

March 5, 2021

Commissioner Andrew Saul
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235-6401

Sent via email

Dear Commissioner Saul,

The undersigned members of the Consortium for Citizens with Disabilities (CCD) and allies write to urge SSA to waive all overpayments that arose during the pandemic automatically, without requiring individuals to request waivers. This is the most efficient method for SSA and for affected individuals. In these cases, demanding recovery of an overpayment debt and requiring individuals to go through any kind of waiver process would be unfair.

We continue to hear about individuals who have been notified about an overpayment by SSA, and yet are struggling to get these overpayments waived. Many are told that their overpayment does not qualify for the streamlined waiver process, and that they are required to submit a waiver form (SSA-632), including supporting documentation. With all Field Offices continuing to be closed to the public indefinitely, communicating with SSA and navigating the waiver process can be a terrible hardship for many who are already facing so many difficulties during the on-going pandemic.

SSA has authority under existing law to waive these overpayments automatically. When individuals were not at fault in causing the overpayment, and it would be against equity and good conscience and/or defeat the purpose of the Social Security Act to collect the overpayment, it should be waived automatically. Applying this relief to all COVID-related overpayments would create administrative efficiencies, since all would be subject to the same set of rules and business processes and since there would be no need to process streamlined overpayment waiver requests or regular waiver applications.

SSA should waive overpayments automatically

SSA admits that individuals whose overpayments were not processed timely were affected in a uniformly detrimental manner. Yet the same set of circumstances leading to overpayments due to no fault of the individuals will lead to some having their repayment obligation waived, while others will not receive that relief because they were not aware of their right to request a waiver, were not able to take advantage of the process, or were blocked from taking advantage of the process by an overly narrow application of the interim final rule on the streamlined waiver process.

SSA should automatically forgive COVID-related repayment obligations¹ whether or not the individual was aware of and able to take advantage of a waiver process, simplified or otherwise. It should not matter if the overpayment has been identified in SSA's systems as "COVID related" or not. In all of these cases, where the individual should be presumed to be not at fault in causing the overpayment, demanding recovery of the overpayment debt is against equity and good conscience. It is within SSA's authority to waive these overpayments automatically.

There is precedent for SSA automatically waiving an entire category of overpayments. For example, there were a significant number of large overpayments that resulted from SSA continuing to pay SSI benefits to members of same-sex couples as if they were single even after the Supreme Court struck down the Defense of Marriage Act in *United States v. Windsor*, 570 U.S. 744, 133 S. Ct. 2675, 186 L.Ed.2d 808 (2013). In May 2015, SSA issued Emergency Message (EM) 15016, providing that future SSI benefits could be reduced or terminated based on the income or resources of a same-sex spouse, but not prior months. It prohibited new overpayment notices being issued to SSI recipients married to persons of the same sex, and advised adjudicators to hold the many outstanding overpayment notices issued during the interim. In March 2016, SSA issued EM 16013 – Processing SSI Overpayment Resulting from Same-Sex Marriage – telling adjudicators to process the overpayments previously put on hold, consider them as "presumed waiver requests," and grant waivers, as collecting these overpayments would be against equity and good conscience.

In addition, applying this relief to all COVID-related overpayments would create administrative efficiencies, making everyone subject to the same set of rules and business process and eliminating the need to process streamlined waiver requests or regular waiver requests. It would eliminate the variation across SSA Field Offices in application of the interim final rule that we have witnessed. Individuals have reported that even when they have received a notice of overpayment from SSA instructing them to call their Field Office to request a waiver through the streamlined process, they have been told by Field Office employees they are not eligible for a streamlined waiver or that they must first complete Form SSA-632 or submit a written letter requesting a waiver.

Further, SSA should not limit its streamlined procedures to overpayments from workloads that were officially halted during the pandemic. The closure of SSA offices and transition to working remotely had a negative impact on all SSA workloads. As SSA rightly prioritized workloads necessary to assure that individuals continue to receive benefits over those dedicated to identifying overpayments, even automated processes likely experienced delays in implementation as SSA transitioned from in-office to remote teleworking for its employees.

¹ This should include overpayments related to Unemployment Insurance benefits, once SSA's policy on receipt of these benefits is finalized and implemented.

SSA put redetermination appointments on hold during the pandemic which limited one route of reporting for individuals. In addition, many individuals regularly report changes in their circumstances that could impact their benefit level to SSA in person and that reporting has been impossible during the pandemic. Many overpayments that arose during the pandemic would have been avoided if SSA had been running its workload at pre-pandemic levels. All of these overpayments are the result of the pandemic and should be automatically waived.

Data-sharing with agencies outside of SSA also may have been delayed or subject to inaccuracies as those agencies scrambled to adjust to remote work. And SSA's ability to receive and review automated reports in order to determine that a change in benefits was warranted and then notify the individual likely was interrupted during the transition as well. In the interest of equity and good conscience, individuals should get the same relief whether an overpayment was triggered by delays in automated or manual processing.

If SSA does not choose to utilize the most equitable path and address these issues for everyone, we suggest that SSA automatically waive COVID-related overpayments where the streamlined procedures would apply. Given the economic crisis stemming from the pandemic and its disproportionate impact on low-income individuals, it is crucially important that SSA gives low income individuals as much assistance as possible. Requiring individuals to make a waiver request is a waste of valuable agency time and resources when SSA already struggles to process waiver requests in a timely fashion. SSA can and should waive qualifying overpayments without requiring individuals to request this relief.

SSA should extend the “Pandemic Period” beyond September 30, 2020

The “pandemic period,” or qualifying overpayment period, identified by SSA needs to be expanded. The COVID-19 pandemic did not end on September 30, 2020 and in fact is expected to continue well into 2021. The pandemic is ongoing, and we continue to face this national health crisis in addition to the economic crisis it has caused. We recommend that SSA extend its designation of the pandemic period until September 30, 2021, or until the end of the federal COVID-19 emergency declaration, whichever is later.

It likely will be many months before members of the public have safe access to SSA Field Offices; mail delivery returns to pre-pandemic reliability; and those dealing with the effects of COVID-19 have the capacity to prioritize SSA reporting requirements. Many individuals, including those receiving SSI and Title II benefits and their family members, have experienced job loss, had to find new jobs, and may, depending on spikes or outbreaks of the virus, experience these things multiple times before this crisis is over.

If it takes SSA longer than normal to process an earnings report received timely from an individual because of ongoing complications from the virus after September 30, 2020, assessing the resulting larger-than-normal overpayment debt would be just as much a breach of equity and good conscience as requiring repayment of overpayments that occurred between March 1 and September 30 through no fault of the individual. Until SSA Field Offices re-open to the public and processing of workloads returns to pre-pandemic timeframes, SSA should employ every tool at its disposal to simplify and expedite its process for waiving repayments.

SSA should automatically waive overpayments identified after December 31, 2020

While SSA may have begun processing backlogged workloads on September 1, 2020, as discussed above, it will be a long time before in-office staffing to address those workloads reaches pre-pandemic levels. Therefore, working through those backlogs is unlikely to have been accomplished by December 31, 2020.

This means that individuals who were notified about overpayments beyond the pandemic period that are a direct result of the pandemic but were not processed by December 31 will not receive effective relief under the streamlined procedures. Individuals are having a part of their overpayment evaluated under the streamlined provisions, with the other part of the overpayment subject to SSA's normal waiver procedure. This is proving to be confusing and a burden to individuals, and has created extra work for SSA in double processing these overpayments under two separate procedures. Also, it has resulted in two overpayments with the same cause and financial circumstances of individuals being treated differently depending on when they were identified and addressed. In some cases, if any part of the overpayment falls outside of the March 1 to September 30, 2020 time period, SSA Field Offices are requiring individuals to submit a 632 Form for the whole period.

It would be confusing, inconsistent and unfair to apply two different processes to qualified overpayments based not on when they occurred, but on when they are identified by SSA. Given the considerable additional administrative burden SSA has incurred as a result of having to process these overpayments twice, SSA should treat the entire overpayment as if it had occurred during the pandemic period, and automatically waive it. The administrative savings may well be greater than the amount of debt that SSA would collect had it required the individual to pursue an overpayment waiver for the period occurring outside of the pandemic period.

SSA should refund benefits withheld due to an overpayment debt that is later waived

While there is no deadline for an individual to request a waiver, we are concerned that many individuals will not be aware of or able to request a waiver until after SSA begins withholding funds from their current benefits. In the interim final rule on the streamlined

waiver process, SSA stated: “If a beneficiary or recipient had benefits withheld during the pandemic period, or if we have already begun to withhold benefits due to an overpayment debt that accrued in part or in whole during the pandemic period, we will not issue refunds under this interim final rule, because these actions are not within the scope of this interim final rule.” 85 Federal Register at 52911.

The assumption in the interim final rule seems to be that individuals will contact the SSA Field Office as soon as they receive the notice of overpayment, and that the qualified overpayment will be waived before collection begins. However, this assumption is not supported by reality. Frequently, individuals do not receive the notice of overpayment in the mail from SSA, or they do not receive the notice until after collection has begun, or they do not understand what they need to do in response to the notice. They are not aware of the overpayment or able to take action until after withholding from their current benefits begins. Individuals are also likely dealing with stressors such as job loss, social isolation, and health concerns from the ongoing COVID-19 pandemic that would make it even more challenging for them to navigate the overpayment process. In other cases, individuals have contacted SSA to request a streamlined waiver and processing is delayed by SSA’s continued attempts to avoid applying the streamlined process and instead requiring the individual to submit a 632 form. Individuals will face significant financial hardship if SSA does not refund the money withheld from their benefits before they submit their waiver request.

In addition, any collection that has begun is supposed to cease while a waiver request is pending. However, this requires an SSA employee to take manual action in the agency’s systems, and frequently withholding from the individual’s current benefits continues even after a waiver request is made. The interim final rule prevents individuals from being refunded these benefits that were withheld in error, and it is unfair for them to lose these benefits that they need to pay for their basic needs like food, shelter, and medicine.

Thank you for your consideration. We would be happy to discuss this with you further. Please contact Kate Lang at Justice in Aging (klang@justiceinaging.org) to arrange this discussion.

Sincerely,

Advocacy and Training Center

Alliance for Children’s Rights

American Association on Health and Disability

American Council of the Blind

Autistic Self Advocacy Network

Bay Area Legal Aid

Benefits Law Center

Center for American Progress

Charlotte Center for Legal Advocacy

Community Legal Aid Society, Inc. (Delaware)

Community Legal Services of Philadelphia

Disability Rights California

Empire Justice Center

Epilepsy Foundation

Homeless Action Center

Inner City Law Center

Jacksonville Area Legal Aid, Inc.

Justice in Aging

Lakeshore Foundation

Law Foundation of Silicon Valley

Legal Action Chicago

Legal Aid Justice Center

Legal Aid Society of San Mateo County

Legal Aid Society of the District of Columbia

Legal Council for Health Justice

Legal Services of Northern California

Medicare Rights Center

Mobilization for Justice, Inc.

National Alliance on Mental Illness

National Association of Disability Representatives

National Association of Social Workers (NASW)

National Committee to Preserve Social Security and Medicare

National Council on Independent Living

National Down Syndrome Congress

National Organization of Social Security Claimants' Representatives

New Alternatives for Homeless LGBT Youth

New York Legal Assistance Group

Paralyzed Veterans of America

Pisgah Legal Services

PRC

Social Security Works

Southeast Louisiana Legal Services

Spina Bifida Association

The Arc of the United States

The Gerontological Society of America

The Legal Aid Society of Roanoke Valley

United Spinal Association

Women's Institute for a Secure Retirement