

SOCIAL SECURITY AND SSI OVERPAYMENTS

1. WHAT SHOULD I DO IF I GET A NOTICE OF OVERPAYMENT?

You will get a notice of overpayment if the SSA thinks they paid more money than you should have received. If this happens, you can:

1. **File for a waiver of repayment** (Form SSA-632) if you agree that you were paid too much and you agree with the amount of the overpayment but the overpayment was not your fault and you cannot pay back the money. A request for a waiver asks SSA to free you from having to pay back the overpayment.
2. **File for reconsideration** if you think the amount of the overpayment is wrong or there was no overpayment.
3. **If you do not want your checks reduced** while you are appealing the overpayment, SSA should stop trying to collect the overpayment if you:
 - a. ask for **reconsideration or waiver** within 30 days of the date of the overpayment notice, or
 - b. ask for a **waiver** at a later time. If your request is more than 30 days after the date of the overpayment notice, SSA probably will have started trying to collect the overpayment, but they should stop when you make your request.

2. HOW DO I GET A WAIVER OF REPAYMENT?

To get an overpayment waived you must show:

1. You were not at fault; and
2. You cannot afford to pay back the money or you can show that, based on the facts in your case, it would be unfair for SSA to require you to pay back the money.

You can ask for a waiver at any time. You can get the form you need at your local Social Security office. Ask for form **SSA-632 (Request for Waiver of Overpayment Recovery or Change in Repayment Rate.)**

3. HOW DO I SHOW THAT I WAS NOT AT FAULT?

The most important part of the Request for Waiver is **Section I – Information About Receiving the Overpayment**. SSA will look at this statement very carefully.

Your statement should explain:

- Whether or not you knew about the events causing the overpayment
- Any problems you had remembering or understanding things
- Any physical/mental problems which kept you from reporting information to SSA

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- Whether or not you were confused about SSA rules or misunderstood anything they told you

You will be considered “*at fault*” if:

- You didn't report to SSA information that you knew (or should have known) was important
- You gave information to SSA which you knew (or should have known) was wrong
- You didn't return a check which you knew (or should have known) was wrong

Make your statements detailed and honest. Do not limit yourself to the space on the form. Attach any extra pages you need in order to fully explain why the overpayment wasn't your fault.

Even if SSA finds that the overpayment was not your fault, they will require you to pay it back unless they also find that:

- You do not have the ability to repay the overpayment
- It would be unfair to require you to repay the overpayment

4. HOW DO I SHOW I HAVE NO ABILITY TO PAY?

To prove you can not repay the overpayment, you must show that your monthly expenses use all your monthly income and that you have no other resources (e.g. bank accounts) to pay it back. It is *very important* to list where *all* your money goes under "**Household Expenses**" on the form.

Small expenses, such as laundry costs, haircuts, etc., are important and should be listed under "**Other Expenses.**" Also, point out the items you go without since you can not pay for them.

If you have money in a bank account, you must explain why the money can not be used to repay the overpayment (for example, you need the money to pay bills that you owe or your money is being saved for new dentures.) Use the section called "**Remarks**" on the last page of the form to explain why you cannot use your money to pay the overpayment.

5. HOW DO I SHOW IT WOULD BE UNFAIR FOR SSA TO REQUIRE I REPAY THEM?

To prove it would be unfair to require you to repay the overpayment, you must show SSA that your case is unusual and compelling. SSA must look at all the facts and circumstances of your case and decide if it would be unfair to make you pay back the overpayment.

Some examples of situations where it may be unfair to collect on overpayments are:

- You gave up a right or changed your position for the worse because you relied on the amount of overpaid benefits (for example, you lost public housing or rented a more expensive apartment)
- You have physical, mental, or language limitations that affect your ability to understand the SSA rules

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6. HOW DO I APPEAL A WAIVER DENIAL?

If your request for waiver is denied and you disagree, you should ask for **Reconsideration of the Waiver Denial**. *You have 60 days from the date you get the decision to ask for reconsideration. But, if you don't want your checks reduced at this time, you must request reconsideration within 30 days.* If you miss the 60-day limit without a very good reason you will not be able to appeal the decision.

It is best to have a face-to-face conference with SSA to explain in person why you were not at fault and cannot repay the overpayment. Ask for a meeting between you, your witnesses, and an SSA representative.

Ask the SSA representative to tell you exactly why your request for waiver was denied. Explain why you think Social Security is wrong. You can also give the SSA representative another written "without fault" statement that has facts you forgot to mention in your request for waiver.

If your request for waiver is denied after this reconsideration, you have a right to a hearing.

SSA can reduce your checks to recover the overpayment while you are waiting for a hearing.

7. HOW DO I FILE FOR RECONSIDERATION OF THE OVERPAYMENT?

If you do not think you were overpaid or if you think the amount of the overpayment is wrong, you should request reconsideration of the overpayment itself. You have 60 days from receiving an overpayment notice to request reconsideration. If you miss the 60-day limit without a very good reason, you will lose your chance to appeal. (You can still request *waiver* at any time.)

You can explain in writing why you think there was no overpayment or why the amount of the overpayment is wrong. You can also ask for an appointment to talk to SSA.

If your request for reconsideration is denied, you have a right to a hearing before an Administrative Law Judge. To get this hearing, you must either fill out a **Request for Hearing By Administrative Law Judge (Form HA 501-U5)** available at the Social Security office or write a letter requesting a hearing.

8. HOW DOES THE SOCIAL SECURITY ADMINISTRATION COLLECT THE OVERPAYMENT?

The Social Security Administration has several ways to collect overpayments:

1. The most common way is to reduce your monthly or lump sum retroactive Social Security or SSI benefits until the overpayment is paid back.
 - a. If you receive SSI, overpayments are usually collected by reducing your monthly benefits by 10% of your total monthly income.

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- b. For Social Security overpayments, SSA can stop your entire check until the overpayment is paid back.
2. If the overpayment was not intentional on your part, and you can't pay your bills without your benefits, SSA will usually reduce the amount they collect each month.
 - a. You should file a request for a waiver in order to do this. You can make payment arrangements with SSA by speaking to a claims representative and telling him or her how much you can afford to pay each month. You must pay back at least \$10 each month (unless the entire overpayment is waived.)
 3. Payment arrangements can be made with SSA. Payment arrangements are also available for people who no longer receive SSI or SSD benefits. You can ask SSA to "compromise" the overpayment and make a lump sum payment that is less than the total amount you owe.
 4. SSA can take you to court and sue you to collect the overpayment.
 5. If the overpayment is due to fraud on your part, SSA can ask the Attorney General's office to prosecute you for fraud.
 6. SSA can ask the US Department of the Treasury to do an "Administrative Offset". This means if the US government owes you any money, such as a tax refund, the money can go to SSA to repay your overpayment. *SSA will only do this if you are no longer on SSI or SSD.*

7. SSA can use other methods to collect overpayments such as garnishing your wages if you work and notifying credit reporting agencies you owe money.
8. SSI overpayments can be collected from your SSD benefits, and SSD overpayments can be collected from your SSI benefits.

9. WHO CAN SSA COLLECT THE OVERPAYMENT FROM?

SSA can collect Social Security overpayments from anyone who receives benefits based on the overpaid person's account. For example, if you have an SSD overpayment and your children get benefits based on your account, SSA can collect the overpayment from you and your children.

SSI overpayments can be collected from the person who receives SSI. It can also be collected from the husband or wife if that person was also on SSI at the time the overpayment occurred and was getting benefits at the couple's rate.

For more information, call the **Public Benefits Hotline (1-800-520-5292)** or your local Legal Aid Services Office for possible advice or representation. Go to www.oregonlawhelp.org for a directory of legal aid programs.

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