



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

October 26, 2020

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

Re: Docket No. SSA-2020-0045, RIN 0960-AI51, Interim Final Rule on Waiver of Recovery of Certain Overpayment Debts Accruing During the COVID-19 Pandemic Period

Dear Commissioner Saul:

These comments are submitted by the undersigned members of the Social Security Task Force of the Consortium for Citizens with Disabilities (CCD). CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. Since 1973, CCD has advocated on behalf of people of all ages with physical and mental disabilities and their families.

Thank you for issuing this Interim Final Rule to expedite the waiver process for beneficiaries who experience overpayments through no fault of their own during the pandemic due to SSA's reprioritizing of manual workloads that could have resulted in a reduction, suspension or termination of benefits. We will also note that even before the pandemic, many individuals experienced overpayments through no fault of their own due to delays in processing information provided by the individual or by the automatic processes. Individuals receiving Social Security disability benefits are particularly vulnerable to the physical and economic impact of the pandemic and developing an adequate response to these overpayments is both necessary and crucially important to ensuring people with disabilities who rely on Title II and SSI benefits continue to be safe during the pandemic. Recognizing that vulnerability by protecting beneficiaries from overpayment debt due to circumstances beyond their control is very much in keeping with SSA's mission "to promote the economic security of the nation's people through compassionate and vigilant leadership in shaping and managing America's Social Security programs."

We urge SSA to evaluate all COVID related overpayments and forgive the repayment obligation whether or not the claimant was aware of and able to take advantage of the waiver process, simplified or otherwise. In all of these cases, demanding recovery of an overpayment debt would be against equity and good conscience. Applying this relief to all qualifying overpayments also would create administrative efficiencies, since all would be subject to the same set of rules and business process and since there would be no need to process streamlined overpayment waiver requests.

SSA should apply its expedited waiver process automatically and more broadly.

SSA admits that beneficiaries whose overpayments were not processed timely are affected in a uniformly detrimental manner. Yet, the simplified-waiver relief is only available to beneficiaries who are aware of the waiver process and able to make a timely request for a waiver. Thus, the same set of circumstances leading to overpayments due to no fault of the beneficiary 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.

SSA should evaluate all qualifying overpayments as they plan to do and automatically forgive COVID-related repayment obligations whether or not the claimant was aware of and able to take advantage of a waiver process, simplified or otherwise. In all of these cases, demanding recovery of an overpayment debt would be against equity and good conscience and within SSA's authority to waive overpayments. In addition, applying this relief to all qualifying overpayments also would create administrative efficiencies, since all would be subject to the same set of rules and business process and since there would be no need to process streamlined overpayment waiver requests.

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 assuring that beneficiaries 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.

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 beneficiary likely was interrupted during the transition as well. In the interest of equity and good conscience, beneficiaries whose overpayments fall into this category deserve the same relief that SSA is affording those whose changes would normally be manually processed.

If SSA does not choose to utilize the most equitable path and address these issues for everyone, we would suggest that SSA automatically waive COVID-related overpayments where the streamlined procedures would apply and the identified overpayment is less than a particular amount. Given the economic crisis stemming from the pandemic and its disproportionate

impact on low-income individuals, it is crucially important that we give low-income beneficiaries as much assistance as we can. SSA could target low-income beneficiaries by utilizing the current SSI waiver amount of \$1000 or an increased amount, such as the maximum monthly benefit amount at which an individual is still eligible for Medicare Extra Help. In addition, this narrow focus might lead to higher collection of overpayments that may or may not be offset by the increased administrative cost and effort.

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 and in fact is expected to continue well into next year. While SSA may have begun to restart some suspended manual workloads in September, working through a backlog that was six months in the making will take time. Addressing the backlog – particularly if SSA intends to meet its goal of completing that work by December 31, 2020 -- necessarily will delay processing of information received from claimants and other sources after SSA resumed this workload on September 1, 2020.

In addition, the pandemic is ongoing and we continue to face this national health crisis in addition to the economic crisis it has caused. It likely will be many months before beneficiaries will have safe access to SSA Field Offices; mail delivery will return to pre-pandemic reliability; and those dealing with the effects of COVID-19 on them and their families can be expected to prioritize SSA reporting requirements. Many individuals, include those on SSI and Title II benefits, have experienced job loss and returned to jobs and may, depending on spikes or outbreaks of the virus, experience these things again before this crisis is over.

If it takes SSA longer than normal to process an earnings report received timely from a beneficiary because of ongoing complications from the virus after September 30, 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 beneficiary. Until the backlog is completely eliminated and processing of manual workloads returns to pre-pandemic timeframes, SSA should employ every tool at its disposal to simplify and expedited its process for waiving repayments.

SSA should apply the Simplified Waiver Process to 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 be accomplished by December 31, 2020.

This means that beneficiaries who experience overpayments beyond the pandemic period that are a direct result of the pandemic but are not processed by December 31 will not be subject to the relief the streamlined procedures provide. These beneficiaries will have 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 will be confusing and a burden to

beneficiaries and will create extra work for SSA in double processing these overpayments under two separate procedures. Also, it will result in two identical overpayments of the same amount, cause, and financial circumstances of the beneficiary being treated differently depending on when they were identified and addressed.

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 will incur as a result of having to process these overpayments twice, SSA should seriously consider treating the entire overpayment as if it had occurred during the pandemic period. The administrative savings may well be greater than the amount of debt that SSA would collect had it required the beneficiary to pursue an overpayment waiver for the period occurring outside of the pandemic period.

If, however, SSA chooses not to do so, it must act promptly to provide affected beneficiaries with simple and clear notice about how to request a waiver for the non-pandemic period overpayment and to assure that field office technicians inform the beneficiary of the right to request a waiver, note the response on the SSA 5002, and complete any required portion of the SSA-632, 634 and 561 forms with attestation.

Thank you for issuing this important Interim Final Rule to protect blameless beneficiaries from incurring overpayment debt during this pandemic. We appreciate the opportunity to offer our views.

Sincerely,

Justice in Aging
National Alliance on Mental Illness
National Association of Disability Representatives
National Disability Rights Network (NDRN)
National Multiple Sclerosis Society
National Organization of Social Security Claimants' Representatives
The Arc of the United States
United Spinal