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IN FOCUS

March 10, 2015

Legal Liability for Social Security Overpayments

Overview

Social Security provides monthly cash benefits to retired or disabled workers and their family members and to the family members of deceased workers. Payroll taxes paid by covered workers and their employers primarily finance the program.

An overpayment of Social Security benefits occurs when a beneficiary receiving retirement, survivors, or disability insurance benefits is paid more than he should have been paid for a given period. 20 C.F.R. §404.501(a). The beneficiary incorrectly reporting or failing to report a change in circumstances that could affect his benefits eligibility is the primary cause of an overpayment. For example, a Social Security disability beneficiary's failure to inform the Social Security Administration (SSA) that he has begun to receive wages may result in an overpayment of benefits more than the amount due.

Once the government has determined that an overpayment has been made, the overpayment becomes a debt owed to the United States government. SSA generally recovers this debt through an adjustment of benefits payable, a full refund payment by the overpaid beneficiary, or a reduction in tax refunds.

This In Focus will examine who is liable for Social Security overpayments, and thus who may be subject to these recovery methods by SSA.

Primary Liability

The beneficiary, who received the overpayment, is *primarily* (directly) liable for the overpayment. Thus, he is the main person responsible for repaying the overpayment. SSA will generally stop benefit payments to this individual until an amount equal to the overpayment has been withheld or refunded. This group of beneficiaries generally includes those receiving benefits, such as retirement or disability, based on his earnings record. 42 U.S.C. §404(a); 20 C.F.R. §404.502(a)(1).

Example of Primary Liability: Lauren works while receiving disability benefits, but does not report her earnings in a timely manner. She is *primarily* liable for the overpayment because she received the benefits overpaid based on her work record.

Contingent Liability

Individuals who have received Social Security benefits based on the same earnings record as the overpaid beneficiary may be *contingently* liable for the primary beneficiary's overpayment. While SSA generally first seeks repayment from the beneficiary who is primarily liable, SSA will not pay benefits to individuals contingently liable until an amount equal to the overpayment amount has been withheld or refunded. 20 C.F.R. §404.502(a)(2).

Individuals who may be contingently liable for overpayments include spouses, widow(er)s, children or parents of the overpaid beneficiary.

Example of Contingent Liability: Carol is currently receiving a widow's benefit of $210.00 based on her deceased husband's work record. SSA has determined that it overpaid Carol's husband $980.00 due to an incorrect reporting of earnings. Carol is likely to be contingently liable for the repayment of $980.00 as she is receiving the $210.00 widow's benefit based on her husband's work record. SSA would likely propose recovery by withholding the widow's benefit.

Joint and Several Liability

Joint and *several* liability means that two or more people have equal responsibility for the repayment of an overpayment. Each person may be primarily liable for the repayment of the entire overpayment. SSA's Program Operations Manual System GN 02205.007.

Example of Joint and Several Liability: Alice is a representative payee for Bob and receives $142.00 in benefits for him each month. Bob married, making him no longer eligible for benefits. If both Alice and Bob knew of the marriage yet continued to receive the benefits, both Bob and Alice would be jointly and severally liable for the resulting overpayment.

Joint and several liability typically appears in the context of a representative payee-beneficiary relationship. A representative payee is an individual or organization appointed by SSA to receive Social Security benefits for someone who cannot manage, or direct someone else to manage, his money. The primary responsibilities of a representative payee include using the benefits to pay for the current needs of the beneficiary and properly saving the benefits not needed at the present time. Generally, a beneficiary and the representative payee are jointly and severally liable if they both had knowledge of the event/information that led to the overpayment.

However, a representative payee may also be primarily liable for an overpayment. For example, if a representative payee misused the funds and the beneficiary did not have access to the funds, the representative payee would be primarily liable for the overpaid benefits and the beneficiary is not jointly liable. Similarly, if a beneficiary fails to inform a representative payee of a change that would impact eligibility, only the beneficiary may be held primarily liable for the overpayment. Referring to the example above, if Bob married and failed to inform Alice of the change in status, Bob would be primarily liable for the overpayment.

No Recovery from Persons Without Fault

The Social Security Act states that SSA cannot recover an overpayment from a person who is without fault if the recovery of an overpayment would defeat the purpose of the benefits program or would be against equity and good conscience. 42 U.S.C. §404(b).

SSA expects a Social Security beneficiary to exercise a high degree of care in preventing overpayment. SSA will find fault with the beneficiary who fails to exercise a high degree of care in reporting circumstances that may affect entitlement to or the amount of benefits. The degree of care varies according to the individual's circumstances and capacity to understand that he was overpaid. SSA's Program Operations Manual System GN 02250.005.

> *Example of fault*: Allison, who is currently receiving disability insurance, failed to report to SSA a change in medical circumstances that would have impacted her benefits eligibility. SSA would likely find that Allison is at fault because she failed to exercise a high degree of care in failing to report this information to the agency.

Related Legislation in the 114th Congress

The "Stop Punishing Innocent Americans Act" (H.R. 409/S. 204) would prohibit the finding of liability of individuals under the age of 18 for Social Security overpayments made to or on behalf of these individuals.

Related Reports to Social Security Overpayment

For more information on Social Security benefits, see CRS Report R42035, *Social Security Primer*, by Dawn Nuschler.

Emily M. Lanza, elanza@crs.loc.gov, 7-6508

IF10146