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Social Security Overpayments: Debt Recovery

Introduction

The Old-Age, Survivors and Disability Insurance (OASDI) program, commonly known as Social Security, is authorized under Title II of the Social Security Act (42 U.S.C. §§401 et seq.). Social Security is a work-based social insurance program that provides monthly cash benefits to retired or disabled workers and their family members, as well as to the family members of deceased workers. Benefits are derived from a worker's career-average earnings in covered employment. The program is administered by the Social Security Administration (SSA) and pays about \$119 billion in monthly benefits to over 67 million beneficiaries each month (see SSA, *Monthly Statistical Snapshot, February 2024*, Table 2).

A Social Security overpayment occurs when the SSA pays a Social Security beneficiary more than the agency should have paid (i.e., more than the beneficiary was entitled to receive). Of the approximately \$1.3 trillion paid to OASDI beneficiaries in FY2022, SSA estimated that \$6.5 billion (or 0.5%) were overpayments (see SSA, *Annual Financial Report, Fiscal Year 2023*, p. 177).

Social Security overpayments can occur for a variety of reasons stemming from actions on the part of either the beneficiary or the agency. Major causes of OASDI overpayments are changes in marital status and child relationships, increases in beneficiaries' earnings, and SSA's computation errors (see SSA, *Annual Financial Report, Fiscal Year 2023*, p. 178). For example, an overpayment can occur if a beneficiary fails to timely notify SSA of a change in marital status or an increase in current earnings. An overpayment can also occur if SSA miscalculates the amount of benefits a beneficiary is entitled to receive.

The recovery of Social Security overpayments is authorized under Section 204 of the Social Security Act (see 42 U.S.C. §404). SSA recovered \$3.1 billion in OASDI overpayments during FY2023 and had \$4.5 billion in OASDI overpayments scheduled for repayment at the end of FY2023 (see SSA, *Agency Annual Overpayment Waivers Report, FY2023*). This In Focus describes the debt recovery requirements for OASDI overpayments, as well as the recent changes in SSA's overpayment recovery policy.

Overpayment Recovery

Once SSA has determined that an overpayment has been made, the overpayment becomes a debt owed to the federal government. The agency notifies the liable beneficiary immediately by mail if the address is available (see SSA, *Overpayments Fact Sheet*). The liable beneficiary may be the beneficiary who has been overpaid, an individual who received Social Security benefits based on the same

earnings record as the overpaid beneficiary (e.g., a dependent family member), or a representative payee who has received a payment on behalf of the overpaid beneficiary under certain conditions. Overpayment notices explain why the individual has been overpaid, the overpayment amount, repayment options, and appeal and waiver rights (see 20 C.F.R. §404.502a).

Appeal and Waiver Rights

Overpaid beneficiaries (or their representatives) may appeal determinations by requesting reconsideration when they dispute the facts or amounts of overpayments. An individual generally has to request reconsideration within 60 days of the date the individual received the overpayment notice.

Overpaid individuals may also request that SSA waive recovery of the overpayments if they believe they should not have to pay the money back. SSA does not impose a time limit for filing a waiver. Under current law, SSA will waive recovery of an OASDI overpayment if the overpaid individual is *without fault* in causing the overpayment and the recovery would (1) *defeat the purpose of the OASDI program* or (2) *be against equity and good conscience* (see 42 U.S.C. §404(b)). *Without fault* means that facts show that the individual did not cause the overpayment (see 20 C.F.R. §404.507). Recovery of an OASDI overpayment *defeats the purpose of the program* if recovery would deprive the overpaid individual of the income and resources required for ordinary and necessary living expenses (see 20 C.F.R. §404.508). Recovery of an overpayment would be *against equity and good conscience* for either of two reasons (see 20 C.F.R. §404.509):

- The overpaid individual relinquished a valuable right or put himself or herself in a worse financial position because of the receipt of Social Security overpayments. For example, an individual purchased a more expensive home in light of the awarded amount of the Social Security benefit but was unable to afford the home after the discovery of a Social Security overpayment.
- The individual was receiving benefits on the same earnings record as the overpaid beneficiary, was living in a separate household from the overpaid beneficiary at the time of the overpayment, and did not receive the overpayment.

Internal Collections

If the overpaid individual does not request reconsideration, request a waiver, or repay in full, SSA usually recovers the overpayment through one of several options.

For current beneficiaries, SSA generally recovers this debt from the overpaid beneficiary (or the representative payee) through an adjustment to ongoing OASDI benefit payments. SSA withholds a portion or all of the beneficiary's ongoing OASDI payments each month until the debt has been fully repaid. The benefit withholding begins approximately 60 days after SSA sends the overpayment notice.

Some current and former OASDI beneficiaries who have low income and assets also receive benefits from the Supplemental Security Income (SSI) program, which is a means-tested program administered by SSA. Under certain circumstances, a former OASDI beneficiary's Social Security overpayment may be recovered by withholding a portion of ongoing monthly SSI benefits. This is referred to as cross-program recovery.

External Debt Collection

If the overpaid individual's benefits end, SSA offers the person the option to repay the debt in full or in monthly installments. The debt is typically considered delinquent when the individual has made no voluntary repayments or it has been 30 days since the last voluntary repayment.

For delinquent debt, SSA can turn to authorized external debt collection tools for enforced repayment, including, for example, the Treasury Offset Program that can offset money from federal tax refunds and other federal or eligible state payments (i.e., administrative offset), as well as administrative wage garnishment.

In some cases, SSA may terminate its debt collection efforts if the overpayment is temporarily unrecoverable. The overpayment will remain on the benefit record for collection when a future recovery method is available. For example, a former childhood beneficiary may not be aware of an overpayment if the overpayment was found when the individual was a minor and the notice was addressed to the representative payee. SSA may resume its collection efforts through voluntary repayment plans, external debt collection tools, and adjustment of future OASDI benefits if the overpaid individual becomes entitled to benefits again at a later time (see SSA, *Recovering Title II Overpayments Made to Childhood Beneficiaries*).

Recent Changes in Overpayment Recovery Policies for Current OASDI Beneficiaries

In the past, SSA generally withheld the *full* monthly benefit to recover a Social Security overpayment. The overpaid individual might request to change the rate of recovery—but to an amount no less than \$10 per month—if he or she was unable to meet his or her ordinary and necessary living expenses because the entire Social Security monthly benefit was withheld (see 20 C.F.R. §404.502).

The procedure to request a new recovery rate depended on the length of the repayment plan. The overpaid individual did not have to provide information about income, expenses, and assets if the debt could be collected within 12 months. A verbal summary of that financial information was needed if the debt could be recovered between 13

months and 36 months. The overpaid individual had to complete Form SSA-634—including a detailed breakdown of income, expenses and assets—if the requested rate of recovery resulted in a repayment plan of more than 36 months.

The request for a new rate of recovery is not granted for individuals who have been convicted of fraud or who have similar fault determinations.

Length of Repayment Plan

On February 15, 2024, SSA changed its instructions in Program Operations Manual System (POMS) to extend the length of repayment plan that requires the completion of Form SSA-634 from 36 months to 60 months (see POMS GN 02210.030). That is, an overpaid individual can request a lower rate of recovery by providing a verbal summary of financial information if SSA can recover the debt between 13 months and 60 months.

Default Rate of Benefit Withholding

On March 25, 2024, SSA issued an Emergency Message EM-24011 SEN (with a retention date of October 25, 2024), titled "Change in Title II Overpayment Default Rate of Benefit Withholding" that reduces the default withholding rate from 100% of the monthly benefit to 10% (but no less than \$10 except for special situations), excluding cases of fraud convictions or similar fault determination. An overpaid individual can request a recovery rate greater than 10% of the monthly benefit payment.

This new default rate will be automatically applied to overpayments created on or after April 15, 2024. For overpaid individuals who are currently repaying at a rate greater than 10%, they have the option to request a recovery rate as low as 10% (but no less than \$10). Both the new default rate and the new request for a lower rate will take priority over the procedural change in the length of repayment plan discussed earlier. In other words, the recovery rate is defaulted (or granted) at 10% of monthly benefits regardless whether the amount collected will facilitate an overpayment recovery within 60 months.

This policy change in the default (or requested) recovery rate will reduce the financial hardship for some affected overpaid individuals. It will also likely take the agency longer to recover the overpayment debt.

Waiver of Recovery

Before March 2024, an overpaid individual had to request a waiver of recovery by submitting Form SSA-632 (version updated in September 2023), a 10-page form including the reasons for the waiver request and information about income, expenses, and assets.

Beginning in March 2024, SSA offers a process option by phone for an overpaid individual who is not at fault in causing the overpayment and the overpayment amount is \$1,000 or less (see SSA, *Overpayments Fact Sheet*).

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