

How to Fight an SSI or Social Security Overpayment Notice

Introduction

Are you being charged with an overpayment? If so, Social Security believes that you got benefits when you were not eligible to get them. Social Security must notify you in writing of the overpayment before it may take any money from your check. There are four actions you may take if you receive an overpayment notice. You may take any or all four.

May I appeal the overpayment?

Yes, when:

- You do not agree that you were overpaid or
- You do not agree with the amount of overpayment.

You may appeal by filing [SSA Form 561, "Request Reconsideration."](#) You have 60 days from the date of the overpayment notice to request reconsideration. If you do so within ten days of getting your notice, Social Security will not take any money out of your check until a decision on your request is made.

How do I request reconsideration?

You may request reconsideration at your Social Security office, or call them and ask for the form to do so, or get the form online at www.ssa.gov. When you turn the form in, you should also give Social Security evidence to show that you were not overpaid. A different worker will make the reconsideration decision. It must be in writing.

May I ask for a waiver?

You may ask them to **waive** the overpaid amount by filing [SSA Form 632, "Request for Waiver of Overpayment Recovery or Change in Repayment."](#) You may ask this at any time, even if Social Security has started collecting the overpayment from you.

When you ask for a waiver, you are asking Social Security not to collect the overpayment from you. A Social Security or SSI overpayment may be waived if you meet the standards for waiver. You may apply for a waiver at the Social Security office, or call them and ask for the form to do so. Or get the form online at <http://www.ssa.gov>.

In order for a waiver to be granted:

- You must show that you are **"without fault"** in causing the overpayment. And
- You must show either that recovery would **"defeat the purpose"** of the Social Security Act **or** that recovery (making you pay it back) would **"be against equity and good conscience."**

If you meet both standards, SSA should grant your waiver request.

"Fault" means:

1. Failure to provide information that you knew or should have known was material; or
2. You made an incorrect statement

that you knew or should have known was incorrect; or

3. You failed to return a payment that you knew or should have known was incorrect.

You meet the **“Defeat the Purpose”** test if you need your income and resources to meet your necessary and ordinary living expenses. Social Security is more likely to grant your waiver request if you do not have extra money in the bank or extra income left over after paying your living expenses. Ordinary and necessary living expenses include food, clothing, housing costs (house or rent payments, utilities, insurance, taxes, maintenance), medical expenses, support obligations, and other miscellaneous expenses which can reasonably be considered a part of your standard of living.

“Against Equity and Good Conscience” means that you have given up a valuable right or changed your position for the worse.

If your waiver request is denied, you may request that Social Security reconsider their decision by filing [SSA Form 561, “Request Reconsideration.”](#) Do this at your local Social Security office, or call them and ask for the proper form. SSA must get your request for reconsideration within 60 days of the date of their written denial of waiver. A different worker will review your request and make a decision.

Further Appeal Rights

If your request for reconsideration is denied, you may ask for a hearing before an Administrative Law Judge (ALJ). SSA must get our request for a hearing within 60 days of SSA’s written reconsideration denial. You may make your request for a hearing before an ALJ by filing [SSA Form HA501 “Request for Hearing before an ALJ.”](#) You can do this at the Social Security office, call them and ask for the form, or get the form online at www.ssa.gov.

The ALJ will notify you of the time and date of your hearing. This is usually at least several months after you have asked for the hearing. You may have a lawyer or a non-lawyer represent you at the hearing. If you have a lawyer, be sure to get an explanation of the fee from the lawyer.

Before the hearing, you have the right to review and copy your file at the Social Security hearing office. Call them and make an appointment to copy your file.

At the hearing, the ALJ will have only the information that is in your file and any information you provide. You may testify. You may also have witnesses testify. You may also give the judge more documents. Your testimony and your witnesses’ testimony is evidence. So are any other documents that you give to the judge. **Make a list before the hearing of the things that you want 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 after the hearing.

If you do not agree with the ALJ’s decision you may appeal further to the Social

Security Administration's Appeals Council by filing [SSA Form HA520, "Request for Review of Decision/Order of Administrative Law Judge."](#) SSA must get your request within 60 days of the ALJ's written denial notice. You may make the request at the SSA office, or call and ask for the form to be sent to you, or get the form online at www.ssa.gov.

◆ You may appeal an adverse Appeals Council decision to Federal District Court. You must file an appeal to the Federal District Court within 60 days of the Appeals Council's written decision.

What if my Appeal or Waiver is denied?

You may ask Social Security to reduce your rate of repayment based on your present financial circumstances. Decide how much

money you can afford to have taken out of your check each month. Weigh your income against your expenses. Then ask Social Security to take only that amount out of your check each month. Social Security will ask you for documentation of your income and expenses, and will then make a decision on your request for a reduction in the rate of repayment.

May I pay back only part of the overpayment?

Maybe. If you have an overpayment but are not currently getting Social Security benefits, you may be able to compromise the overpayment amount. This means you may offer to pay less than the full amount of the overpayment. SSA will not compromise the overpayment if you still have the money, or if you were found to be at fault in causing the overpayment. Make your offer of compromise in writing to your Social Security office.

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This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice.

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