

# KNOW YOUR RIGHTS

## SOCIAL SECURITY OVER PAYMENT

### 1. What is an overpayment?

An overpayment occurs when the Social Security Administration (“SSA”) states that you received more benefits than you were supposed to receive.

### 2. Who may have to pay back an overpayment?

- The individual who receives the disability benefit
- The individual’s spouse
- Others receiving benefits on the individual’s earnings record
- The estate of the individual or spouse if they are deceased
- An alien’s sponsor (SSI only) and
- A representative payee. (A representative payee is a person who receives the disabled person’s benefits if he/she is unable to manage money on their own. For example, a parent is the “rep payee” of their minor child).

### 3. I’ve received an overpayment notice. What should I do?

- You can ask Social Security to waive the overpayment (by filing a Request for Waiver Form SSA-632-BK) AND/OR
- You can ask Social Security to reconsider by filing a Request for Reconsideration (FORM SSA-561-U2). You do this when

you think the amount of the overpayment is wrong.

- Forms are available at your local social security office or online at: <http://www.socialsecurity.gov/online/ssa-632.pdf> & <http://www.socialsecurity.gov/online/ssa-561.pdf>

### 4. How do I submit the forms?

- It is best to submit the forms in person. Call 1-800-772-1213 or go online to find out the location of the nearest Social Security Office.
- If something prevents you from submitting the forms in person, send the forms to Social Security by certified mail with a return receipt request from the post office. Be sure to keep a copy for yourself.

### 5. What do I have to prove in order for a waiver to be granted?

- To get the overpayment waived, you will have to show that (1) the overpayment was not your fault and (2) that paying the money back to Social Security would cause a financial hardship or would be against equity and good conscience.

**Lack of fault** can be shown by stating on your waiver form, for example, that you didn’t know you had to give SSA some information they claimed they needed; or you did comply with the rules (and handed in your paystubs) but Social Security did nothing; or you did not know the information you gave was incorrect; or you thought the payments you received were correct, etc.

- If SSA believes that you are without fault, then they look at the second part of your waiver request:

**Financial Hardship** is auto-matically proven if you receive some sort of public assistance (like SSI). It can also be shown by explaining to Social Security that repaying the overpayment will be a financial hardship on you by putting you into debt or making you unable to pay your ordinary living expenses. If you don’t receive public assistance, you will have to list all of your necessary expenses/bills on the waiver form to show that you can’t afford to pay Social Security back.

**Against equity and good conscience** can be shown by telling Social Security that recovering the overpayment from you would be extremely unfair. For example, if you changed your position for the worse or gave up a valuable right because you relied on what Social Security told you, then that would be unjust.

### 6. What if the amount I owe is very little:

- **SSI \$50 Rule:** Social Security will waive overpayments of \$50 or less.
- **SSI \$1000 Rule:** Where the overpayment is \$1000 or less and you file a request for reconsideration or waiver, Social Security will waive any collection of the overpayment (unless you were at fault in creating the overpayment).

### 7. What if Social Security says that I have money in the bank or some property that I do not have or that is not valuable?

- If you receive SSI, you are only allowed to have \$2000 in the bank or \$3000 if you are a disabled couple.
- You must show receipts or other documentation proving the money has been spent or is no longer available to you for

some other reason. (You cannot just give the money to relatives to hold for you). Remember, keep a copy of every thing you submit to Social Security!

- In the case of property (for example, like owning a house in another country), you can provide documents showing the property's value is lower than what Social Security claims.

#### **8. What if I lose my Request for Waiver or Reconsideration**

- If you disagree with the Waiver Decision, the next step of appealing is reconsideration. (However, in some cases, you have a right to a conference first at your local SSA office).
- If you disagree with the reconsideration decision: You can request a hearing with an Administrative Law Judge (ALJ). The Form can be downloaded at: <http://ssa-custhelp.ssa.gov/ci/fattach/get/2/>. After completing the form submit it in person to the nearest Social Security Office or mail it certified with a return receipt request from the post office.
- You can appeal the ALJ's decision to the Appeal's Council.
- After the Appeal's Council appeals are heard in Federal Court.

#### **9. What can happen after a final unfavorable decision?**

- For SSI recipients, SSA will recover the overpayment by taking up to 10% of your SSI each month. If this is a hardship on you, ask them to take out less.
- If you receive SSD or Disability Insurance, SSA can recover the overpayment amount by taking your entire check for a month or more. That is why you may request a modification due to hardship. For example,

ask them to only take 10% or 5% of you check because more than that creates a financial hardship on you.

- If you are not currently receiving benefits, over payments may be taken from future benefits when they become due.
- Remember, spending the money after receiving a notice of overpayment will not stop SSA from proceeding against you to recover the amount of the over payment.
- The Social Security Administration can make claims against you in civil court.
- Your IRS tax refunds can be seized.
- Credit reporting agencies can be notified.
- Private debt collection agencies may be used to collect the debt (overpayment) from you.



MAKING THE CASE FOR HUMANITY

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