



SOCIAL SECURITY
Office of the Commissioner

December 21, 2018

The Honorable Kevin Brady
Chairman, Committee on Ways and Means
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

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 2018.

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 Royce Min, Acting Deputy Commissioner for Legislation and Congressional Affairs, at 202-358-6030.

Sincerely,

Nancy A. Berryhill
Acting Commissioner

Enclosure

Social Security Administration
Overpayment Waivers for the Old-Age, Survivors, and Disability Insurance and
Supplemental Security Income Programs Report
As Required by the Bipartisan Budget Act of 2015
Fiscal Year 2018

Bipartisan Budget Act of 2015 Reporting Requirements

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

Few government agencies touch the lives of as many people as we do. We administer three programs under the *Social Security Act* (the Act):

- **Old-Age and Survivors Insurance:** Created 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) 2018, we paid OASI benefits to an average of about 52 million beneficiaries each month, and paid about \$837 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 2018, we paid DI benefits to an average of over 10 million beneficiaries each month, and paid about \$141 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 2018, we paid SSI benefits to a monthly average of over 8 million recipients (about 2.7 million of whom concurrently receive DI benefits) and paid over \$47 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. We always strive to pay the right amount to the right person at the right time. Our payment accuracy in the OASDI programs is exceptionally high; 99.4 percent of benefits were free from overpayment in FY 2017. In the SSI program, which is more difficult to administer due to complex policies surrounding income and resource limits, 92.7 percent of payments were free from overpayment in FY 2017.¹

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 language to enforce the recovery of overpayments.² When OASDI and SSI benefit overpayments occur, we collect these overpayments 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 an overpayment.⁴ For instance, in the SSI program, overpayments occur when beneficiaries do not timely report to us a change in their current living arrangements. One method we use to identify overpayments is conducting SSI redeterminations, which are periodic reviews of SSI beneficiaries' 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:

- The payment amount the individual received and should have received for each month in the adjusted period;
- How and when the overpayment occurred;
- The individual's right to request reconsideration (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 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 various external debt collection methods to seek recovery.

¹ Our FY 2018 [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 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. §§ 404.502a and 416.558(a).

⁶ See 20 C.F.R. §§ 404.502(a)-(j) and 416.558(a); Program Operations Manual System (POMS) GN 02201.009.

Right to Appeal⁷

The existence and amount of an overpayment are initial determinations, and an overpaid individual may appeal that 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 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 program involved; 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 program involved;
 - b. Be against equity and good conscience; or
 - c. Impede the efficient or effective administration of SSI due to either the small amount involved; or because the overpayment was caused by the beneficiary'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 GN03101.001.

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 overpayment did not result from the individual’s failure to (for example);

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

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. For individuals who are not receiving SSI benefits, the refund or adjustment of OASDI benefits would reduce his or her total assets to:
 - a. Below \$3,000, if he or she has no dependents; or
 - b. Below \$5,000, if he or she has one dependent. For each dependent after the first, an additional \$600 is allowed; or
3. The individual receives any type of welfare payments; therefore, we generally consider recovery of an overpayment to defeat the purpose when an individual receives SSI.

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 because of their reliance upon a notice that a payment would be made or because of the overpayment itself decided to do something he or she would not have done, if he or she had not been entitled to benefits payments (e.g., a beneficiary, relying on the benefit payments, signed a lease for a more expensive apartment or retired from a job and cannot be rehired); 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.

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 022250.150 and SI 02260.025.

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 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) for Waivers

AFI is an automated process that verifies alleged bank account balances with financial institutions to help determine SSI eligibility and payment amount. In addition to verifying alleged accounts, the process may detect undisclosed bank account balances by requesting financial institutions, that have a physical presence around the individual, search their records. Along with preventing overpayments for current SSI recipients, the AFI process can find that an applicant is ineligible before he or she has started receiving benefits. Applicants must provide AFI authorization as a condition of eligibility for SSI payments.

Section 834 of BBA, which applies to both OASDI and SSI, authorizes us to use AFI to obtain financial account balances 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 balances, we request the individual’s authorization.

OASDI and SSI Overpayments Recovered, Scheduled, and Waived

In FY 2018, we recovered approximately \$3.931 billion in OASDI and SSI program overpayments. We had approximately \$8.890 billion scheduled for repayment, and we waived approximately \$329.2 million.

Overpayments Recovered in FY 2018²⁰

Program	Volume	Amount
OASDI	8,349,856	\$2,572,254,566
SSI	<u>15,846,150</u>	<u>1,358,726,307</u>
Total	<u>24,196,006</u>	<u>\$3,930,980,873</u>

²⁰ Source: FY 2018 Treasury Report on Receivables.

Overpayments Scheduled for Repayment

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

**Overpayments in Scheduled Repayment Plans at the end of
FY 2018²¹**

Program²²	Volume	Amount
OASDI	832,492	\$4,600,638,645
SSI	<u>1,204,975</u>	<u>4,288,862,426</u>
Total	<u>2,037,467</u>	<u>\$8,889,501,071</u>

Overpayments Waived in FY 2018²³

Program	Volume	Amount
OASDI	44,584	\$197,969,004
SSI²⁴	<u>116,146</u>	<u>131,225,392</u>
Total	<u>160,730²⁵</u>	<u>\$329,194,396</u>

²¹ Source: SSA Monthly Debt Goals Report.

²² 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 2018.

²³ Source: FY 2018 Treasury Report on Receivables.

²⁴ 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.

²⁵ In FY 2018, we completed 102,241 SSI Federal and 13,905 SSI State overpayment waiver actions.