



Social Security/SSI Overpayments & Waivers Toolkit

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COMMUNITY LEGAL SERVICES
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OF PHILADELPHIA

Social Security/SSI Overpayments & Waivers Toolkit

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Overview – Presentation Slides

SSI and Social Security: Overpayments and Waivers

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Community Legal Services

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This presentation was sponsored by Philadelphia Corporation for Aging. Learn more at PCA at www.pcacares.org



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Sources of Law

- Regulations

- * 20 C.F.R. §§ 404.502 – 545

- * 20 C.F.R. §§ 416.550 – 590

- Program Operations Manual System (POMS)

- <https://secure.ssa.gov/apps10/poms.nsf/home?readform>

- GN 2210.000 et seq.
 - SI 2260.000 et seq.



What is an Overpayment?

- Overpayment
- Suspension/Termination

**NOTE: Beware of retroactive
suspensions/terminations**



Overpayments & Waivers

- **SSA withholds funds from benefits to repay itself**
 - **SSI:** 10% of full check (\$72.10 for 2014)
 - **Title II:** no limit



Options

- Appeal the overpayment
- Request a waiver
- Negotiate a lower repayment amount
- (Do nothing)



Request for Reconsideration

- Appeal of merits of the overpayment
- Form SSA-561
- Deadline: 60 days (plus 5 for mailing)
- Appeal rights
- Not the focus of this presentation



Request for Waiver

- Separate from merits of overpayment
- Ask the overpayment be forgiven
- File at any time (no deadline)
- Form SSA-632
- Stops recoupment IF REQUESTED
(may have to advocate at local office)
- Full appeal rights



Easy Fix #1

○ **Administrative waiver**

- Overpayments of over \$1,000
- Not automatic – must be requested
- Do not need to complete waiver form
- POMS SI 2260.030(B)(2)
- **Sample request letter**



Easy Fix #2

○ **\$10/month withholding**

- Medicare Low-income Subsidy (LIS)
- Paying more would present financial hardship
- Other extenuating circumstances
- **Sample request letter**



Medicare Low-income Subsidy

- **Cost-sharing help for low-income Medicare recipients**
 - Medicare Part D recipients meeting certain Income and resource limits
 - All recipients of both Medicare and any Category of Medicaid
- Automatically eligible for \$10/month Withholding of overpayments
- **Cite to: GN 2210.030(B)(6) (exception)**
- **Sample request letter**



Requierments for Wavier

Without fault

AND

**Defeat the purpose of the Act
(financial hardship)**

OR

Against equity and good conscience



“Without Fault”

- Term of art
- “blameless in the creation of the overpayment”
- “knew or should have known”
- **AKA, whatever you can persuade SSA it means**
- Look to the POMS



Common Examples

- Failure on the part of former representative payee to report change in income/resources
- Client was working and dutifully reported wages each month, but reports not processed timely by SSA
- Client received benefits on parent's work record and overpayment relates to parent's eligibility



Common Examples, cont'd

- Retroactive suspensions/
termination resulting from work
activity
- Client received SSI benefits while
incarcerated or institutionalized
- Client received inheritance or other
financial settlement
- Overpayments caused by workers'
compensation offsets



“Defeat the Purpose of the Act”

- Construed as **financial hardship**
- Presumed met for SSI recipients and recipients of other public assistance
- Title II recipients must show:
 - need substantially all of their current income to meet ordinary and necessary living expenses and recovery would reduce assets below certain levels (POMS GN 02250.100)
 - Income and expenses portion of form SSA-632
 - Need proof (bill, rent receipts, etc.)



“Against Equity and Good Conscience”

- Alternative to showing financial hardship
- For situations where it would be really unfair to require repayment
- **See GN 02250.150**



Tips for Resolution

- Persistence pays off
- Put requests in writing and provide support with documentation
- Follow up with a phone call
- Local office personnel have a lot of discretion in deciding “without fault”
- Grovel, beg... and cut a deal.



Procedural Steps

1. File Request for Waiver (form SSA-632)
2. Request that SSA cease recoupment pending waiver
3. Right to personal conference before waiver denied
4. Right to written decision
5. Full appeal right if denied



If Waiver Denied

- Appeal – form SSA-561
 - Deadline: 60 days (plus 5 for mailing)

- Reconsideration
 - Check box requesting “Formal conference”
 - Prevents “instant reconsideration”



Good Cause for Missing Deadlines

- Any good reason why appeal not files within deadline
- Concept of “finality” is flexible
- **POMS GN 03101.020**



Last Resort

- Bankruptcy
 - Unsecured Debt



Questions?

Contact us

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Selected Provisions from SSA'S Program Operation Manual System (POMS)

Social Security

The Official Website of the U.S. Social Security Administration

Official Social Security Website

Program Operations Manual System (POMS)

Effective Dates: 04/13/2009 - Present

SI 02260.000 Waiver Provisions for SSI Overpayments

Subchapter Table of Contents

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SI 02260.001 Basic Requirements Concerning Supplemental Security Income (SSI) Overpayment Waiver	TN 12 04-09
SI 02260.005 Completing the SSA-632-BK (Request for Waiver of Overpayment or Overpayment Recovery or Change in Repayment Rate)	TN 12 04-09
SI 02260.006 Personal Conferences	TN 10 02-08
SI 02260.007 Waiver Procedures for Disability Cessation Cases	TN 7 12-03
SI 02260.010 Development of Without Fault for a Supplemental Security Income (SSI) Overpayment Waiver	TN 12 04-09
SI 02260.015 Establishing Without Fault for a Supplemental Security Income (SSI) Overpayment	TN 12 04-09
SI 02260.020 Defeat the Purpose of Title XVI of the Act	TN 12 04-09
SI 02260.025 Policy - SSI Overpayment Waiver - Against Equity and Good Conscience	TN 8 09-05
SI 02260.030 Impede Effective or Efficient Administration of Title XVI of the Act	TN 12 04-09
SI 02260.035 Individual's Countable Resources Exceed Limit by \$50.00 or Less	TN 12 04-09
SI 02260.040 Change in Circumstances Following a Denial of Waiver	TN 12 04-09
SI 02260.045 Form SSA-632-BK, Request for Waiver of Overpayment Recovery or Change in Repayment Rate - Exhibit	TN 1 04-92

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Program Operations Manual System (POMS)

Effective Dates: 06/14/2013 - Present

TN 12 (04-09)

SI 02260.001 Basic Requirements Concerning Supplemental Security Income (SSI) Overpayment Waiver

A. Policy for waiving recovery of an overpayment

All overpayment waiver determination decisions **must** be made through the Modernized Supplemental Security Income Claims System (MSSICS) via Direct Supplemental Security Record (SSR) Update (MSOM BUSSR 004.001). Following are the basic waiver policies.

1. When to waive

We waive the recovery of an overpayment **only** if the liable individual is without fault in causing the overpayment, **and** recovery or adjustment would:

- **Defeat the purpose** of Title XVI of the Act; or
- **Be against equity and good conscience**; or
- **Impede effective or efficient administration** of Title XVI of the Act because of the amount involved.

2. Effect of waiver

The effect of an approved request for a waiver is to relieve the overpaid individual, his or her estate or his or her spouse (and the spouse's estate) of the obligation to repay the amount of the overpayment that is waived.

We reopen a determination to approve a request for waiver only if we later determine that the overpayment was the result of fraud.

3. When a waiver may be requested

A waiver may be requested at **any time**. A second or subsequent request may be made even if the prior waiver request was denied and the due process period has expired. Waiver may be requested after recovery has begun or even after recovery is complete.

Unless the total overpayment is \$1,000.00 or less, the request must be in writing, over the individual's signature (or that of his or her representative payee, legal counsel, or other appointed representative). Even if the written request does not contain all the information required on the Form SSA-632-BK (Request for Waiver of Overpayment or Overpayment Recovery or Change in Repayment Rate) it is a request for a waiver. The date of the waiver request is the date the written request is received in the field office (FO).

If the total amount of the overpayment, not the balance, is \$1,000.00 or less, the individual, representative payee, or other authorized representative may make a verbal request for a waiver (SI 02260.001B.1 and SI 02260.030B.2.f). Field office staff will document the date of the verbal waiver request on the DROC screen in MSSICS, or on a SSA-5002 faxed into NDRed.

4. Effect of waiver request

A request for waiver stops recovery or adjustment effective with the month the written waiver request is received. We do not resume recovery or adjustment until we make the waiver determination and the appeal period has expired.

5. Action following waiver requests

If we cannot make the waiver determination within 10 days of the date the request was filed, we:

- **Stop** recovery or adjustment; and
- **Refund**, the amount recovered for the month the waiver was filed and any subsequent month.

6. Actions following a denial of a request for waiver

Following a denial of a request for waiver we:

- Notify the individual(s) who requested the waiver.
- Delay starting or resuming adjustment until 30 days (plus 5 days for mailing) after the date of the notice of waiver denial.

B. Waiver procedures

1. Written request for a waiver

In order to process a request for a waiver, the request must be in writing and over the individual's signature (or that of his or her representative payee, legal counsel or other appointed representative). Even if incomplete, this document is a waiver request.

A written request for waiver is not required if the total overpayment, not the outstanding balance, is less than \$1,000.01. See SI 02260.030.

The date of the waiver request is the date the written request is received in the FO.

2. Actions following a request for waiver

- a. If you cannot make the waiver determination within 10 days of the waiver request date you must:
 - Stop all recovery or adjustment actions.
 - Refund the amount recovered in the month the request for waiver was filed and any subsequent months. Use the A-OTP process to refund the recovered amount(s). For instructions on the A-OTP process see SM 01901.005 and MSOM BUSSR 004.007 through MSOM BUSSR 004.009 and MSOM BUSSR 003.022.
- b. Do not refund any funds collected for months(s) before the month the request was received.
- c. Do not refund payment withheld if there is either another collect decision (i.e., different period of overpayment) or an unresolved overpayment.
- d. Develop only for the person(s) who is or are liable for making repayment.

For a discussion of liability when there is a representative payee see SI 02201.020 through SI 02201.023 and SI 02201.025.

NOTE: Effective 12/04/2008, a representative payee (or his or her estate) is solely liable for repayment of payments he or she received on behalf of a deceased recipient for month(s) after the month of the recipient's death. See SI 02201.005

3. Actions following an approval of a request for waiver

- a. Post the approved waiver decision to the SSR using MSSICS Direct SSR Update and the UOWV screen. For instructions see MSOM BUSSR 004.009; and
- b. Refund funds recovered for the period covered by the approved request for waiver. Use

the A-OTP process to refund the recovered amount. For instructions on the A-OTP process see SM 01901.005 and MSOM BUSSR 004.003 through MSOM BUSSR 004.009 and MSOM BUSSR 003.022.

- c. If the approved waiver covers months in which payments were adjusted to recover the waived overpayment, refund the amount that was withheld.
- d. Do not refund any funds if there is either another collect decision (i.e., different period of overpayment) or an unresolved overpayment.
- e. If the overpaid individual is a legal guardian or representative payee, send him or her a manual notice of an approved request for waiver. (See Notice of Waiver Decision-General, NL 00803.200)

4. Action following the denial of a waiver request

For instructions on the waiver denial process see SI 02260.006. If you deny a request for waiver of an overpayment you must:

- a. Post the waiver decision to the SSR using MSSICS Direct SSR Update and the UOWV screen. For instructions see MSOM BUSSR 004.009 UOWV screen. For instructions on posting a waiver denial, see MSOM BUSSR 004.009.
- b. Notify the individual(s) who requested the waiver. Use the Form SSA-8173-U3 (Notice of Waiver Denial) in current pay cases or Form SSA-8174-U4 (Notice of Waiver Denial) for non-payment cases.
- c. Never start or resume adjustment before 30 days (plus 5 days for mailing) after the date of the notice of waiver denial.

C. References

GN 02250.325 - Waiver after administrative change of position

GN 02250.330 - Blanket Waivers for Dollar Down Rounding Overpayments

GN 02250.340 - Waiver Determinations for Automatic or Blanket Waivers

SI 02220.017 - SSI Overpayment - Request for a Different Rate of Adjustment, Reconsideration or a Waiver

SI 02220.065 - Recovery from Alien's Sponsor of Payments Made to the Alien

MSOM BUSSR 004.007 (UOWV Screen) - Documenting a Waiver Request Date

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Program Operations Manual System (POMS)

Effective Dates: 04/13/2009 - Present

TN 12 (04-09)

SI 02260.015 Establishing Without Fault for a Supplemental Security Income (SSI) Overpayment

A. Policy

The burden of establishing without fault lies with the overpaid individual. The individual must request waiver and submit evidence or provide a reasonable explanation as to why he or she believes that he or she is without fault.

NOTE: A determination that the overpaid individual is liable for repayment of the overpayment is **not** a finding that the liable individual is at fault in causing the overpayment.

1. Evidence and/or allegations

We consider all evidence and allegations from the overpaid individual along with our own records to determine whether to grant a request for waiver from recovery of an overpayment.

2. The individual's ability to comprehend and comply with reporting responsibilities

In the determination of whether the overpaid individual is without fault in causing the overpayment, we consider:

- The individual's ability to understand his or her reporting responsibilities;
- Whether the individual believed that the change was significant enough to effect his or her eligibility or payment amount;
- The individual's attempt(s) to report events that could impact eligibility or payment

amount; and

- Whether the individual received misinformation from an official source.

B. Procedures for establishing without fault - SSI overpayment

1. General

- a. You must be receptive to any explanation offered as to why the individual believes he or she is without fault in causing the overpayment. Give particular attention to:
 - The individual's ability to comprehend the reporting requirements.
 - Whether the change which caused the overpayment was significant to the individual.
 - Any allegation that the individual received incorrect or misleading information from an official source.

For instructions on how to add a without fault decision through MSSICS, see MSOM BUSSR 004.007.

- b. If you cannot substantiate and document the cause of the overpayment, you must determine the individual is without fault

If despite all available information (e.g., the supplemental security record (SSR), MSSICS, paper documents, NDRed, etc.), you cannot give the individual a full explanation of the facts surrounding the overpayment, you must determine the individual is without fault.

This should occur only in the rare situation where there is a long period of time between the report of event(s) causing the overpayment and the development of the overpayment, and documentation of the overpayment is not available.

2. Good faith in reporting events

If there is a valid reason to believe that the information was given in good faith and that it was correct to the best of the individual's knowledge at the time it was reported, you can determine the individual is without fault for any part of an overpayment caused by incorrect information reported by the overpaid individual.

See SI 02260.010C.5.b when the individual gave information which he or she knew or should have known was incorrect.

3. Individual's comprehension level

- a. If you determine that the overpaid individual did not understand his or her reporting responsibilities, find the individual is without fault.

Some factors affecting the individual's ability to comprehend his or her reporting responsibilities are:

- Inability to read;
- Limited education;
- English not his or her native language;
- Senility;
- Debilitating handicaps or disease.

- b. Consider second and subsequent failures to timely report changes more strictly in terms of whether the individual knew or should have known to report the change.

This stricter standard applies to a subsequent failure to report a change because the reporting requirements should have been fully explained at the time prior requests for waiver and/or reconsideration. Because the overpaid individual received multiple explanations of his or her reporting responsibilities, the individual should now have an increased awareness of his or her reporting responsibilities.

However, you can find the individual is without fault if you have reason to believe that the individual failed to receive reporting instructions and written reporting material when he or she filed for initial eligibility, completed a redetermination, or previously requested reconsideration or waiver of an overpayment.

You must determine each request for waiver on its own merits. While you may use presumptions to determine whether without fault exists, you cannot find fault solely because the individual had a prior overpayment. You must consider all factors.

NOTE: Be sensitive to the possibility that the overpaid individual needs a representative payee. See GN 00502.010 through GN 00502.060.

4. Significance of the change of events to the individual

- a. You may find the individual is without fault if the evidence and allegations indicate the individual, although aware of the need to report and of the effect of the change, believed that the change was so insignificant as to have no material effect on eligibility or payment amount.
- b. To determine that the individual is without fault you must determine that both the change was, in fact, minor, and the individual believed it was insignificant.

NOTE: Do not ask the individual for his or her opinion. If the individual does not

volunteer the opinion, do not ask for it.

5. Questions to ask concerning the individual's understanding of reporting responsibilities

Ask the individual the following questions then use the answers to help you determine whether the individual was without fault due to a lack of understanding of reporting responsibilities:

- What does the individual recall being told about reporting responsibilities during the application, redeterminations and prior requests for reconsideration or waiver of an overpayment?
- What did the individual do with the written reporting instructions provided at the time of initial application?
- If there have been recent check stuffers or if there are additional regionally prepared lists of reporting requirements, what did the individual do with them?
- Does the individual have his or her SSA-4122-FO "Your Supplemental Security Income Folder?"
- How many redeterminations has the person had and/or has the person been eligible for SSI more than once?
- Is the change which caused the overpayment one that normally would have been covered during a discussion of reporting requirements or is it a unique occurrence?
- Could a reasonable person conclude that the change was so insignificant as not to affect payment amount or eligibility?
- Does the individual have a language problem?
- Does the individual have difficulties caused by a limited education?
- If the individual is disabled due to mental retardation or mental illness (i.e., due to mental disease or defect), is the individual's thought process rationale or is it impaired?

6. Misinformation from an official source

- a. Find the individual is without fault in causing the overpayment if you determine an individual failed to report a change because of misinformation from an official source. **Deem a finding of against equity or good conscience.** For policy and procedures for developing against equity and good conscience see SI 02260.025.
- b. An official source is any Social Security source (such as an employee) or any other source the individual had reason to believe was closely related to SSA to lend credence to their

claim of misinformation.

EXAMPLE: Many title XVI recipients receive aid and services from social workers or other Federal, State, or local government employees. In an individual case the overpaid individual could reasonably consider these non-SSA employees to be an official source.

Misinformation from an official source does not apply to routine notices of eligibility determinations (for example, an award notice).

7. Development and documentation - misinformation from an official source

- a. Contact the source to verify the allegation. When sources outside SSA are involved, see disclosure with consent, GN 03305.001.
- b. Record the results of the contact using the MSSICS DROC (Remarks) screen or in a written statement on a Report of Contact (RC), SSA-5002, from the alleged source of misinformation. Some sources may not be willing to release information without the consent of the individual involved. If so, obtain the overpaid individual's consent.
- c. If contact is not feasible, you must judge the probability of such misinformation. One factor to consider is the credibility, and reliability of the overpaid individual.
- d. If misinformation is alleged from a SSA source, you must always verify the allegation.

C. Reference

SI 02201.005 SSI – Who is responsible for repayment?

To Link to this section - Use this URL:

<http://policy.ssa.gov/poms.nsf/lnx/0502260015>

SI 02260.015 - Establishing Without Fault for a Supplemental Security Income

(SSI) Overpayment - 04/13/2009

Batch run: 04/13/2009

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Official Social Security Website

Program Operations Manual System (POMS)

Effective Dates: 07/30/2007 - Present

GN 02250.000 Waiver Provisions for Title II and Title XVIII Overpayments

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GN 02250.005 Fault/Without Fault Findings - Waiver	TN 10 07-90
GN 02250.010 Undocumented Allegations - Waiver - Title II, XVIII	TN 10 07-90
GN 02250.015 Fault/Without Fault in Special Circumstances	TN 10 07-90
GN 02250.020 Incorrect Benefit Rates — Waiver of Overpayment Recovery	TN 10 07-90
GN 02250.022 Lack of Insured Status — Waiver of Overpayment Recovery	TN 10 07-90
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GN 02250.030 Benefits Not Terminated When Child Attains Age 16, 18 or 19 - Waiver of Overpayment Recovery	TN 14 02-98
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GN 02250.038 Return to or Increase in Work - Disability Case — Waiver	TN 10 07-90
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GN 02250.042 Incorrect Disposition of Properly Reported Event — Waiver	TN 10 07-90
GN 02250.044 Overpayment Resulting from Continued Payments to Incarcerated Felons — Waiver	TN 10 07-90

GN 02250.060	Misunderstanding About Allowable Wage Earnings — Waiver	TN 11 08-91
GN 02250.061	Misinformation From an Official Source — Waiver	TN 11 08-91
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GN 02250.067	Lack of Knowledge That Special Types of Payments (Bonus, Vacation Pay, Traveling Expenses, etc.) Are Included for Deduction Purposes — Waiver	TN 10 07-90
GN 02250.069	Confusion About Charging Provision of Annual Earnings Test — Waiver	TN 10 07-90
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DEFEAT THE PURPOSE

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AGAINST EQUITY AND GOOD CONSCIENCE

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DEVELOPING WAIVER REQUESTS

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GN 02250.230	Completion of the SSA-632-BK (Request for Waiver of Overpayment Recovery or Change in Repayment Rate)	TN 14 02-98
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DOCUMENTING WAIVER ALLEGATIONS

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GN 02250.420	Sample SSA-635 for Waiver Denial - Exhibit	TN 10 07-90
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Official Social Security Website

Program Operations Manual System (POMS)

Effective Dates: 10/04/2005 - Present

TN 10 (07-90)

GN 02250.001 Waiver - Title II, XVIII

Policy

Recovery of an overpayment can be waived if both of the following conditions are met:

- The person is without fault, and
- Recovery would either defeat the purpose of the act or be against equity and good conscience.

To Link to this section - Use this URL:

<http://policy.ssa.gov/poms.nsf/lnx/0202250001>

GN 02250.001 - Waiver - Title II, XVIII - 10/04/2005

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Official Social Security Website

Program Operations Manual System (POMS)

Effective Dates: 09/21/2011 - Present

TN 10 (07-90)

GN 02250.002 Request for Waiver - Title II, XVIII

A. Policy

Generally, the overpaid person must request waiver except for a blanket waiver due to dollar down rounding (see GN 02250.330).

1. When Waiver May Be Requested

Waiver may be requested at any time. Waiver may also be requested when:

- a person becomes aware of his or her liability for repayment of an overpayment, or
- at the same time he or she appeals the fact or amount of an overpayment, or
- after denial of a previous request for waiver.

The fact that a person is not eligible for or entitled to benefits or that recovery has begun or is completed, is immaterial.

2. How Waiver May Be Requested

A request for waiver may be a formal request or may be implied. The request may be in various forms:

- a plea for relief in a letter to a PC or from a Congressman;
- verbal request to a field office or Debt Management Branch (DMB) employee;
- the tear-off portion of the SSA-3105; or
- the SSA-632-BK, Request for Waiver and Recovery Questionnaire (GN 02250.240 and GN

02250.400). This is the preferred form for requesting waiver because it elicits all information needed to make the waiver determination.

B. Procedure

1. Title II Beneficiary Wishes to Request Waiver

Give beneficiary who asks about filing for waiver an explanation of:

- a. the two-step waiver process (i.e., initial interview when waiver is requested; if waiver cannot be approved, a personal conference using information from the folder with opportunity for a folder review at least 5 days before the conference);
- b. his/her right to request folder review at any time in the waiver process and that the process will be interrupted until the folder is received from the PC;
- c. his/her right to obtain legal representation;
- d. the need for verification of income, assets and certain expenses and how this information is used. (See GN 02250.250.)

2. What to Consider as Waiver Request

Consider any written document a request for waiver as long as the necessary information (i.e. the information requested on the SSA-632-BK) is furnished in a signed statement. If waiver is requested on an SSA-561-U2, see GN 02201.025.

3. Documentation Needed

Fully document any request for waiver, whether actual or implied, and developed allegations before making a determination. Obtain sufficient information to clarify the issues of fault, ability to repay and equity. Instruct the person requesting waiver to submit the information needed to make a waiver determination.

To Link to this section - Use this URL:

<http://policy.ssa.gov/poms.nsf/lnx/0202250002>

GN 02250.002 - Request for Waiver - Title II, XVIII - 09/21/2011

Batch run: 09/21/2011

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Social Security

The Official Website of the U.S. Social Security Administration

Official Social Security Website

Program Operations Manual System (POMS)

Effective Dates: 03/08/2010 - Present

TN 10 (07-90)

GN 02250.005 Fault/Without Fault Findings - Waiver

A. Definition

1. At Fault

The person caused or helped cause the overpayment.

2. Without Fault

The person was blameless in the creation of the overpayment.

B. Policy

1. Fault of an Individual

Findings of fault must be made separately for each person who requests waiver. The fault of one individual is independent of the fault of any other individuals also liable for the overpayment.

When a deceased person's estate is seeking waiver, it is the fault of the deceased that must be determined. When the estate has been closed and the distributee is seeking waiver, fault of the distributee must be determined.

Even though the overpayment may have been caused by SSA's error, the individual may still be at fault for the overpayment.

2. Fault Determination Depends on Degree of Care

An individual is expected to exercise a high degree of care in preventing an overpayment. Any individual who demonstrates either a lack of good faith or failure to exercise a high degree of care in reporting circumstances which may affect entitlement to or the amount of benefits will be found at fault for the overpayment. The degree of care expected varies with the complexity of the circumstances giving rise to the overpayment and the capacity of the individual to realize that he/she is overpaid.

Lack of good faith in preventing an overpayment is evident when the facts show the overpayment resulted from:

- a. an incorrect statement by the person which he/she knew or should have known was false,
- b. the person's failure to furnish information which he/she knew or should have known was material,
- c. the person's acceptance of any payment that he/she knew or should have known was incorrect.

3. Presumptions About Fault

Certain presumptions can be made concerning the fault of persons other than the overpaid person:

- a. If the number holder is without fault in causing the overpayment, it will be presumed that any other beneficiary is also without fault if overpaid for the same event;
- b. If the overpaid person is at fault, a spouse will be presumed at fault if living in the same household and overpaid for the same event;
- c. If the overpaid person is at fault, a minor or an incompetent adult will be presumed without fault even though living in the same household and overpaid for the same event.

Any of these presumptions can be rebutted by clear and convincing evidence to the contrary.

4. Misuse and Fault

In the usual situation, if a misuse determination is upheld, the misuser cannot be found without fault.

C. Procedure

1. Fault Decided on an Individual Basis

Consider all of the circumstances surrounding the overpayment in each individual case taking into account any physical, mental, educational or linguistic limitations (including any lack of

facility with the English language) the person has. In evaluating the evidence, consider the individual's:

- a. understanding of and agreement to comply with reporting requirements,
- b. knowledge of the occurrence of events that should have been reported,
- c. efforts to comply with the reporting requirements,
- d. understanding of the obligation to return payments not due,
- e. ability (as determined by age, comprehension, education, memory, physical and mental condition, linguistic limitations, etc.) to understand and comply with the reporting requirements,
- f. ability to recognize inconsistencies and evaluate the reasonableness of SSA's actions,
- g. experience in dealing with government agencies.
- h. understanding of the language used by SSA.

If the evidence clearly shows the individual did not understand and comply with reporting responsibilities, that individual can usually be found without fault. Resolve any doubt in favor of the individual.

2. Facts to Consider in Making Fault Determinations

In determining what a person knew or should have known, remember that:

- The application contains an explanation of most reporting responsibilities on the tear off pages.
- Pamphlets and check stuffers are sent to beneficiaries at various times.
- The January check contains a stuffer about the new retirement test; for direct deposit beneficiaries, a separate notice is sent.
- "Your Social Security Rights and Responsibilities" is mailed with every award letter.
- The fact that there is a repay statement in file does not automatically preclude a without fault finding.

Generally, assume a person received the appropriate information.

3. Example

In 7/89 Harry Finch reports a pending workers' compensation (WC) claim. He signs an SSA-546 and an SSA-795 repay statement. In 2/90, Mr. Finch reports that his WC claim was allowed in 2/90 with WC payments beginning 1/89. Since a timely report was made, the previously signed

repay statement would not preclude a finding of without fault.

To Link to this section - Use this URL:

<http://policy.ssa.gov/poms.nsf/lnx/0202250005>

GN 02250.005 - Fault/Without Fault Findings - Waiver - 03/08/2010

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Social Security

The Official Website of the U.S. Social Security Administration

Official Social Security Website

Program Operations Manual System (POMS)

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TN 11 (08-91)

GN 02250.100 Defeat the Purpose

A. Policy

Recovery of an overpayment will defeat the purpose of title II of the Social Security Act if recovery would deprive the person of income required for ordinary and necessary living expenses.

Recovery will defeat the purpose of title II to the extent that the person does not have any of the overpaid funds in his possession when notified of the overpayment (GN 02250.105) and the person:

- Receives cash public assistance (GN 02250.110); or
- Needs substantially all current income to meet ordinary and necessary living expenses (GN 02250.120) and recovery would reduce assets below the levels specified in GN 02250.115A.4.

B. Procedure

Consider a person's financial situation, comparing the person's income and resources to ordinary and necessary expenses when deciding defeat the purpose. Take into account such factors as the existence of overpaid funds in the person's possession, living arrangements, the presence of a boarder or dependent in the household, and the person's usual and customary fixed expenses (i.e., standard of living). If the person is receiving cash public assistance, recovery is deemed to defeat the purpose and no financial development is needed.



Helpful Forms

- 1. Request for Waiver of Overpayment**

(also used for establishing financial hardship in negotiating repayment agreements)
- 2. Request for Reconsideration**
- 3. Appointment of Representative**
- 4. Pro Se Request for Administrative Waiver**
- 5. Pro Se Request for \$10 Withholding**

SOCIAL SECURITY ADMINISTRATION

Form Approved
OMB No. 0960-0037

Request For Waiver Of Overpayment Recovery Or Change In Repayment Rate

We will use your answers on this form to decide if we can waive collection of the overpayment or change the amount you must pay us back each month. If we can't waive collection, we may use this form to decide how you should repay the money.

Please answer the questions on this form as completely as you can. We will help you fill out the form if you want. If you are filling out this form for someone else, answer the questions as they apply to that person.

FOR SSA USE ONLY

ROAR Input ☐ Yes

☐ No

Input Date

Waiver ☐ Approval

☐ Denial

SSI ☐ Yes ☐ No

AMT OF OP \$

PERIOD (DATES) OF OP

1. A. Name of person on whose record the overpayment occurred:

B. Social Security Number

C. Name of overpaid person(s) making this request and his or her Social Security Number(s):

2. Check any of the following that apply. (Also, fill in the dollar amount in B, C, or D.)

A. ☐ The overpayment was not my fault and I cannot afford to pay the money back and/or it is unfair for some other reasons.

B. ☐ I cannot afford to use all of my monthly benefit to pay back the overpayment. However I can afford to have \$ _____ withheld each month.

C. ☐ I am no longer receiving Supplement Security Income (SSI) payments. I want to pay back \$ _____ each month instead of paying all of the money at once.

D. ☐ I am receiving SSI payments. I want to pay back \$ _____ each month instead of paying 10% of my total income.

SECTION I-INFORMATION ABOUT RECEIVING THE OVERPAYMENT

3. A. Did you, as representative payee, receive the overpaid benefits to use for the beneficiary? ☐ Yes ☐ No (Skip to Question 4)

B. Name and address of the beneficiary

C. How were the overpaid benefits used?

-
4. If we are asking you to repay someone else's overpayment:

A. Was the overpaid person living with you when he/she was overpaid? ☐ Yes ☐ No

B. Did you receive any of the overpaid money? ☐ Yes ☐ No

C. Explain what you know about the overpayment AND why it was not your fault.

-
5. Why did you think you were due the overpaid money and why do you think you were not at fault in causing the overpayment or accepting the money?

-
6. A. Did you tell us about the change or event that made you overpaid? ☐ Yes ☐ No
If no, why didn't you tell us?

B. If yes, how, when and where did you tell us? If you told us by phone or in person, who did you talk with and what was said?

C. If you did not hear from us after your report, and/or your benefits did not change, did you contact us again? ☐ Yes ☐ No

-
7. A. Have we ever overpaid you before? ☐ Yes ☐ No

If yes, on what Social Security number?

B. Why were you overpaid before? If the reason is similar to why you are overpaid now, explain what you did to prevent the present overpayment.

SECTION II-YOUR FINANCIAL STATEMENT

NAME: _____

SSN: _____

You need to complete this section if you are asking us either to waive the collection of the overpayment or to change the rate at which we asked you to repay it. Please answer all questions as fully and as carefully as possible. We may ask to see some documents to support your statements, so you should have them with you when you visit our office.

EXAMPLES ARE:

- Current Rent or Mortgage Books
- Savings Passbooks
- Pay Stubs
- Your most recent Tax Return
- 2 or 3 recent utility, medical, charge card, and insurance bills
- Cancelled checks
- Similar documents for your spouse or dependent family members

Please write only whole dollar amounts-round any cents to the nearest dollar. If you need more space for answers, use the "Remarks" section at the bottom of page 7.

8. A. Do you now have any of the overpaid checks or money in your possession (or in a savings or other type of account)? ☐ Yes Amount: \$ _____
Return this amount to SSA
- ☐ No
- B. Did you have any of the overpaid checks or money in your possession (or in a savings or other type of account) at the time you received the overpayment notice? ☐ Yes Amount: \$ _____
Answer Question 9.
- ☐ No

9. Explain why you believe you should not have to return this amount.
- _____
- _____

ANSWER 10 AND 11 ONLY IF THE OVERPAYMENT IS SUPPLEMENTAL SECURITY INCOME (SSI) PAYMENTS. IF NOT, SKIP TO 12.

10. A. Did you lend or give away any property or cash after notification of the overpayment? ☐ Yes (Answer Part B)
- B. Who received it, relationship (if any), description and value: ☐ No (Go to question 11.)
- _____

11. A. Did you receive or sell any property or receive any cash (other than earnings) after notification of this overpayment? ☐ Yes (Answer Part B)
- B. Describe property and sale price or amount of cash received: ☐ No (Go to question 12.)
- _____

12. A. Are you now receiving cash public assistance such as Supplemental Security Income (SSI) payments? ☐ Yes (Answer B and C and
See note below)
- ☐ No
- B. Name or kind of public assistance C. Claim Number
- _____

IMPORTANT: If you answered "YES" to question 12, DO NOT answer any more questions on this form. Go to page 8, sign and date the form, and give your address and phone number(s). Bring or mail any papers that show you receive public assistance to your local Social Security office as soon as possible.

Members Of Household

13. List any person (child, parent, friend, etc.) who depends on you for support AND who lives with you.

NAME	AGE	RELATIONSHIP (If none, explain why the person is dependent on you)

Assets-Things You Have And Own

14. A. How much money do you and any person(s) listed in question 13 above have as cash on hand, in a checking account, or otherwise readily available?

\$

B. Does your name, or that of any other member of your household appear, either alone or with any other person, on any of the following?

TYPE OF ASSET	OWNER	BALANCE OR VALUE	PER MONTH	SHOW THE INCOME (Interest, dividends) EARNED EACH MONTH. (If none, explain in spaces below. If paid quarterly, divide by 3).
SAVINGS (Bank, Savings and Loan, Credit Union)		\$	\$	
		\$	\$	
CERTIFICATES OF DEPOSIT (CD)		\$	\$	
INDIVIDUAL RETIREMENT ACCOUNT (IRA)		\$	\$	
MONEY OR MUTUAL FUNDS		\$	\$	
BONDS, STOCKS		\$	\$	
TRUST FUND		\$	\$	
CHECKING ACCOUNT		\$	\$	
OTHER (EXPLAIN)		\$	\$	
TOTALS —		\$	\$	Enter the "Per Month" total on line (k) of question 18.

15. A. If you or a member of your household own a car, (other than the family vehicle), van, truck, camper, motorcycle, or any other vehicle or a boat, list below.

OWNER	YEAR/MAKE/MODEL	PRESENT VALUE	LOAN BALANCE (if any)	MAIN PURPOSE FOR USE
		\$	\$	
		\$	\$	
		\$	\$	

B. If you or a member of your household own any real estate (buildings or land), OTHER than where you live, or own or have an interest in, any business, property, or valuables, describe below.

OWNER	DESCRIPTION	MARKET VALUE	LOAN BALANCE (if any)	USAGE-INCOME (rent etc.)
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	

Monthly Household Income

If paid weekly, multiply by 4.33 (4 1/3) to figure monthly pay. If paid every 2 weeks, multiply by 2.166 (2 1/6). If self-employed, enter 1/12 of net earnings. Enter monthly TAKE HOME amounts on line A of question 18 also.

16. A. Are you employed? ☐ YES (Provide information below) ☐ NO (Skip to B)

Employer name, address, and phone: (Write "self" if self-employed)

Monthly pay before deduction (Gross) \$

Monthly TAKE-HOME pay (NET) \$

B. Is your spouse employed? ☐ YES (Provide information below) ☐ NO (Skip to C)

Employer(s) name, address, and phone: (Write "self" if self-employed)

Monthly pay before deduction (Gross) \$

Monthly TAKE-HOME pay (NET) \$

C. Is any other person listed in Question 13 employed? ☐ YES ☐ NO (Go to Question 17) Name(s)

Employer(s) name, address, and phone: (Write "self" if self-employed)

Monthly pay before deduction (Gross) \$

Monthly TAKE-HOME pay (NET) \$

17. A. Do you, your spouse or any dependent member of your household receive support or contributions from any person or organization? ☐ YES (Answer B) ☐ NO (Go to question 18)

B. How much money is received each month? \$
(Show this amount on line (J) of question 18)

SOURCE

BE SURE TO SHOW MONTHLY AMOUNTS BELOW - If received weekly or every 2 weeks, read the instruction at the top of this page.

18. INCOME FROM #16 AND #17 ABOVE AND OTHER INCOME TO YOUR HOUSEHOLD		YOURS	✓	SPOUSE'S	✓	OTHER HOUSEHOLD MEMBERS	✓
A. TAKE HOME Pay (Net) (From #16 A, B, C, above)	\$	<input type="checkbox"/>	\$	<input type="checkbox"/>	\$	<input type="checkbox"/>	
B. Social Security Benefits		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	
C. Supplemental Security Income (SSI)		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	
D. Pension(s) (VA, Military, Civil Service, Railroad, etc.)	TYPE	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	
	TYPE	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	
E. Public Assistance (Other than SSI)	TYPE	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	
F. Food Stamps (Show full face value of stamps received)		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	
G. Income from real estate (rent, etc.) (From question 15B)		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	
H. Room and/or Board Payments (Explain in remarks below)		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	
I. Child Support/Alimony		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	
J. Other Support (From #17 (B) above)		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	
K. Income From Assets (From question 14)		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	
L. Other (From any source, explain below)		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	
REMARKS	TOTALS	\$		\$		\$	
						GRAND TOTAL	\$
						(Add 3 total blocks above)	

Monthly Household Expenses

If the expense is paid weekly or every 2 weeks, read the instruction at the top of Page 5. Do NOT list an expense that is withheld from income (Such as Medical Insurance). Only take home pay is used to figure income.

Show "CC" as the expense amount if the expense (such as clothing) is part of CREDIT CARD EXPENSE SHOWN ON LINE (F).

		\$ PER MONTH	SSA USE ONLY
19.	A. Rent or Mortgage (If mortgage payment includes property or other local taxes, insurance, etc. DO NOT list again below.)		
	B. Food (Groceries (include the value of food stamps) and food at restaurants, work, etc.)		
	C. Utilities (Gas, electric, telephone)		
	D. Other Heating/Cooking Fuel (Oil, propane, coal, wood, etc.)		
	E. Clothing		
	F. Credit Card Payments (show minimum monthly payment allowed)		
	G. Property Tax (State and local)		
	H. Other taxes or fees related to your home (trash collection, water-sewer fees)		
	I. Insurance (Life, health, fire, homeowner, renter, car, and any other casualty or liability policies)		
	J. Medical-Dental (After amount, if any, paid by insurance)		
	K. Car operation and maintenance (Show any car loan payment in (N) below)		
	L. Other transportation		
	M. Church-charity cash donations		
	N. Loan, credit, lay-away payments (If payment amount is optional, show minimum)		
	O. Support to someone NOT in household (Show name, age, relationship (if any) and address)		
	P. Any expense not shown above (Specify)		
EXPENSE REMARKS (Also explain any unusual or very large expenses, such as medical, college, etc.)		TOTAL	\$

Income And Expenses Comparison

20. A. Monthly income (Write the amount here from the "Grand Total" of #18.)	_____	\$
B. Monthly Expenses (Write the amount here from the "Total" of #19.)	_____	\$
C. Adjusted Household Expenses	_____	+\$25
D. Adjusted Monthly Expenses (Add (B) and (C))	_____	\$ 25

21. If your expenses (D) are more than your income (A), explain how you are paying your bills.	FOR SSA USE ONLY	
	<input type="checkbox"/> INC. EXCEEDS	\$
	ADJ EXPENSE	+
	<input type="checkbox"/> INC LESS THAN	\$
	ADJ EXPENSE	-

Financial Expectation And Funds Availability

22. A. Do you, your spouse or any dependent member of your household expect your or their financial situation to change (for the better or worse) in the next 6 months? (For example: a tax refund, pay raise or full repayment of a current bill for the better-major house repairs for the worse).

☐ YES (Explain on line below)
☐ NO

B. If there is an amount of cash on hand or in checking accounts shown in item 14A, is it being held for a special purpose?

☐ NO (Amount on hand)
☐ NO (Money available for any use)
☐ YES (Explain on line below)

C. Is there any reason you CANNOT convert to cash the "Balance or Value" of any financial asset shown in item 14B.

☐ YES (Explain on line below)
☐ NO

D. Is there any reason you CANNOT SELL or otherwise convert to cash any of the assets shown in items 15A and B?

☐ YES (Explain on line below)
☐ NO

Remarks Space —

If you are continuing an answer to a question, please write the number (and letter, if any) of the question first.

(MORE SPACE ON NEXT PAGE)

REMARKS SPACE (Continued)

PENALTY CLAUSE, CERTIFICATION AND PRIVACY ACT STATEMENT

I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge. I understand that anyone who knowingly gives a false or misleading statement about a material fact in this information, or causes someone else to do so, commits a crime and may be sent to prison, or may face other penalties, or both.

SIGNATURE OF OVERPAID PERSON OR REPRESENTATIVE PAYEE

SIGNATURE (First name, middle initial, last name) (Write in ink)

DATE (Month, Day, Year)

HOME TELEPHONE NUMBER (Include area code)

WORK TELEPHONE NUMBER IF WE MAY CALL YOU AT WORK (Include area code)

**SIGN
HERE**

MAILING ADDRESS (Number and street, Apt. No., P.O. Box, or Rural Route)

CITY AND STATE

ZIP CODE

ENTER NAME OF COUNTY (IF ANY) IN WHICH YOU NOW LIVE

Witnesses are required ONLY if this statement has been signed by mark (X) above. If signed by mark (X), two witnesses to the signing who know the individual must sign below, giving their full addresses.

SIGNATURE OF WITNESS

SIGNATURE OF WITNESS

ADDRESS (Number and street, City, State, and ZIP Code)

ADDRESS (Number and street, City, State, and ZIP Code)

Privacy Act Statement

Collection and Use of Personal Information

Sections 204, 1631(b), and 1870 of the Social Security Act, as amended, and the Federal Coal Mine Health and Safety Act of 1969 authorize us to collect this information. The information you provide will be used to make a determination on waiving overpayment recovery or changing your repayment rate.

The information you furnish on this form is voluntary. However, failure to provide the requested information may prevent us from approving your request.

We rarely use the information you supply for any purpose other than for determining waiver or a change in the repayment rate of an overpayment recovery. However, we may use it for the administration and integrity of Social Security programs. We may also disclose information to another person or to another agency in accordance with approved routine uses, which include but are not limited to the following:

To enable a third party or an agency to assist Social Security in establishing rights to Social Security benefits and/or coverage; To comply with Federal laws requiring the release of information from Social Security records (e.g., to the Government Accountability Office and Department of Veterans' Affairs);

To facilitate statistical research, audit or investigative activities necessary to assure the integrity of Social Security programs; and To the Department of Justice when representing the Social Security Administration in litigation.

We may also use the information you provide in computer matching programs. Matching programs compare our records with records kept by other Federal, state or local government agencies. Information from these matching programs can be used to establish or verify a person's eligibility for Federally funded or administered benefit programs and for repayment of payments or delinquent debts under these programs.

Additional information regarding this form, routine uses of information, and our programs and systems, is available on-line at www.socialsecurity.gov or at your local Social Security office.

Paperwork Reduction Act Statement - This information collection meets the requirements of 44 U.S.C. § 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take about 2 hours to read the instructions, gather the facts, and answer the questions. **SEND OR BRING THE COMPLETED FORM TO YOUR LOCAL SOCIAL SECURITY OFFICE.** To find the nearest office, call 1-800-772-1213 (TTY 1-800-325-0778). *Send only comments on our time estimate above to: SSA, 6401 Security Blvd., Baltimore, MD 21235-6401.*

REQUEST FOR RECONSIDERATION

(Do not write in this space)

NAME OF CLAIMANT		NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON (If different from claimant.)
CLAIMANT SSN	CLAIMANT CLAIM NUMBER (if different from SSN)	SUPPLEMENTAL SECURITY INCOME (SSI) OR SPECIAL VETERANS BENEFITS (SVB) CLAIM NUMBER
SPOUSE'S NAME (Complete ONLY in SSI cases)		SPOUSE'S SOCIAL SECURITY NUMBER (Complete ONLY in SSI cases)

CLAIM FOR (Specify type, e.g., retirement, disability, hospital /medical, SSI, SVB, etc.)

I do not agree with the determination made on the above claim and request reconsideration. My reasons are:

SUPPLEMENTAL SECURITY INCOME OR SPECIAL VETERANS BENEFITS RECONSIDERATION ONLY(See the three ways to appeal in the How To Appeal Your Supplemental Security Income (SSI) Or Special Veterans Benefit (SVB) Decision instructions.)**"I want to appeal your decision about my claim for Supplemental Security Income (SSI) or Special Veterans Benefits (SVB).****I've read about the three ways to appeal. I've checked the box below."**
☐ Case Review
 ☐ Informal Conference
 ☐ Formal Conference
ENTER ADDRESSES FOR THE CLAIMANT AND THE REPRESENTATIVE

CLAIMANT SIGNATURE- OPTIONAL			NAME OF CLAIMANT'S REPRESENTATIVE <input type="checkbox"/> NON-ATTORNEY <input type="checkbox"/> ATTORNEY		
MAILING ADDRESS			MAILING ADDRESS		
CITY	STATE	ZIP CODE	CITY	STATE	ZIP CODE
TELEPHONE NUMBER (Include area code)		DATE	TELEPHONE NUMBER (Include area code)		DATE

TO BE COMPLETED BY SOCIAL SECURITY ADMINISTRATION

See list of initial determinations

1. HAS INITIAL DETERMINATION BEEN MADE? <input type="checkbox"/> YES <input type="checkbox"/> NO	2. CLAIMANT INSISTS ON FILING <input type="checkbox"/> YES <input type="checkbox"/> NO
3. IS THIS REQUEST FILED TIMELY? (If "NO", attach claimant's explanation for delay and attach any pertinent letter, material, or information in Social Security office.) <input type="checkbox"/> YES <input type="checkbox"/> NO	

RETIREMENT AND SURVIVORS RECONSIDERATIONS ONLY (CHECK ONE) REFER TO (GN 03102.125)	SOCIAL SECURITY OFFICE ADDRESS
<input type="checkbox"/> NO FURTHER DEVELOPMENT REQUIRED (GN 03102.300) <input type="checkbox"/> REQUIRED DEVELOPMENT ATTACHED <input type="checkbox"/> REQUIRED DEVELOPMENT PENDING, WILL FORWARD OR ADVISE STATUS WITHIN 30 DAYS	

ROUTING INSTRUCTIONS (CHECK ONE)	<input type="checkbox"/> DISABILITY DETERMINATION SERVICES (ROUTE WITH DISABILITY FOLDER) <input type="checkbox"/> ODO, BALTIMORE	<input type="checkbox"/> PROGRAM SERVICE CENTER <input type="checkbox"/> OIO, BALTIMORE <input type="checkbox"/> OEO, BALTIMORE	<input type="checkbox"/> DISTRICT OFFICE RECONSIDERATION <input type="checkbox"/> CENTRAL PROCESSING SITE (SVB)
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NOTE: Take or mail the **completed original** to your local Social Security office, the Veterans Affairs Regional Office in Manila or any U.S. Foreign Service post and keep a copy for your records.

ADMINISTRATIVE ACTIONS THAT ARE INITIAL DETERMINATIONS (See GN03101.070, GN03101.080, and SI04010.010)

NOTE: These lists cover the vast majority of administrative actions that are initial determinations. However, they are not all inclusive.

Title II

1. Entitlement or continuing entitlement to benefits;
2. Reentitlement to benefits;
3. The amount of benefit;
4. A recomputation of benefit;
5. A reduction in disability benefits because benefits under a worker's compensation law were also received;
6. A deduction from benefits on account of work;
7. A deduction from disability benefits because of claimant's refusal to accept rehabilitation services;
8. Termination of benefits;
9. Penalty deductions imposed because of failure to report certain events;
10. Any overpayment or underpayment of benefits;
11. Whether an overpayment of benefits must be repaid;
12. How an underpayment of benefits due a deceased person will be paid;
13. The establishment or termination of a period of disability;
14. A revision of an earnings record;
15. Whether the payment of benefits will be made, on the claimant's behalf to a representative payee, unless the claimant is under age 18 or legally incompetent;
16. Who will act as the payee if we determine that representative payment will be made;
17. An offset of benefits because the claimant previously received Supplemental Security Income payments for the same period;
18. Whether completion of or continuation for a specified period of time in an appropriate vocational rehabilitation program will significantly increase the likelihood that the claimant will not have to return to the disability benefit rolls and thus, whether the claimant's benefits may be continued even though the claimant is not disabled;
19. Nonpayment of benefits because of claimant's confinement for more than 30 continuous days in a jail, prison, or other correctional institution for conviction of a criminal offense;
20. Nonpayment of benefits because of claimant's confinement for more than 30 continuous days in a mental health institution or other medical facility because a court found the individual was not guilty for reason of insanity; a court found that he/she was incompetent to stand trial or was unable to stand trial for some other similar mental defect; or, a court found that he/she was sexually dangerous.

Title XVI

1. Eligibility for, or the amount of, Supplemental Security Income benefits;
2. Suspension, reduction, or termination of Supplemental Security Income benefits;
3. Whether an overpayment of benefits must be repaid;
4. Whether payments will be made, on claimant's behalf to a representative payee, unless the claimant is under age 18, legally incompetent, or determined to be a drug addict or alcoholic;
5. Who will act as payee if we determine that representative payment will be made;
6. Imposing penalties for failing to report important information;
7. Drug addiction or alcoholism;
8. Whether claimant is eligible for special SSI cash benefits;
9. Whether claimant is eligible for special SSI eligibility status;
10. Claimant's disability; and
11. Whether completion of or continuation for a specified period of time in an appropriate vocational rehabilitation program will significantly increase the likelihood that claimant will not have to return to the disability benefit rolls and thus, whether claimant's benefits may be continued even though he or she is not disabled.

NOTE: Every redetermination which gives an individual the right of further review constitutes an initial determination.

Title VIII (See VB 02501.035)

1. Meeting or failing to meet the qualifying and/or entitlement factors for special veterans benefits (SVB);
2. Reduction, suspension or termination of SVB payments;
3. Applicability of a disqualifying event prior to SVB entitlement;
4. Administrative actions in SVB cases similar to those listed under Title II--items 3, 4, 10, 11 & 16.

Title XVIII

1. Entitlement to hospital insurance benefits and to enrollment for supplementary medical insurance benefits;
2. Disallowance (including denial of application for HIB and denial of application for enrollment for SMIB);
3. Termination of benefits (including termination of entitlement to HI and SMI).
4. Initial determinations regarding Medicare Part B income-related premium subsidy reductions.

Name (Claimant) (Print or Type)	Social Security Number - -
Wage Earner (If Different)	Social Security Number - -

Part I APPOINTMENT OF REPRESENTATIVE

I appoint this person, _____

(Name and Address)

to act as my representative in connection with my claim(s) or asserted right(s) under:

- ☐ Title II (RSDI) ☐ Title XVI (SSI) ☐ Title XVIII (Medicare Coverage) ☐ Title VIII (SVB)

This person may, entirely in my place, make any request or give any notice; give or draw out evidence or information; get information; and receive any notice in connection with my pending claim(s) or asserted right(s).

- ☐ I authorize the Social Security Administration to release information about my pending claim(s) or asserted right(s) to designated associates who perform administrative duties (e.g. clerks), partners, and/or parties under contractual arrangements (e.g. copying services) for or with my representative.

- ☐ I appoint, or I now have, more than one representative. My main representative is _____

(Name of Principal Representative)

Signature (Claimant)	Address	
Telephone Number (with Area Code) () -	Fax Number (with Area Code) () -	Date

Part II ACCEPTANCE OF APPOINTMENT

I, _____, hereby accept the above appointment. I certify that I have not been suspended or prohibited from practice before the Social Security Administration; that I am not disqualified from representing the claimant as a current or former officer or employee of the United States; and that I will not charge or collect any fee for the representation, even if a third party will pay the fee, unless it has been approved in accordance with the laws and rules referred to on the reverse side of the representative's copy of this form. If I decide not to charge or collect a fee for the representation, I will notify the Social Security Administration. (Completion of Part III satisfies this requirement.)

Check one: ☐ I am an attorney. ☐ I am a non-attorney eligible for direct payment under SSA law.
☐ I am a non-attorney not eligible for direct payment.

I am now or have previously been disbarred or suspended from a court or bar to which I was previously admitted to practice as an attorney. ☐ YES ☐ NO

I am now or have previously been disqualified from participating in or appearing before a Federal program or agency. ☐ YES ☐ NO

I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.

Signature (Representative)	Address	
Telephone Number (with Area Code) () -	Fax Number (with Area Code) () -	Date

Part III FEE ARRANGEMENT

(Select an option, sign and date this section.)

- ☐ **Charging a fee and requesting direct payment** of the fee from withheld past-due benefits. (SSA must authorize the fee unless a regulatory exception applies.)
- ☐ **Charging a fee but waiving direct payment** of the fee from withheld past-due benefits —I do not qualify for or do not request direct payment. (SSA must authorize the fee unless a regulatory exception applies.)
- ☐ **Waiving fees and expenses from the claimant and any auxiliary beneficiaries** —By checking this block I certify that my fee will be paid by a third-party, and that the claimant and any auxiliary beneficiaries are free of all liability, directly or indirectly, in whole or in part, to pay any fee or expenses to me or anyone as a result of their claim(s) or asserted right(s). (SSA does not need to authorize the fee if a third-party entity or a government agency will pay from its funds the fee and any expenses for this appointment. Do not check this block if a third-party individual will pay the fee.)
- ☐ **Waiving fees from any source** —I am waiving my right to charge and collect any fee, under sections 206 and 1631(d)(2) of the Social Security Act. I release my client and any auxiliary beneficiaries from any obligations, contractual or otherwise, which may be owed to me for services provided in connection with their claim(s) or asserted right(s).

Signature (Representative)	Date
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INFORMATION FOR CLAIMANTS

What Your Representative(s) May Do

We will work directly with your appointed representative unless he or she asks us to work directly with you. Your representative may:

- get information from your claim(s) file;
- with your permission, designate associates who perform administrative duties (e.g. clerks), partners and/or parties under contractual arrangements (e.g., copying services) to receive information from us on his or her behalf (by checking the appropriate block and signing this form, you are providing your permission for your representative to designate such associates, partners, and/or contractual parties);
- give us evidence or information to support your claim;
- come with you, or for you, to any interview, conference, or hearing you have with us;
- request a reconsideration, a hearing, or Appeals Council review; and
- help you and your witnesses prepare for a hearing and question any witnesses.

Also, your representative will receive a copy of the decision(s) we make on your claim(s). We will rely on your representative to tell you about the status of your claim(s), but you still may call or visit us for information.

You and your representative(s) are responsible for giving Social Security accurate information. It is wrong to knowingly and willingly furnish false information. Doing so may result in criminal prosecution.

We usually continue to work with your representative until (1) you notify us in writing that he or she no longer represents you; or (2) your representative tells us that he or she is withdrawing or indicates that his or her services have ended (for example, by filing a fee petition or not pursuing an appeal). We do not continue to work with someone who is suspended or disqualified from representing claimants. We will inform you if we suspend your representative.

What Your Representative(s) May Charge

Each representative you appoint can ask for a fee. To charge you a fee for services, your representative must get our authorization if you or another individual will pay the fee. However, as described in "Completing this form to appoint a representative, Part III Fee Arrangement" section of this form, under certain circumstances, we do not have to authorize the representative's fee. To request a fee, your representative must file a fee agreement or a fee petition. In either case, your representative cannot charge you more than the fee amount we authorize. If he or she does, promptly report this to your Social Security office.

Filing A Fee Petition

Your representative may file a fee petition when his or her work on your claim(s) is complete. This written request describes in detail the amount of time your representative spent on each service he or she provided you. The request also gives the amount of the fee the representative wants to charge for these services. Your representative must give you a copy of the fee petition and each attachment. If you disagree with the information shown in the fee petition, contact your Social Security office. Please do this within 20 days of receiving your copy of the petition.

We will review the petition and consider the reasonable value of the services provided. Then we will tell you in writing the amount of the fee we authorize.

Filing A Fee Agreement

If you and your representative have a written fee agreement, one of you must give it to us before we decide your claim(s). We usually will approve the agreement if:

- you both signed it;
- the fee you agreed on is no more than 25 percent of past-due benefits, or \$6,000 (or a higher amount we set and announced in the Federal Register), whichever is less;
- we approve your claim(s); and
- your claim results in past-due benefits.

We will tell you in writing the amount of the fee your representative can charge based on the agreement.

If we do not approve the fee agreement, we will tell you and your representative in writing. If your representative wishes to charge and collect a fee, he or she must file a fee petition.

After we tell you the amount of the fee your representative can charge, you or your representative can ask us to look at it again if either or both of you disagree with the amount. If we approved a fee agreement, the person who decided your claim(s) also may ask us to lower the amount. Someone who did not decide the amount of the fee the first time will review and finally decide the amount of the fee.

How Much You Pay

You never owe more than the fee we authorize, except for:

- any fee a Federal court allows for your representative's services before it; and
- out-of-pocket expenses your representative incurs or expects to incur, for example, the cost of getting your doctor's or hospital's records. Our authorization is not needed for such expenses.

Your representative may accept money in advance as long as he or she holds it in a trust or escrow account. We usually withhold 25 percent of your past-due benefits to pay toward the fee for you if:

- your retirement, survivors, disability insurance, and/or supplemental security income claim(s) results in past-due benefits;
- your representative is an attorney or a non-attorney whom we have determined to be eligible to receive direct payment of fees; and
- your representative registers with us for direct payment before we effectuate a favorable decision on your claim.

You must pay your representative directly:

- **the rest of the fee you owe**, if the amount of the authorized fee is more than the money we withheld and paid to your representative for you plus any amount your representative held for you in a trust or escrow account.
- **all of the fee you owe**, if we did not withhold past-due benefits, (for example, because there are no past-due benefits; your representative waived direct payment, did not register for direct payment, you discharged the representative, or he or she withdrew from representing you, before we issued a favorable decision); or we withheld an amount from your past-due benefits, but your representative did not ask us to authorize a fee or tell us that he or she planned to ask for a fee within 60 days after the date of your notice of award and we released the withheld amount to you

NAME: _____

SSN: _____

DATE: _____

TEL: _____

REQUEST FOR \$10 WITHHOLDING OF OVERPAYMENT

Dear SSA Claims Representative:

I currently receive Social Security/SSI benefits. I understand that I have an overpayment on my record. Please limit withholding to \$10 per month, as I meet one or more of the following criteria:

_____ I receive the Medicare Low-Income Subsidy (LIS), per POMS GN 2210.030(B)(6) exception;

_____ I receive other cash public assistance, per POMS GN 2210.030(B)(5);

_____ Paying back the overpayment at a rate of more than \$10 per month would be a great hardship to me, per POMS GN 02210.045;

_____ A rate of \$10 per month would permit recovery within 36 months, and paying back the overpayment at a rate of more than \$10 per month would be a great hardship to me, per POMS GN 2210.030(B)(3).

Thank you for your attention to this matter.

Sincerely,

Name

NAME: _____

SSN: _____

DATE: _____

TEL: _____

REQUEST FOR ADMINISTRATIVE DISCONTINUANCE OF OVERPAYMENT

Dear SSA Claims Representative:

I currently receive Social Security/SSI benefits. I understand that I have an overpayment on my record, the amount of which is less than \$1,000.00. I was without fault in the creation of the overpayment. I request that the overpayment be waived per POMS SI 02260.030(C)(3).

Thank you for your attention to this matter.

Sincerely,

Name



COMMUNITY LEGAL SERVICES
OF PHILADELPHIA

Sample Letter Brief

VIA FACSIMILE (215-225-9307)

Attn: Dot Ferry
Social Security Administration
Nicetown District Office
2929 N. Broad St.
Philadelphia, PA 19132

April 18, 2010

RE: CLIENT, SSN: 123-45-6789

Dear Ms. Ferry:

I represent CLIENT. You and I spoke several weeks ago about Ms. CLIENT's case. She receives Title II benefits for her disability. In early March 2010, her benefits were reduced to recover an alleged overpayment, however no overpayment notice was sent prior to the recoupment start date. You informed me that the recovery had been initiated by the Baltimore Office of Central Operations, rather than by your district office, and you promised to communicate with the Baltimore office regarding the lack of an overpayment notice being sent in advance of the recovery efforts. Thanks to that communication, an overpayment notice was finally sent on April 4, 2010. The April 4 notice informed Ms. CLIENT that she was overpaid \$1,242.00 "due to a technical error," by which her monthly benefits were "wrongfully increased" in certain months. This letter is to request waiver of that overpayment. Enclosed with this request, please find a signed 1696 appointing me as representative, as well as a 632 waiver form. (The completed 632 form, including financial statement, is forthcoming; however, pursuant to the POMS governing waiver requests, I am submitting it here so that the waiver request may be entered at this time to stop recovery efforts pending the final waiver determination.)

Pursuant to POMS GN 02250.001, a request for waiver is to be granted where both of the following conditions are met:

- (1) The person is without fault, and
- (2) Recovery would either defeat the purpose of the act or be against equity and good conscience.

I. Ms. CLIENT Was Without Fault for the Overpayment

With respect to the first requirement, Ms. CLIENT was indisputably without fault in the creation of the overpayment. The overpayment notice itself states clearly that the overpayment is the result of a "technical error" on the part of SSA. Ms. CLIENT did not know, nor did she have reason to know, her benefit amount had been wrongfully increased. Indeed, POMS GN 02250.020 provides a useful illustration similar to the present case:

A. Policy

Usually a person cannot be charged with knowledge of how benefit rates are computed. However, when the error results in a payment or payments clearly out of line with what could have reasonably been expected, without fault can be established only if there is clear and convincing evidence.

B. Examples

1. Without Fault

Jane Reynolds alleged 02/15/25 as her date of birth on her application for retirement benefits. We subsequently notified her that we established 2/15/27 as her correct date of birth. However, the 02/15/25 date of birth was used in computing her benefit rate. Because Ms. Reynolds could not be expected to know how her benefit rate was computed, she is without fault for the overpayment.

As with the example above, Ms. CLIENT cannot and should not be expected to know how her benefits are computed. The difference between the rate at which she was erroneously overpaid (\$770/month) and the proper amount (\$716) is small enough that it is not reasonable to expect a beneficiary to notice and discern that an error had been made in calculating her benefit rate. Therefore, Ms. CLIENT should be determined without fault for the overpayment.

II. Recovery Would Defeat the Purpose of Title II of the Act

As to the second requirement, pursuant to POMS GN 02250.100, recovery is deemed to defeat the purpose of title II of the Social Security Act if recovery would deprive the person of income required for ordinary and necessary living expenses. Recovery will defeat the purpose of title II to the extent that the person does not have any of the overpaid funds in his possession when notified of the overpayment and the person either:

- (1) Receives cash public assistance; or
- (2) Needs substantially all current income to meet ordinary and necessary living expenses and recovery would reduce assets below the levels specified in the POMS.

Ms. CLIENT does not presently have any of the overpaid funds in her possession. Furthermore, she needs all of her income in order to meet ordinary and necessary living expenses, and recovery would reduce her assets below the levels set forth in the POMS. A financial statement is forthcoming to document these facts.

Based on the foregoing, it is requested that the overpayment be waived. Please feel free to contact me if further information is needed in order to process Ms. CLIENT's request for waiver of the overpayment.

Sincerely,

Rebecca D. Vallas
Staff Attorney
Ext. 2417
Rvallas@CLSphila.org



COMMUNITY LEGAL SERVICES
OF PHILADELPHIA

“What is an Overpayment” Client Brochure



What Is A Social Security/SSI “Overpayment”?

This guide will give you information about Social Security/SSI Overpayments. Even though the Social Security Administration says they overpaid you, you may not have to pay the money back. Read on about how to fight overpayments, and also how to have them forgiven so you don't have to pay them back.

What is a Social Security/SSI overpayment?

An “overpayment” is when the Social Security Administration (SSA) sends you benefits when they should not, or when they pay you more than they are supposed to. If SSA thinks they overpaid you, they will want their money back.

What causes an overpayment?

Overpayments can be caused by lots of things. *Some examples are:*

- Changes in your household income
- Returning to work
- Changes in your living situation
- Incarceration
- Being in a hospital/nursing home
- Changes in your disability

What is a Notice of Overpayment?

Before anything else can happen, SSA must send you a Notice of Overpayment. This notice must tell you:

- The amount of the overpayment
- How to pay SSA back
- What caused the overpayment
- Your right to appeal

What should you do if you get a Notice of Overpayment?

Do not ignore it! You can fight an overpayment, but there may be time limits. If you do nothing, SSA will begin to collect the overpayment out of your benefits. You must act quickly.



What can you do about a Social Security/SSI overpayment?

APPEAL. If you don't think you were overpaid, you can appeal. If you disagree about how much SSA says they overpaid you, you can appeal. An appeal is called a "Request for Reconsideration." Appealing makes SSA take another look at the overpayment.

WAIVER. If you do not disagree with the overpayment, you still may not have to pay it back. If you don't think it was your fault, and can't afford to pay it back, you can ask SSA to forgive the overpayment. This is called a "Request for Waiver."

PAYMENT PLAN. No matter what, you can always ask SSA to let you pay the overpayment back over time on a monthly schedule you can afford. This is called a "Payment Plan." In many cases SSA will agree to \$10 per month.

How to Appeal an Overpayment – Request for Reconsideration

If you don't think you were overpaid, or you think the amount of the overpayment is wrong, you can file an appeal. This is called a "Request for Reconsideration." You must file a special form called SSA-561. Filing this form will make SSA take another look at the overpayment.

You should file your appeal immediately to stop money from being taken out of your benefits check. Say that you do not agree with the fact and/or amount of the overpayment. Ask that no money be taken out of your benefits until a decision is made about the overpayment. The deadline to appeal is 65 days from the date on the notice of overpayment – but you should file it right away.

You can get a Request for Reconsideration form (SSA-561) from your local Social Security Office, or by calling 1-800-772-1213. Note: If you are waiting for the form to be mailed to



you, be sure that you do not miss your appeal deadline. If you are close to the deadline, just go to your local office and file your appeal.

How to request Waiver

If you think the overpayment wasn't your fault, and you can't afford to pay it back, you can ask SSA to forgive the overpayment. This is called a "Request for Waiver." You must file a special form called SSA-632.

You should file your Request immediately to stop money from being taken out of your monthly benefits. Ask that no money be taken out of your benefits until a decision is made about the overpayment. You may request Waiver at any time, even if the overpayment is already being collected.

To get a Waiver, you must show:

- (1) the overpayment was not your fault, and
- (2) you cannot afford to back it back.

* If you get SSI, SSA will assume you can't afford to pay it back.

You can get a Request for Waiver form (SSA-632) from your local Social Security Office or by calling 1-800-772-1213.

Can I file both an appeal and a Request for Waiver?

Yes. You can file both an appeal and a Request for Waiver of the overpayment. Some people choose to file them at the same time. Some people appeal first, and then request Waiver if SSA denies their appeal.

What happens while my Requests are pending?

If you appeal or request Waiver within 30 days of the Notice, your benefits will not change. If you request Waiver after SSA has already started collecting the overpayment, SSA must stop recovery while it considers your request. Your benefits will not be reduced to collect the overpayment until a decision has been made.



What happens if SSA denies my appeal and/or Request for Waiver?

You have the right to appeal both Reconsideration and Waiver decisions. Your rights to appeal will be on the decision notices you get from SSA. There are time limits to appeal, so you must act quickly.

How much can SSA take out of my benefits to collect the overpayment?

If you are receiving any SSI benefits, no more than \$72.10 can be taken out of your check each month. If you are only receiving Social Security benefits (retirement or disability), Social Security can take your whole monthly check unless you agree on a lower payment plan. You should contact SSA to work out a payment plan you can afford to make sure this doesn't happen.

How to get a Payment Plan you can afford

If you don't disagree with the overpayment, you can still work out a payment plan that you can afford, to pay back the money.

Getting a payment plan:

Go to your local SSA Office and ask for a payment plan to pay back your overpayment. Offer a monthly payment amount that you are sure you can afford.

Fill out an Income and Expense Statement to show that this amount is the most you can afford to pay each month.

If your situation changes and you can no longer afford the payment plan you have agreed to, contact SSA right away to let them know that you need to change the amount of the payment plan.



OTHER HELPFUL TIPS

- You can find your local Social Security office by calling 1-800-772-1213, or at www.socialsecurity.gov/locator.
- Every time you turn something in to SSA...
You should bring it to your local SSA Office in-person. You should keep a copy for yourself, and ask for a receipt. This will help you prove what you turned in.
- Want more information on Social Security/SSI overpayments and what you can do about them? Visit www.clsphila.org/get-help/ssi.
- Getting help from Community Legal Services
 - Our Center City office is located at 1424 Chestnut St., (215) 981-3700.
 - We are also at 1410 W. Erie Avenue (at Broad St.), (215) 227-2400.

*Please call either office for intake hours