

SOCIAL SECURITY OVERPAYMENTS A Self-Help Guide

1. What is an overpayment?

- If you are being charged with an overpayment, it is because the Social Security Administration (SSA) believes that you received benefits when you were not eligible to receive them. SSA must notify you in writing of the overpayment before taking or withholding any money from you.

2. How is the amount of overpayment calculated?

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

3. What causes an overpayment?

- The following are common reasons for overpayments. This is not a complete list of reasons. The reasons are different depending on whether you receive SSI, SSDI, or both.
 - “**SSI**” is Supplemental Security Income, which is a needs-based benefit program for people with disabilities who are unable to work.
 - “**SSDI**” is Social Security Disability Insurance, which is a benefit for people with disabilities who are unable to work, who have a significant work history and who have paid into the Social Security system via taxes on their earnings.

A. If you receive either SSI or SSDI:

- If SSA determines that your disability ended, either because your medical condition improved and you would now be able to work, or because you actually returned to work.
IMPORTANT: SSA may have sent you a notice that says your disability ended, and then a notice about an overpayment. In this case, you may first need to appeal SSA’s determination that your disability ended. You can call Seattle Community Law Center for advice about this situation.
- If SSA believes that you committed fraud with regard to your disability benefit. In this case, they may charge you an overpayment for the entire period you received benefits.

B. If you receive SSDI:

- If you return to work, there are rules you need to know if you decide to return to work:
 - Trial Work Period: The first nine non-consecutive months you earn over \$750 (2013 amount) are called your Trial Work Period. You are entitled to a full SSDI benefit during this period. The “Trial Work Period” begins the first month you earn over \$750 (2013 amount) per month. After that, each month you earn \$750 or more will count as a trial work month. Once you have accumulated nine trial work months, your trial work period ends.
 - Extended Period of Eligibility: The following 36 months are called the “Extended Period of Eligibility” (EPE). During this time, SSA will need to know if you earn more than \$1040 (2013 amount), which is the amount considered to be “Substantial Gainful Activity” or “SGA”. During this period, if you earn over the SGA level in one month, you are not eligible for an SSDI benefit for that month.
 - After the 36-month Extended Period of Eligibility ends, your SSDI benefits will be terminated all together as of the first month you earn over the SGA level.

C. If you receive SSI:

- Because SSI is a needs-based program, there are many rules about income and resources. Thus, it can be helpful to think of it as a month-to-month program. SSA can examine your income and resources each month. Any month you have income, your benefit will be affected. Any month you have resources over the resource limit, you will not be entitled to any amount of benefit.
- It is your responsibility to report an event to SSA within 10 days after the end of the month the event occurred. If SSA does not get the information in time, it cannot adjust your check. If you do not tell SSA, this will cause SSA to figure your SSI benefit amount on incomplete or incorrect information. This in turn could cause an overpayment.
- If you did not know you had to report an event, or if you did report the event and SSA did not act on the information, see the section below on requesting a waiver.
 - A change in January, reported by February 10th, is supposed to be reflected in your March check.
- The following is a list of a few events that can have an impact on your benefit:
 - ✓ Earned income (wages)
 - ✓ Unearned income (settlement, inheritance, L&I benefits, Unemployment Insurance, cash gifts, child support)
 - ✓ Changes in living situation, such as a change in address or change in composition of your household (a child moves out, or you move in with family and do not have to pay rent)
 - ✓ If you tell SSA you are single, but hold yourself out the public as married
 - ✓ Divorce, marriage, or separation
 - ✓ Becoming a fleeing felon: someone who flees to escape prosecution; flees after a conviction or to avoid giving testimony; or someone who has an outstanding arrest warrant for an offense related to “fleeing”
 - ✓ Being admitted to a physical or mental health facility when you do not have a home to go back to or when your doctor thinks you will be there for more than 90 days
 - ✓ Traveling outside of the USA for more than one calendar month.

4. Who is responsible for an overpayment?

- You, the overpaid person.
- Your Representative Payee (“payee”) –
 - If the overpaid amount was misused by your payee, then 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 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 payee will be solely responsible for the overpayment, regardless of whether she/he knew of the overpayment.
- In certain circumstances, your sponsor, if you are an alien receiving SSI.
- Your spouse, if during the period of overpayment, you were living together and SSA cannot recover from you.
- Your estate, and/or that of your payee, spouse, or sponsor.

5. What information does the notice of overpayment have to contain?

- The reason for the overpayment;
- The amount of the overpayment;
- The months in which the overpayment occurred, including a list outlining what the benefit amount you actually received, and the amount you should have received;
- The rate of adjustment to your benefit check, if you do not pay in full;
 - If you receive SSI, the maximum SSA can withhold from your benefit is 10% of the full SSI benefit amount until the overpayment is recovered. The current SSI benefit is \$710, so the maximum recovery is \$71 per month.
 - If you receive SSDI, SSA has the right to recover 100% (all!) of your monthly benefit until the overpayment is recovered.
 - In both cases, you can request a lower rate of repayment.
- The right to request a waiver and/or to appeal by requesting reconsideration; and
- How to request a waiver or reconsideration.
- The notice will also be sent to your rep payee and/or legal representative.

6. What if my notice does not contain the required information?

- You can File Form 561 (Request for Reconsideration – see Section 8(A)) stating that the notice is deficient (state what you feel is missing) and that SSA cannot recover until they provide you with a notice that is sufficient.
 - You will likely need to follow up on this request to make sure you get the information that SSA is required to give. Start keeping a record of your interactions with SSA now. Also, keep an eye on appeal deadlines. If you get close to the 60-day deadline to appeal the notice, you may want to go ahead and make your appeal based on the information you do have.

- Social Security’s operating manual states that if notice is deficient (notice was not sent; notice was not received at least 30 days before adjustment action, or notice content is inadequate), SSA should:
 - Send a new notice
 - Issue any benefits prematurely withheld (i.e. repay monies that were withheld to recover the overpayment)

7. What happens after SSA notifies me of an overpayment?

- SSA will ask you to pay the full amount within 30 days. If you do not, then they will begin recovery efforts after another 30 days have passed.
 - If you are still receiving some amount of monthly benefit, SSA will propose adjusting your benefit rate until the overpayment is paid off (in other words, SSA issues you a lower amount of monthly benefit and uses the difference to repay your overpayment).
 - If you are no longer receiving a monthly benefit, then SSA will send you billing statements and will want you to enter into a monthly repayment plan.
- However, if you appeal the overpayment, SSA will either not begin recovery efforts, or they will stop their recovery efforts if they already began them. See Section 13.
- In some circumstances, if you appeal within 10 days, your benefits will continue at their usual rate until a decision is made in your case.
 - During Continuing Disability Reviews of either SSI or SSDI beneficiaries, SSA reviews your medical condition to see if it’s improved. If SSA sends you a notice that your medical conditions have improved and you would now be able to work, please see our Self-Help Guide to Continuing Disability Reviews. In these cases, you can get your benefits continued if you appeal SSA’s determination within 10 days.
 - In certain SSI cases, if you appeal SSA’s determination within 10 days, your benefits can continue at their previous rate.
- SSA figures you will “receive” the notice no later than 5 days after the date on the notice.
 - Example: if your notice is dated January 1st, SSA will assume you received it by January 6th. Thus, your appeal must be filed by January 16th to meet a 10-day deadline for continuing benefits.

Quick Tip:

If you get a notice with appeal rights, and you disagree with the notice, appeal it! Read the notice carefully to find out which form to file and deadlines that apply.

If you don’t get a response to one of your appeals, follow up in-person at your local SSA office every 30 to 60 days to find out the status of your appeal.

Quick Tip:

You are your own advocate. Sometimes it is hard to tell what information is going to be important to your case. Now is the time to start building your case:

- ✓ Put together a file folder and notebook where you will keep all of your SSA correspondence
- ✓ Write out a timeline of events that are key to your case
- ✓ Write out a timeline of conversations with SSA representatives
- ✓ Keep date-stamped copies of everything you submit to SSA. If SSA loses your information, you want to be able to provide it again and to prove when you originally submitted it.
- ✓ Keep the number slips that are printed out at the SSA office when you sign in for an appointment. On the slip, write the name of the representative you met with. Now you have a record of who you met with and when.

8. What can I do to avoid repaying SSA?

- Whatever you do, act promptly! Do not just put the notice aside, even if the overpayment sounds absurd to you. If you ignore the notice, SSA can start taking money out of your future checks, report the debt to credit bureaus, garnish your wages, or intercept (take) your federal income tax refunds!
- You may want to file BOTH a request for waiver AND for reconsideration. For example, you may think that SSA did not overpay you (SSA should reconsider its decision), but even if it did, it was not your fault and you cannot afford to repay it (SSA should waive the overpayment). IF you request ONLY a waiver, you are admitting that the overpayment is accurate, and are simply asking that SSA not recover it from you.
- If you file both of these appeal options, you will need to keep track of each of them separately and make sure to observe the deadlines on each for timely appeals.

A. Request Reconsideration (appeal)

- When to request reconsideration:
 - You do not agree with the explanation of the overpayment (ex: SSA's rules are not being applied correctly to your case)
 - You do not agree with the amount of the overpayment (ex: SSA's calculations are wrong)
 - You are not responsible for repayment (ex: if you are the payee, spouse, etc.)
- How to request reconsideration:
 - **File SSA Form 561 "Request for Reconsideration"**. You may request Form 561 at your local office, or call the 1-800 number to request that they send one to you. You may also get the form online at www.ssa.gov.
 - We recommend that you check the box for "Informal Conference" so that you can meet with an SSA representative to go over your case with you. If you do not understand why SSA says you were overpaid, the representative should explain it to you.
 - If you check the box for "Case Review," an SSA Representative will review the papers in your file and make a new decision based on this review. You will not have the opportunity for a face-to-face meeting.
 - If you check the box for "Formal Conference," you can bring witnesses to help present your case to the SSA representative. This review is only used if your benefits have been stopped or lowered for non-medical reasons.
 - **You have 60 (+5) days from the date of the notice of overpayment to request this.** If you have a good reason for missing the deadline, you can explain this reason and request reconsideration after 65 days have passed.
 - When you turn in the form, you should also give SSA any evidence that shows you were not actually overpaid.
 - Keep a copy of everything you submit to SSA because things get lost and you need to be able to prove that you submitted your appeal!

B. Request a Waiver

➤ When to request a waiver:

- If the rules seem to be applied correctly, and the calculations are correct, BUT you feel that the overpayment was not your fault and it would be unfair to have to repay it. When you ask for a waiver, you are asking SSA not to collect the overpayment from you – essentially to forgive the debt.

➤ How to request a waiver:

- File SSA **Form 632 “Request for Waiver of Overpayment Recovery or Change in Repayment.”** You may request Form 632 at your local office, or call the 1-800 number to request that they send one to you. You may also get the form online at www.ssa.gov.
- **IMPORTANT: There is no time limit on requesting a waiver.**
- Your waiver request will not be considered complete until you have submitted documentation of your monthly income and expenses.
- Keep a copy of everything you submit to SSA because things get lost and you need to be able to prove that you submitted your appeal!
- **IMPORTANT: Automatic Waivers for Small Overpayments**
 - “Administrative or Automatic Waiver”: SSA must waive your overpayment if you request waiver and the overpayment is \$1000 or less.
 - You should be able to use Form 561 (Request for Reconsideration) to request an administrative waiver. This will save a lot of paperwork, and the agency is supposed to treat a reconsideration request as a waiver request in this case.
 - If your request for this “administrative waiver” is denied, you can appeal, reminding the SSA representative that you qualify for an automatic waiver because recovery would “impede efficient administration of the Social Security Act.”
 - **Note:** if you have prior overpayments for the same reason as your current overpayment, SSA may not administratively waive the current overpayment in such a situation.

➤ What to expect once you file a waiver request:

- Once you submit a completed waiver request, SSA must stop any recovery efforts until they issue a written decision on your request!
- It can take quite a while for the local SSA office to make a decision on your waiver request. It is a good idea to take notes about dates and names of people you talk to at SSA about your waiver request. It is a good idea to follow up with your local SSA office, preferably in person, every couple months to check the status of your waiver request.

➤ If SSA wants to deny your request, it must set up a **Personal Conference**.

- **File Review:** SSA is required to allow you to review your file 5 or more days prior to the personal conference. You can request copies of all the information on which they are basing their decision. Then take some time to gather more evidence to support your arguments.

- **Personal Conference:** At the personal conference, you have a chance to discuss the information in SSA’s file and to bring any additional evidence that supports your request. Importantly, stay calm and focus the conversation on the reasons why you believe you are not at fault and why it would be a hardship to repay the overpayment.
- After the personal conference, the SSA representative will send you a written decision. You cannot make the next level of appeal unless you have a written decision. You may need to follow up with the claims representative to get a written decision.
- In order to grant a waiver, SSA must decide two different issues.
 - **First, you must show that you were “without fault” in causing the overpayment.** It does not matter if SSA had any fault. It only matters that you were completely without fault. The agency considers your situation at the time of the initial overpayment determination. Think about what SSA will say in your case and prepare your responses ahead of time. For example, if SSA is going to say that you failed to provide material information or that you should have known you weren’t due benefits, what will you say in response?
 - According to SSA, you are at fault if:
 - You failed to provide information to SSA that you knew, or should have known, was material (important) with regard to your benefit
 - You made an incorrect statement that you knew, or should have known, was incorrect
 - You failed to return a benefit payment that you knew, or should have known, was incorrect.
 - SSA will look at these factors in considering fault, so make sure to list any of these that apply to you:
 - Age
 - Reading ability
 - Level of education
 - Whether English is your second language
 - And whether you have a disability that makes it difficult to understand things. It can be helpful to explain how your disability, medication side effects, or other impairments or affect your ability to understand, remember or follow-through on rules and directions. You would want to explain mental health diagnoses, medication side effects, the effect of pain, learning disabilities, memory problems and other health issues that affect your understanding and memory.
 - **Second, you must ALSO show that SSA’s recovery of the overpayment (making you pay it back) would either:**
 - **“Defeat the purpose”** of the Social Security Act. This means that it would be a financial hardship to pay the money back. This is based on your financial situation at the time of adjudication. Thus, this may change over time.

- This is shown if all of your income and resources are needed to meet your necessary and ordinary living expenses (food, clothing, rent/mortgage payments, utilities, insurance, taxes, transportation, medical expenses, support obligations, and other miscellaneous expenses which can reasonably be considered as part of your standard of living). Basically, if you have some extra money each month, or if you have some extra money in your bank account, then SSA will want you to use that extra money to repay the overpayment.
- Part of Form 632 asks for financial information
 - If you currently receive SSI, you do not need to give financial information. The rules assume that you cannot afford to repay. You can just write “I am currently receiving SSI.”
 - If you receive SSDI, or if you no longer receive any benefits from SSA, you will need to list all your income and expenses, and provide documentation of all of them. SSA will likely require your last two paystubs (or last year’s tax return, if self-employed); current lease or receipt for rent paid; two most recent bills for utilities (gas, electric, phone, cable, internet); current bill for insurance premiums; most recent statements for credits cards and other debts; most recent statement for bank accounts or mutual funds; and certificates of any stocks or bonds.
- Or, recovery of the overpayment would be “Be against equity and good conscience”. This is shown if you have given up a valuable right or changed your position for the worse because you relied on your benefit payment.
 - For example, if SSA sent you a letter awarding you additional benefits, and based on that letter, you purchased a computer which you cannot return, and it later turned out that you were not entitled to additional benefits. It would be unfair to require you to repay the overpaid money because you relied on incorrect information.

WAIVER CHECKLIST

- _____ Complete Form 632
- _____ Determine arguments for why you are not at fault:
 - What is the context for your overpayment situation: Age, aspects of disability, limited education, language issues
 - What will SSA try to argue – Failed to report; gave incorrect information; failed to return checks. Why do you think you are not at fault?
- _____ Compile your expenses and income information, including documentation.
- _____ Submit Form 632 packet to the local SSA office. Get date-stamped copy.
- _____ Follow up on the waiver request every 60 days or so, preferably in person, keeping track of who you talk to and what they say.
- _____ Attend file review
- _____ Attend personal conference – focus the discussion on why you are not at fault and why it would be a hardship to repay.
- _____ Continue to follow up until you have a written decision.
- _____ If denied, appeal within 60 days (+5 for mailing) and get a date-stamped copy of your appeal when you submit it (more detail below).

9. What if my waiver or reconsideration request is denied?

- SSA can start recovery efforts again, and can continue to do so even if you appeal again. Later, if an ALJ (Administrative Law Judge) grants your waiver or reconsideration request, SSA should pay back any amount they already recovered from your benefit.
 - If you receive a monthly benefit and the amount of recovery from your monthly benefit is too high, you can ask for a lower repayment amount. See Section 13.
 - If you no longer receive a monthly benefit, it is a good idea to set up a monthly repayment plan with your local office or SSA's centralized debt collection office (via 1-800 number). Let them know you are appealing again, and you are only setting up the repayment plan for the period while you are waiting to see a judge. Section 13 gives more information on negotiating a repayment plan.
 - **NOTE:** there is no time limit on requesting a lower repayment amount, except under certain circumstances such as a finding of fraud.
- You can appeal again. The written denial will explain your option to appeal the denial. Both options require that you file the correct form within 60 (+5) days of receiving the denial notice. If you have a good reason for missing the deadline, you can explain this reason and request either option after 65 days have passed.
 - In some cases, you will have to file SSA Form 561, "Request for Reconsideration" and ask that SSA reconsider its denial of your waiver request. In this case, a different worker will review your request and make a decision.
 - In other cases, you will have to file SSA Form HA501, "Request for Hearing before an Administrative Law Judge"
 - You may request Form 561 or Form HA501 at your local office, or call the 1-800 number to request that one be sent to you. You may also get the forms online at www.ssa.gov.
- **NOTE:** You can request a new waiver anytime in the future, if your financial circumstances change (meaning that you can no longer afford to repay). However, if the local SSA office already decided you were at fault during a previous overpayment request, and you did not appeal that decision to an ALJ, the local office will likely point to the decision that you are at fault and deny your waiver request.

Quick Tip

Remember, if you filed both a waiver and a reconsideration request, you might receive a decision on one first (likely the reconsideration request). If you disagree with the first decision, make sure to appeal this denial within the 60 + 5 day deadline.

- Then keep a watch out for a decision on your other appeal (likely the waiver request) and make sure to appeal that one within the 60 + 5 day deadline.
- This way, you preserve both issues (whether the overpayment is accurate *and* whether you qualify for waiver) for the judge, and hopefully the ALJ will combine the issues into one hearing.

10. What should I expect if I request a hearing in front of an ALJ?

- Your SSA file will be sent to SSA's hearing office. This is called the Office of Disability Adjudication and Review (ODAR). Once the hearing request is filed, it generally takes another 12 months for a hearing to be scheduled.
- It is important to notify ODAR if your address or phone number changes, since ODAR is the office that will contact you with the time and date of your hearing.
 - **Seattle ODAR:**
Address: 300 Fifth Avenue, Suite 500, Seattle, WA 98104.
Phone: 888-366-6144
 - **Tacoma ODAR:**
Address: 2413 Pacific Avenue, Suite 200, Tacoma, WA 98402.
Phone: 888-208-4640.
- You may have a lawyer or a non-lawyer represent you at the hearing. If you have a representative, be sure to get an explanation of any fee.
- Before the hearing, you have the right to review and copy your file at ODAR. ODAR will send you a notice when your file is ready to be reviewed. You may then call them to make an appointment to copy your file. ODAR will allow you to copy your hearing file for free. If you see incorrect information in the file, you should present correct information at the hearing.
- You will be notified of the date and time of your hearing at least 20 days before your hearing.
- If you have more evidence, you should submit it to ODAR as soon as possible. You can call their phone number above to ask the best way to submit new evidence.
- At the hearing, the ALJ will have only the information that is in your file and any information you provide. Administrative hearings are quite informal. Usually, you and any witnesses you bring will be the only people at the hearing with the ALJ.
- You may testify and you may have witnesses testify. Also, you may give the judge additional documents and evidence. Your testimony and your witnesses' testimony is evidence, and so are any additional documents that you provide to the judge. You and your witnesses will be placed under oath, subject to the penalty of perjury. The judge will ask you questions to understand the case better and to help him/her apply the law to your case. It's a good idea to make a list before the hearing of the things you want to say, and of the things you want your witnesses to tell the judge.
- After the hearing, the ALJ will make a written decision and mail it to you. This will usually be within a few months of the hearing.
- If you receive a favorable decision reversing, reducing, or waiving your overpayment, we would suggest following up with your local SSA office to make sure the decision gets processed. You can bring a copy of the judge's decision into your local office. You can then request a notice from your local SSA office regarding the new balance of your overpayment (including whether the balance is now \$0).

11. What if the ALJ denies my appeal?

- If you do not agree with the ALJ's decision, you can file SSA Form **HA520, "Request for Review of Decision/Order of Administrative Law Judge."** Then, the Social Security Administration's Appeals Council will review the ALJ's decision for error. This form must be filed within 60 (+5) days of the ALJ's written decision.
- If you do not agree with the Appeals Council's decision, you can appeal to Federal District Court. This appeal must also be filed within 60 (+5) days of the Appeals Council's written decision.

12. What recovery methods can SSA use to recover the overpayment from me?

- Administrative Offset: SSA can refer any overdue debt to the US Department of the Treasury for collection. This means that any federal payments to you can be reduced, including tax returns and wages from work with the federal government.
- Wage Garnishment
- Notification of Credit Reporting Agencies
- Cross-Program Recovery: SSA can recover against any monthly benefit you receive from SSA. For example, you might develop an overpayment while receiving SSDI. Later, when you receive retirement benefits, your retirement benefit can be reduced until the overpayment is fully recovered by SSA.

13. If I must repay the overpayment, how can I reduce the rate of repayment?

- You may try asking an SSA representative to lower your rate of repayment. The lowest amount SSA can agree to recover each month is \$10, and SSA's goal is for you to repay the overpayment within 1 - 3 years. Suggest a repayment rate you can afford and explain why you can only afford that amount.
- You can also use SSA Form 632 (the same form you use to request a waiver) to request a change in repayment amount. On the first page, you will check the box indicating you want to change your repayment amount.
 - This form will not be considered complete until you have submitted documentation of your monthly income and expenses.
 - SSA will review this form, comparing your income to your expenses. If your income is greater than your expenses, the representative will likely decide that you can afford to pay the difference between your income and expenses. For example, if your income is \$710 per month, and your expenses total \$675, then SSA will set your repayment plan at \$35 per month.

14. Can I make an "offer of compromise"?

- If you are not currently receiving Social Security benefits, you may be able to compromise the overpayment amount. This means you offer to pay less than the full amount of the overpayment. Generally, the amount considered in a compromise agreement ranges from 60% to 80% of the total debt.
- SSA will not compromise the overpayment if you still have the money or if you were found to be fraudulent in causing the overpayment. You should make your offer of compromise in writing to your Social Security office.

15. Can an overpayment be discharged by bankruptcy?

- You can petition the bankruptcy court to include SSI/SSDI overpayments as an unsecured debt, which can be discharged. You should consult with someone who specializes in bankruptcy law. In Washington State, you may be able to receive free legal advice about bankruptcy from the CLEAR (Coordinated Legal Education, Advice, and Referral) hotline. CLEAR's phone number is 1-888-201-1014.

16. Tips for avoiding overpayments

- ✓ Report all changes in your life that can affect your eligibility for benefits or affect the amount you receive.
- ✓ It is best to report changes to SSA in writing, and keep a copy of what you mailed or dropped off. The best thing to do is go to your local office, and keep a copy of the slip you get when you check in. This can be used to prove you visited the office. Then, when you meet with the representative, write that person's name on the slip. Now you have a record of who you spoke with, and when. Finally, have the representative date-stamp any documents or forms you are dropping off. Ask them to make a copy for you. Now you have a record of what you dropped off.
- ✓ If you report by telephone, write down the date, time, and telephone number you called, and the name of the person you talked to.
- ✓ If you report by mail, keep a copy of what you mailed, and write down the date you put it in the mail.
- ✓ We do not advise calling the 1-800 number except to request forms. Representatives at this number are not reliable sources of information. Also, we have found that there is often no record of these calls in the recipient's file.
- ✓ 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 US 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.