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## Beware the Social Security Clawback

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The Social Security Administration makes mistakes! Who knew? Apparently they know, because they sent letters to a million citizens this past year, attempting to recover (“clawback”) billions in overpayments plus interest. Last year they recovered \$5 billion, but another \$22 billion remains outstanding.

And the hits keep on coming: every year, about 0.5% of SS payments are too high, and 0.1% are too low. These errors are worth over \$7 billion, every year. The law says SS must recover the overpayments, and says nothing about ability to pay or the effect on the retiree’s life.

Overpayments are most frequent among those getting SS due to a disability. The Urban Institute cites research showing 71% of these folks received overpayments. The median amount they owe is \$9300. The biggest issues here are part-time income caps and the minimum amount allowed in savings.

Another group subject to SS errors is those who worked for government entities that do not participate in SS, such as teachers and librarians. Their SS claims, based on income from other jobs, are reduced by their benefits from government retirement programs.

The calculations are complex, and mistakes are made. For example, this writer’s wife received three letters saying she was due three different SS amounts, and then another demanding repayment of several thousand dollars.



The Urban Institute adds that “regular beneficiaries experience smaller but *more frequent* overpayments...Most overpayments are the agency’s fault, and recipients may not realize the error. Only a fraction of a percent of all overpayments are due to fraud.”

## What Happens When That Letter Arrives

After they tell you how much you owe for their mistake, including interest, they tell you how they will recover it, usually by stopping or reducing your monthly SS benefit, effective immediately unless you request a waiver. Obviously, this can be a serious cash problem for seniors with limited resources!

You can request one of three types of waivers: you disagree with the amount; you disagree with the responsibility (their error, so you should not be liable); or you agree but seek permission to pay it back more slowly or less than 100%. SS says it will stop its recovery actions while a waiver request is being considered.

The columnist Terry Savage related her experience in “Social Security Horror Stories”:

“As each person who received a clawback letter soon found out, there is no way to get in touch with the SS Administration to find out the source of the problem and the accounting for these huge amounts that the agency is demanding be repaid.

“Social Security’s records and calculations are a mess. Staff members ignore emails, don’t respond to terrified beneficiaries trying to get help, and routinely deny waivers...It’s almost impossible to get a hearing – and when there is a hearing, it is in front of an administrative law judge who is paid by Social Security and encouraged to deny the pleas for relief.”

See the website [socialsecurityhorrorstories.com](http://socialsecurityhorrorstories.com), and her book [Social Security Horror Stories: Protect Yourself from the System and Avoid Clawbacks.](#)

## Why Does This Feel So Wrong?

Seniors may feel attacked and powerless when faced with a clawback letter. They don’t know how this happened, they are not provided with the calculations underlying the clawback claim, and their money is disappearing before they can find out why.

They are liable in the eyes of the payer -- guilty until proven innocent – when the problem was caused by the payer’s own errors.



The agency says they are required by law to pursue these clawbacks, even if the overpayment was their fault. But in our society, we feel like the entity who made the error ought to be liable for the consequences, and the accused ought to have a chance for an *impartial* hearing. We feel the current process would fit better in a dictatorship like Russia than a free society like the USA.

## How Can We Change This?

A recent KFF Health News/CMG investigation and a related segment on **60 Minutes** triggered concerned comments expressed a couple key senators. In response, the agency announced in October that it will review the way it handles overpayments, appointed a lead person, and released “a streamlined waiver request.” Of course, the need to file for a waiver still makes the senior citizen responsible for solving the problem created by the agency’s error.

A better solution would be to change the law requiring clawbacks, adding elements like these:

- Overpayments due to agency error will not be subject to clawback.
- The agency must prove its case to an *impartial* arbiter *before* notifying the senior that a clawback is requested.
- The calculations must be provided to the senior being held responsible, similar to “discovery” in a lawsuit.
- The senior must have the right to an *impartial* hearing before clawbacks begin,
- Agency management will measure employees on the accuracy of their calculations, require remedial training as needed, and hold them accountable for performance below standards.
- Clawbacks can only apply to overpayments made in the past 2 or 3 years.
- Ceiling on clawback amount.
- Maximum reduction in monthly benefit to pay for a clawback: 10, 15, 20, or 25%.

AASBCR has asked our lobbying partner NRLN to include this issue in its 2024 lobbying agenda. We value NRLN’s ability to reach legislators and make change happen. Together, AASBCR and NRLN can be a strong team! Thanks for supporting us.

