C.F.R. Section 416.1411

<sup>22</sup> 20 C.F.R. Section 416.551

<sup>23</sup> 20 C.F.R. Section 416.557

overpayment. Filing a waiver may mean you are admitting that the overpayment exists.

When requesting a waiver, you must show that the overpayment was not your fault and one of the following applies:<sup>24</sup>

- 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;<sup>25</sup>
- If you are still receiving SSI, repayment would defeat the reason why SSI was established. This is true when your income does not exceed the maximum SSI/SSP benefit limit plus \$85;<sup>26</sup>
- Repayment would be “against equity and good conscience” for example, where you relied on your SSI payment, later found to be incorrect, and gave up a valuable right or changed your position for the worse;<sup>27</sup>
- 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;<sup>28</sup> or
- The amount of overpayment \$1000.01 or less.<sup>29</sup> 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 \$1000.01.

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 the overpayment for month one.<sup>30</sup>

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<sup>24</sup> 20 C.F.R. Section 416.550

<sup>25</sup> 42 U.S.C. Section 1383(b); 20 C.F.R. Section 416.553

<sup>26</sup> Id.

<sup>27</sup> 42 U.S.C. Section 1383(b); 20 C.F.R. Section 416.554

<sup>28</sup> 20 C.F.R. Section 416.556; POMS SI 02260.025.C.2; SI 02260.035

<sup>29</sup> 20 C.F.R. Section 416.555; POMS SI 02260.030

<sup>30</sup> 20 C.F.R. Section 416.551

You can get a Request for Waiver Form by going to the SSA office, calling SSA and asking them to mail you one, or from the SSA website at: <http://www.ssa.gov/online/ssa-632.pdf>.

#### **14. What is the Time Limit for Requesting a Waiver?**

There is no time limit for requesting a waiver. You can ask for a waiver at any time. You can even request a waiver after you paid off the overpayment.<sup>31</sup> After you file a request for waiver, SSA will review your request and either make a favorable decision or hold a personal conference with you if it cannot make a favorable decision.<sup>32</sup> You can also appeal a denial of a waiver.

#### **15. If I File a Waiver, How Will SSA Decide Whether I Am Without Fault?**

SSA will consider whether you are “without fault” by looking at whether you:<sup>33</sup>

- 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

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<sup>31</sup> POMS SI 02260.001.A.3

<sup>32</sup> 20 C.F.R Section 416.557

<sup>33</sup> 20 C.F.R. Section 416.552



- 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.

**NOTE:** If SSA cannot substantiate and document the cause of the overpayment, or cannot give you a full explanation of the facts about the overpayment, you must be found to be without fault.<sup>34</sup>

## **16. Under What Circumstances May SSA Deny a Request for Waiver Because It Decides I Am At Fault?**

You may be found “at fault” in connection with an overpayment when an incorrect payment resulted from one of the following:<sup>35</sup>

- You did not give SSA information that you should have given. For example, you did not report the information listed above in question 4;
- You knew you gave SSA incorrect information;
- You received and cashed duplicate checks;
- You have had similar overpayments in the past; or
- You received a conditional payment and did not comply. Conditional payments are made by SSA when you sign a written agreement with and understand the consequences (for example, to repay SSA) if certain conditions are not met.
  - **EXAMPLE:** On January 1<sup>st</sup>, an SSI recipient agrees in writing to spend down resources to \$2,000 by March 31<sup>st</sup> and is advised that if he does not do this by March 31<sup>st</sup>, he will have to pay back his SSI checks from January 1<sup>st</sup> through March 31<sup>st</sup>. If he does not spend down by March 31<sup>st</sup>, he will have an overpayment and will be found at fault.

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.

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<sup>34</sup> POMS SI 02260.015.B.1.b

<sup>35</sup> Id.

This does not mean that the parent, as representative payee, is without fault and not responsible for repayment.<sup>36</sup>

### **17. If I File a Waiver, How Will SSA Decide Whether It Would be a Hardship for Me to Pay Back the Overpayment?**

If you are getting SSI, then SSA automatically considers it a hardship for you to have to repay an overpayment. If you no longer get SSI, you will need to show that you cannot afford to repay the overpayment, based on your income and expenses. We recommend that you attach to the Request for Waiver form, all documents you think will support your position (example, bills, bank statements, letters from SSA). You do not need to attach these or complete certain questions about your income and expenses if you are still receiving SSI, because hardship is presumed.<sup>37</sup>

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.

### **18. Under What Circumstances Does it Make Sense for Me to File An APPEAL AND WAIVER (BOTH)?**

If you are not sure what to do, appeal within 60 days and ask for a waiver. SSA must process the appeal first.<sup>38</sup>

### **19. What is a COMPROMISED PAYMENT?**

You can offer to pay SSA a lesser amount than the total owed as payment in full.<sup>39</sup> Factors SSA will consider include:

- Your ability to pay the entire debt;
- The possibility of adjustment now or in the future;

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<sup>36</sup> SI 02260.010.B.3

<sup>37</sup> 20 C.F.R. Section 416.553

<sup>38</sup> SSA Emergency Message EM-10092, effective date 12/22/2010

<sup>39</sup> 20 C.F.R. Section 416.571

- 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

## **20. Can I File for BANKRUPTCY to Discharge an SSI Overpayment?**

Yes. You can petition the bankruptcy court to include the SSI overpayment as an unsecured debt which can be discharged.<sup>40</sup> If you want to go this route, you should consult with someone who specializes in bankruptcy law.

## **21. How Can I Avoid an Overpayment In The Future?**

- 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.
- 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 In-Kind Support and Maintenance (ISM) and how this "income" can affect your benefit amount or eligibility. For information on ISM see our publication on this subject at:

<https://www.disabilityrightsca.org/publications/ssi-applicants-and-recipients-not-knowing-about-in-kind-support-and-maintenance-can>

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<sup>40</sup> POMS SI 02220.040

NOTE: If you are receiving both Social Security Disability Income (SSDI) and SSI, you must report any changes to both the SSI case worker and the SSDI case worker.

## **22. Where Can I Get More Information on Avoiding an Overpayment?**

Visit SSA's website at [www.ssa.gov](http://www.ssa.gov). Go to "Get a Publication," then "SSI" on the drop-down menu, then select, "SSI Spotlights." You can choose which SSI Spotlights publication you would like to read. SSI Spotlights publications include, "Rights and Responsibilities," "Reporting Your Earnings," "Living Arrangements," and many others.

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