



SOCIAL SECURITY

The Commissioner

December 27, 2021

The Honorable Ron Wyden
Chair, Committee on Finance
United States Senate
Washington, DC 20510

Dear Committee Chair Wyden,

Section 845(c) of the Bipartisan Budget Act (BBA) of 2015 requires us to submit by January 1st of each calendar year a report on overpayment waivers to the House Committee on Ways and Means and the Senate Committee on Finance. Enclosed is our report for fiscal year 2021.

As required by the BBA, this report provides the following information:

- 1) The number and total value of overpayments we recovered or scheduled to be recovered during the previous fiscal year for the Old-Age, Survivors, and Disability Insurance (OASDI) and Supplemental Security Income (SSI) programs respectively, including the terms and conditions of repayment of such overpayments; and
- 2) The number and total value of OASDI and SSI overpayments we waived during the previous fiscal year.

In addition to the required items referenced above, the report provides an overview of our programs, our program overpayments, and a description of our procedures to collect overpayments or adjudicate requests for reconsideration or waiver.

If you have questions about this report, please feel free to contact me. Your staff may also contact Tom Klouda, our Deputy Commissioner for Legislation and Congressional Affairs, at (202) 358-6030.

Sincerely,

Kilolo Kijakazi
Acting Commissioner

Enclosure

cc: The Honorable Mike Crapo, Ranking Member



SOCIAL SECURITY

The Commissioner

December 27, 2021

The Honorable Richard E. Neal
Chair, Committee on Ways and Means
House of Representatives
Washington, DC 20515

Dear Committee Chair Neal:

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- 2) The number and total value of OASDI and SSI overpayments we waived during the previous fiscal year.

In addition to the required items referenced above, the report provides an overview of our programs, our program overpayments, and a description of our procedures to collect overpayments or adjudicate requests for reconsideration or waiver.

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Sincerely,

Kilolo Kijakazi
Acting Commissioner

Enclosure

cc: The Honorable Kevin Brady, Ranking Member

Social Security Administration
Overpayment Waivers for the Old-Age, Survivors, and Disability Insurance and
Supplemental Security Income Programs
as Required by the Bipartisan Budget Act of 2015
Fiscal Year 2021 Report

Bipartisan Budget Act of 2015 Reporting Requirements

Section 845(c) of the Bipartisan Budget Act (BBA) of 2015 requires us to submit a report to the House Committee on Ways and Means and the Senate Committee on Finance by January 1st of each calendar year. The report must contain:

- The number and total value of overpayments we recovered or scheduled to be recovered during the previous fiscal year for the Old-Age, Survivors and Disability Insurance (OASDI) and Supplemental Security Income (SSI) programs, including the terms and conditions of repayment of the overpayments; and
- The number and total value of OASDI and SSI overpayments we waived during the previous fiscal year.

This report provides an overview of our programs, our program overpayments, and a description of our procedures to collect overpayments or adjudicate requests for reconsideration or waiver. Finally, it provides the OASDI and SSI overpayment information required by BBA.

Overview of our Programs

We administer three programs under the *Social Security Act*:

- **Old-Age and Survivors Insurance:** Established in 1935, the Old-Age and Survivors Insurance (OASI) program provides retirement and survivors benefits to qualified workers and their family members. In fiscal year (FY) 2021, we paid OASI benefits to an average of approximately 55 million beneficiaries each month and paid about \$986 billion to OASI beneficiaries through the fiscal year.
- **Disability Insurance:** Established in 1956, the Disability Insurance (DI) program provides benefits for workers who become disabled and their families. In FY 2021, we paid DI benefits to an average of nearly 10 million beneficiaries each month and paid about \$140 billion in DI benefits through the fiscal year.
- **Supplemental Security Income:** Established in 1972, the Supplemental Security Income (SSI) program provides financial support to aged, blind, and disabled adults and children who have limited income and resources. In FY 2021, we paid SSI benefits to an average of nearly 8 million recipients (approximately 2.6 million of whom concurrently receive OASI or DI benefits) each month and paid about \$54 billion in SSI Federal benefits and State supplementary payments through the fiscal year.

OASDI and SSI Overpayments

We are good stewards of the OASDI and SSI programs, striving to pay the right amount to the right person at the right time. Our payment accuracy in the OASDI programs is exceptionally high: 99.83 percent of benefits were free from overpayment in FY 2020. In the SSI program, which is more difficult to administer due to complex policies on income and resource limits, 91.25 percent of payments were free from overpayment in FY 2020.¹

In creating the Social Security program, Congress recognized the possibility that beneficiaries would be overpaid. Accordingly, since 1939, the Social Security Act has provided us with statutory authority to enforce the recovery of overpayments.² When OASDI and SSI benefit overpayments occur, we collect repayment to the extent possible under the law.

An overpayment occurs when we pay an individual more than he or she should have been paid for a given period.³ Many factors can cause overpayments.⁴ For instance, in the SSI program, one reason for overpayments is that recipients do not timely report changes in their current living arrangements to us. We generally discover these overpayments when we conduct SSI redeterminations, which are periodic non-medical reviews of SSI recipients' eligibility.

After we confirm that an overpayment exists, we establish the debt on our records and send a written overpayment notice to the overpaid individual.⁵ The overpayment notice includes the following information:

- The payment amount the individual received, and the payment amount the individual should have received for each month in the adjusted period;
- How and when the overpayment occurred;
- The individual's right to request reconsideration (i.e., an appeal of the determination that an overpayment exists);
- The individual's right to request a waiver of recovery of the overpayment;
- Repayment options; and
- The need for the individual to contact us before we begin collection efforts.⁶

If the overpaid individual does not contact us, we use available collection methods to recover the overpayment. For example, if a person is currently receiving benefits, we can withhold all or part of those benefits to recover an overpayment. If a person is no longer receiving benefits, we can use a variety of external debt collection methods to seek recovery.

¹ Our FY 2020 Agency Financial Report contains a detailed report on improper payments, which discusses our payment accuracy performance.

² See Sections 204 and 1631(b) of the Social Security Act (Act) and 20 Code of Federal Regulations (C.F.R.) §§ 404.502 and 416.535.

³ See Sections 204(a) and 1631(b) of the Act and 20 C.F.R. §§ 404.502 and 416.537.

⁴ See 20 C.F.R. §§ 404.501(a) and (c) and 416.537(a).

⁵ See 20 C.F.R. §§ 404.502(a) and 416.558(a).

⁶ See 20 C.F.R. §§ 404.502(a)-(j) and 416.558(a); Program Operations Manual System (POMS) GN02201.009.

Right to Appeal⁷

The existence and amount of an overpayment are initial determinations, subject to appeal. An overpaid individual may appeal the determination through the following stages of the appeals process.⁸

- Reconsideration;
- A hearing before an administrative law judge;
- Appeals Council review; and
- A civil suit in a Federal district court.

An individual must request a reconsideration within 60 days of the overpayment notice.⁹ If the individual requests a reconsideration after the 60-day period has expired, we will determine whether good cause for late filing exists.¹⁰ If for some reason we determine an overpayment does not exist and we reverse our decision, we will eliminate the debt.¹¹

Right to Request Waiver¹²

An overpaid individual may request that we waive recovery of the overpayment.¹³ If we approve the request for a waiver, the individual does not have to repay the debt.¹⁴ An individual may request a waiver at any time, including after we have fully recovered the debt.¹⁵

We will grant an OASDI overpayment waiver when:

1. The individual was without fault in causing the overpayment; and
2. Recovery or adjustment of the overpayment would:
 - a. defeat the purpose of the OASDI program; or
 - b. be against equity and good conscience.

We will grant an SSI overpayment waiver when:

1. The individual was without fault in causing the overpayment; and
2. Recovery or adjustment of the overpayment would:
 - a. defeat the purpose of the SSI program;
 - b. be against equity and good conscience; or
 - c. impede the efficient or effective administration of SSI due to either
 - i. the small amount involved; or
 - ii. because the overpayment was caused by the recipient's countable resources exceeding the statutory limits by a small amount.¹⁶

⁷ See Sections 205(b), 205(g), and 163(b)(a)(A) of the Act.

⁸ See 20 C.F.R. §§ 404.907-922, 416.1407-1422, 404.929-943, 416.1429-1443, 404.966-982, 416.1433-1482, 404.981, 416.1481, 416.1482, and POMS GN 03101.001.

⁹ See 20 C.F.R. §§ 404.909, 416.1409.

¹⁰ See 20 C.F.R. §§ 404.911, 416.1411.

¹¹ See generally 20 C.F.R. §§ 404.921, 416.1421.

¹² See Sections 204(b) and 1631(b)(1)(B) of the Act and 20 C.F.R. §§ 404.506 and 416.550.

¹³ See 20 C.F.R. §§ 404.909, 416.1409.

¹⁴ See 20 C.F.R. § 413.551 and POMS GN 02250.360 and SI 02260.001.A.2.

¹⁵ See POMS GN 02201.019.A and SI 02260.001.A.3.

¹⁶ See POMS SI 02260.035.

Without Fault¹⁷

“Without fault” means that facts show the individual did not cause the overpayment. For example, the individual is at fault if they fail to:

- Furnish full and accurate information affecting basic rights to benefit payment;
- Comply with annual earnings and other reporting requirements; or
- Return checks that were not due the recipient.

Defeat the Purpose of the Program¹⁸

Recovery of an OASDI or SSI overpayment defeats the purpose of the program if:

1. The individual needs substantially all his or her income (including OASDI and SSI benefits) to meet ordinary and necessary living expenses;
2. The individual receives any type of public assistance payments (we generally consider recovery of an overpayment to defeat the purpose when an individual receives only SSI); or
3. The individual who is receiving OASDI benefits would have his or her total assets reduced to:
 - a. below \$3,000, if he or she has no dependents; or
 - b. below \$5,000, if he or she has one dependent, adding \$600 for each additional dependent.

Against Equity and Good Conscience¹⁹

Individuals can establish that recovery of an overpayment would be “against equity and good conscience”, regardless of their financial ability to repay any part of the overpayment if:

1. They changed their position for the worse or relinquished a valuable right because of their reliance upon a notice that a payment would be made or because of the overpayment itself. For example, a beneficiary, relying on the benefit payments, signed a lease on a more expensive apartment; or
2. They were receiving benefits on the same earnings record as the overpaid person, were living in a separate household from the overpaid person at the time of the overpayment, and did not receive the money.

We do not need financial information to make a waiver determination for an “against equity and good conscience” finding. In “against equity and good conscience” situations, we would grant a waiver, and the individual seeking waiver would not need to repay the overpayment.

SSI Overpayment Waivers due to Excess Resources

An SSI recipient must be without fault in causing an overpayment before we will consider approving his or her waiver request. In some cases, a recipient’s excess resources may exceed the statutory limit by such a small

¹⁷ See 20 C.F.R. §§ 404.507, 510-511, 416.552 and POMS GN 02250.005 and SI 05530.010.

¹⁸ See 20 C.F.R. §§ 404.508, 416.553 and POMS GN 02250.100-115 and SI 02260.020.

¹⁹ See 20 C.F.R. §§ 404.509, 416.554 and POMS GN 02250.150 and SI 02260.025.

amount that we will find the recipient to be without fault. We may determine an overpaid SSI recipient to be without fault if his or her countable resources exceed the resource limit by \$50.00 or less unless we determine the overpaid person willfully and knowingly failed to report the value of his or her resources accurately and timely.

Access to Financial Institutions (AFI) is an automated process that verifies alleged bank account balances with financial institutions to help determine SSI eligibility. In addition to verifying alleged accounts, the process also requests that financial institutions with a physical presence nearby the individual search their records for undisclosed accounts. Along with preventing overpayments for current SSI recipients, the AFI process can identify resources that may make an SSI applicant ineligible to receive benefits.

Access to Financial Institutions (AFI) for Waivers

Section 834 of BBA, which applies to OASDI and SSI, authorizes us to use AFI to obtain financial account information and search for undisclosed accounts before making a waiver determination that recovery of the debt would “defeat the purpose” of the program. Before obtaining financial account information, we request the individual’s authorization.

OASDI and SSI Overpayments Recovered, Scheduled, and Waived

In FY 2021, we recovered approximately \$4,070 million in OASDI and SSI program overpayments. We had approximately \$8,826 million scheduled for repayment. We waived approximately \$266 million.

We deferred certain workloads and the resulting overpayment debt collections to protect beneficiaries’ income and healthcare coverage during a critical time in the COVID-19 pandemic between March and August 2020. We also accommodated individuals’ requests to suspend recovering existing overpayments from their benefits, which resulted in fewer debt collections in FY 2020 and FY 2021.

Through rulemaking,²⁰ we implemented a streamlined waiver procedure specifically to address certain overpayments created or compounded by our deferral of certain workloads due to the pandemic.

²⁰ Waiver of Recovery of Certain Overpayment Debts Accruing During the COVID-19 Pandemic Period

Overpayments Recovered in FY 2021²¹

Program	Volume	Amount
OASDI	7,513,064	\$2,688,648,399
SSI	<u>15,134,542</u>	<u>1,381,336,657</u>
Total	<u><u>22,647,606</u></u>	<u><u>\$4,069,985,056</u></u>

Overpayments Scheduled for Repayment

When an overpaid individual requests to repay his or her overpayment by monthly installments, we negotiate a reasonable monthly payment amount and advise the individual that the installment agreement does not become effective until we receive the first installment payment. If he or she does not make a payment in accordance with the agreement and is currently receiving benefits, we recover the overpayment by withholding from his or her benefit payment. If he or she no longer receives benefits, we use our external debt collection tools, such as administrative offset.

**Overpayments in Scheduled Repayment Plans at the end of
FY 2021²²**

Program²³	Volume	Amount
OASDI	702,625	\$4,237,071,833
SSI	<u>1,161,418</u>	<u>4,588,923,529</u>
Total	<u><u>1,864,043</u></u>	<u><u>\$8,825,995,362</u></u>

Overpayments Waived in FY 2021²⁴

Program	Volume	Amount
OASDI	37,301	\$157,451,721
SSI²⁵	<u>103,004</u>	<u>108,543,881</u>
Total	<u><u>140,305²⁶</u></u>	<u><u>\$265,995,063</u></u>

²¹ Source: FY 2021 Treasury Report on Receivables.

²² Source: SSA Monthly Debt Goals Report.

²³ Scheduled repayments included collections we currently receive under a repayment plan and established repayment plans where we have not received any collections as of the end of FY 2021.

²⁴ Source: FY 2021 Treasury Report on Receivables.

²⁵ A single SSI overpayment may include both Federal and State funds; this report counts the waiver of Federal and State funds as separate actions since they have different funding sources.

²⁶ In FY 2021, we completed 91,663 SSI Federal and 11,341 SSI State overpayment waiver actions.