

Social Security Overpayments

What You Can Do When the Social Security Administration Says You Owe Them Money

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What is an Overpayment?

An Overpayment occurs when the Social Security Administration (SSA) sends you a benefits check that they should not have sent to you or sends you an amount that is more than what you should have received.

Overpayments can be caused by many different events. Some examples are a change in your living situation, getting married, a change in your disability status, an increase in income, or a return to work. Usually, the larger the delay in reporting these events and posting them to your account, the larger the overpayment amount in your notice.

The overpayment recovery process must begin with a formal **Notice of Overpayment** that is sent to you by SSA. This notice must contain:

- The amount of the overpayment
- A detailed, plain language explanation of the cause of the overpayment
- Repayment options
- A complete statement of your appeal rights

Do Not Ignore the Notice of Overpayment!

You have the right to challenge an overpayment but there may be time limits. You must act quickly.

You have three options to respond to a Notice of Overpayment.

1. **Filing a Request for Reconsideration** - Consider this option if you believe that the amount is incorrect or you believe that you were not overpaid. This appeal seeks to have the overpayment and the amount computed again.
2. **Filing a Request for Waiver** - Consider this option if you believe that the overpayment was not your fault and you cannot afford to repay it. This appeal seeks to have the overpayment forgiven.
3. **Negotiating a Payment Plan** - Consider this option if you must make a payment while appealing or if you are not going to appeal (see #1 and #2 above). This option seeks to establish an agreeable, affordable payment plan.

If you do not respond to an overpayment notice, then SSA will typically begin to recover the overpayment by:

- Deducting 10% of your SSI check until the overpayment has been paid back.
- Stopping your SSDI check until the overpayment has been paid back.

1. Filing a Request for Reconsideration

(SSA Form 561-U2 or letter)

The form can be obtained on-line at <http://www.socialsecurity.gov/online/ssa-561.pdf> or from your local Social Security office. At <http://www.socialsecurity.gov/online/ssa-561.html>, you will find information on how to complete the form.

- **This request must be filed within 60 Days**, but should be filed within 30 days to stop collection efforts. (5-day mailing rule applies) If you mail the request at least 5 days prior to the filing date and it does not arrive in time, SSA will still accept it.
- File your request immediately to prevent money being taken out of your benefits check.
- Ask that no money be withheld from your Social Security check until a final decision is reached.
- State that you disagree with the amount of the overpayment or that you disagree about being overpaid.
- Utilize SSA Work Incentives including Impairment Related Work Expenses (IRWEs).
- Utilize information from your Work Incentives Planning and Assistance (WIPA) Project, who might be able to provide supporting evidence.
 - Are the SSA calculations correct?
 - Did SSA properly determine the Trial Work Period, Extended Period of Eligibility, etc.?
 - Did SSA know about and consider IRWEs, Subsidies and Special Conditions, and other work incentives?
 - Could the individual have reapplied for benefits during the overpayment period?

Additional steps for pursuing this option:

- The reconsideration decision can be appealed. The appeal rights will be listed in the decision notice you receive from SSA. As with your other appeal rights, these rights are time limited and, in order to receive these protections, you must act immediately.
- If your reconsideration is denied, you can appeal to an Administrative Law Judge (ALJ) within 60 days. However, collection can begin at this appeal stage.
- Negotiate a reasonable payment plan while your ALJ hearing is pending.
- If your request is denied at the ALJ level, you can appeal to the Appeals Council within 60 days.
- If your request is denied at the Appeals Council level, you can appeal to Federal Court within 60 days.

2. Filing a Request for Waiver

(SSA Form 632-BK)

The form can be obtained on-line at <http://www.socialsecurity.gov/online/ssa-632.pdf> or from your local Social Security office. At <http://www.socialsecurity.gov/online/ssa-632.html>, you will find information on how to complete the form.

- You may file at anytime, but should file within 30 days to stop collection efforts.
- File your request immediately to prevent money being taken out of your benefits check.
- Ask that no money be withheld from your Social Security check until a final decision is reached.
- You must prove to SSA that the overpayment was not your fault and you cannot afford to repay the money owed to the SSA.
- In most circumstances, the SSA will determine that you cannot afford to repay the overpayment if your income is only SSI or if you can show that all of your income is needed to meet ordinary living expenses.

Additional steps for pursuing this option:

- If the waiver is not immediately approved, a personal conference will be held. You must attend the personal conference or the waiver will be denied, in almost all cases.
- If your waiver is denied, you may file a Request for Reconsideration within 60 days. However, if it is an SSDI overpayment and you attended the personal conference, you appeal to an Administrative Law Judge (ALJ) within 60 days and skip this step.
- If the Request for Reconsideration is denied, you can appeal to an ALJ within 60 days.
- If the waiver is denied at the ALJ level, you can file an appeal with the Appeals Council within 60 days.
- If the waiver is denied at the Appeals Council level, you can appeal to Federal Court within 60 days.

3. Negotiating a Payment Plan

- Request a payment plan from your local SSA Office.
- Submit a suggested monthly payment amount that you are sure that you can afford.
- Submit an income and expense statement that supports your proposal.
- Ask that no money be withheld from your Social Security check until a final decision is reached.
- If you are unable to make the full payment under the agreement, contact SSA to let them know.
- If you have to make payments and want to continue an appeal (a request for reconsideration or a request for waiver), do not waive your appeal rights in your payment agreement!

How does SSA collect an overpayment?

For SSI, there is the 10 percent of countable income rule. Generally, SSI beneficiaries will have their check reduced by 10 percent of their countable income to pay for the overpayment. Thus, if a person continues to be eligible to receive an SSI check, it will be reduced by 10% unless the person negotiates a different payment plan.

SSDI beneficiaries can and will have all of their check taken to pay for the overpayment if they do not deal with the situation by filing a request for reconsideration, a request for waiver, or working out a payment plan.

Undue Hardship Rule: While recovering the overpayment, SSA may cause undue hardship, which is a situation in which you cannot meet ordinary and necessary living expenses. Ordinary and necessary living expenses include food and clothing, rent, mortgage, utilities, maintenance, insurance, taxes, medical expenses, expenses to support others (legal responsibility), and other expenses reasonably considered part of the standard of living. If you can prove hardship, SSA will negotiate a lower monthly payment. SSI beneficiaries automatically meet this test. SSDI beneficiaries, however, must prove their hardship and that includes having resources of less than \$3,000. Taking living expenses into account, Social Security will be asking if there is any money left over to pay back this overpayment.

Finally, SSA may use some other methods of recovering overpayments, especially if you are no longer entitled to a monthly payment. Two of these will be mentioned briefly.

- The first one is your tax refund. SSA follows specific procedures before taking your tax refund. The procedures include giving you 60 days notice. That allows you time to go in and deal with the overpayment so that your tax refund is not taken.
- Effective January 22, 2004, the Social Security Administration (SSA) may, in certain circumstances, garnish a person's wages in order to collect overpayment amounts owed. However, the situations under which Social Security can take such action are limited and there are several steps that can be taken by individuals to avoid this garnishment altogether. Individuals who worked out a payment plan with Social Security and are current with that payment plan cannot have their wages garnished. The wage garnishment rule is set up specifically for those individuals who left the system and have ignored repeated attempts to collect the overpayment. And even within these wage garnishment rules, just like with the tax refund, again, SSA gives individuals an opportunity, 60 days, to do something about their overpayment issue.

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Alternative Formats Available Upon Request. DRN uses Language Line as an interpreter services for persons who are non-English speaking. When you call DRN the person answering the phone may not speak your language. Please, state the language that you speak and wait a few minutes until you can be transferred to an interpreter. You will hear music in the background until the interpreter is connected.

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