



Office of the Inspector General

SOCIAL SECURITY ADMINISTRATION

Audit Report

Processing New Waiver Requests After a Previous Request Was Denied

A-08-21-51100 May 2023



Office of the Inspector General

SOCIAL SECURITY ADMINISTRATION

MEMORANDUM

Date: May 24, 2023

Refer to: A-08-21-51100

To: Kilolo Kijakazi
Acting Commissioner

From: Gail S. Ennis *Gail S. Ennis*
Inspector General

Subject: Processing New Waiver Requests After a Previous Request Was Denied

The attached final report presents the results of the Office of Audit's review. The objective was to determine whether the Social Security Administration properly applied res judicata for waiver requests made after a previous request was denied.

Please provide within 60 days a corrective action plan that addresses the recommendations. If you wish to discuss the final report, please call me or have your staff contact Michelle L. Anderson, Assistant Inspector General for Audit.

Attachment

Processing New Waiver Requests After a Previous Request Was Denied

A-08-21-51100



May 2023

Office of Audit Report Summary

Objective

To determine whether the Social Security Administration (SSA) properly applied res judicata for waiver requests made after a previous request was denied.

Background

An individual or their representative payee may request SSA waive recovery of an overpayment at any time. SSA stops debt-collection activity if the debtor requests SSA waive recovery of the overpayment. If SSA denies a request for waiver and the debtor does not timely file an appeal, the denial decision becomes final under res judicata unless certain criteria are met.

Res judicata applies to administrative proceedings and means the matter has been decided and may not be pursued further by the same parties. SSA applies res judicata at all levels of the claims process to avoid unnecessarily deciding an issue the Agency has already decided based on the same facts, issues, parties, and time period.

From 1 segment of the Master Beneficiary Record, we identified 1,352 debtors with an at-fault waiver denial since January 1, 1995, and a new protest since January 1, 2010. We randomly selected 100 debtors from this population for our review.

Results

SSA did not always properly apply res judicata for waiver requests made after a previous request was denied. We determined 9 of 100 overpayment protests were processed in error. The errors resulted from technicians' misapplication of SSA's res judicata policy. Based on this error rate, we estimate SSA did not collect overpayments from 2,434 debtors across all 20 segments of the Master Beneficiary Record for a minimum of 12 months following the new waiver request. As a result, we estimate approximately \$25.9 million in overpayments remains uncollected.

Recommendations

We recommend SSA:

1. Reinstigate collection actions for the remaining four debtors identified in our sample, as appropriate.
2. Identify and re-institute collection actions, where needed, for all debtors who submitted a new request for waiver following an at-fault waiver denial.
3. Incorporate SSA's res judicata policy into SSA's *Waiver Decisionmaker* policy, or other appropriate policy, to alert technicians to review prior debt decisions.
4. Provide reminder items for technicians about identifying and processing res judicata in cases to ensure all appropriate debts are collected and not incorrectly waived.

SSA agreed with our recommendations.

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ABBREVIATIONS

C.F.R.	Code of Federal Regulations
DMS	Debt Management System
MBR	Master Beneficiary Record
OIG	Office of the Inspector General
POMS	Program Operations Manual System
SSA	Social Security Administration

OBJECTIVE

Our objective was to determine whether the Social Security Administration (SSA) properly applied res judicata for waiver requests made after a previous request was denied.

BACKGROUND

The Old-Age, Survivors and Disability Insurance program provides monthly benefits to retired and disabled workers as well as to their dependents and survivors. SSA computes the monthly benefit amount based on specific eligibility and entitlement factors. An adverse change in one or more of these factors can reduce the monthly benefit amount at the point the change occurred. If a change adversely affects an individual's entitlement to all, or part, of the monthly benefit amount but is not reported or detected, SSA will pay the individual more than they are due. When SSA processes the adverse action and adjusts the individual's record to reflect the change, it posts the overpayment and notifies¹ the individual of their due-process rights and information about collection efforts.²

An individual or their representative payee may request SSA waive recovery of an overpayment at any time. SSA stops debt-collection activity if the debtor requests SSA waive recovery of the overpayment.³ Once SSA denies a request for waiver and the debtor does not file the appropriate appeal within the 60-day appeal period,⁴ or if the overpaid individual appeals late and does not establish good cause for late filing,⁵ the denial decision becomes final. If the debtor files a new request for waiver, a new determination is not necessary, if:

- the at-fault⁶ determination in the previously denied waiver is correct;
- the individual does not present any new and material facts or evidence that could warrant reopening or revising the prior determination; or
- reopening is not possible based on the rules of administrative finality.⁷

¹ SSA, *POMS*, GN 02201.009 (March 17, 2021).

² 20 C.F.R. § 404.502; 20 C.F.R. § 404.502a.

³ 20 C.F.R. § 404.506(c); SSA, *POMS*, GN 02201.019 (March 17, 2015).

⁴ The appeal period allows for 5 days' mailing time (60+5).

⁵ SSA may extend the 60-day appeal period when a debtor demonstrates, in writing, reason(s) for late filing. SSA, *POMS*, GN 03101.020 (January 30, 2014).

⁶ SSA considers a debtor at fault when their actions cause, or help cause, benefits to be overpaid. SSA, *POMS*, GN 02250.005 (August 26, 2021).

⁷ SSA can reopen incorrect determinations: (a) within 1 year of the notice of initial determination for any reason; (b) within 4 years of the date of notice of initial determination for good cause; or (c) at any time if certain criteria are met. SSA, *POMS*, GN 04001.010 (December 22, 1989).

If at least one of the criteria apply, technicians should dismiss the new waiver request by applying *res judicata*, which is used in administrative proceedings and means the matter has been decided and may not be pursued further by the same parties. SSA applies *res judicata* at all levels of the claims process to avoid unnecessarily deciding an issue the Agency has already decided based on the same facts, issues, parties, and time period.⁸

When the field office receives a new request for waiver of overpayment (Form SSA-632, *Request for Waiver of Overpayment Recovery*), technicians are directed to:

1. Input the waiver request into SSA's Debt Management System (DMS) and retain the request and any supporting documents in SSA's Evidence Portal.⁹
2. Review the record and the prior waiver determination to ascertain the applicability of *res judicata*, that is, whether the prior denial was based on fault,¹⁰ no new material facts or evidence that would affect the prior decision are presented, and reopening is not possible under the rules of administrative finality.
3. Send the waiver request and associated documentation to the payment center of the jurisdiction using the Evidence Portal for processing, transfer the jurisdiction to the payment center via DMS, and annotate actions taken on appropriate remarks screens.¹¹

When payment centers receive the documents package from the field office, or from the individual directly, they are instructed to review the documents along with SSA's Recovery of Overpayments, Accounting, and Reporting¹² record to determine whether *res judicata* applies. Once technicians determine *res judicata* applies, they are instructed to process the request as a dismissal. Technicians are also required to notify the individual of the dismissal and document the determination on the appropriate DMS remarks screens.¹³ Technicians must declare in writing when they determine *res judicata* does not apply and the previous denial decision should be reopened.¹⁴

SSA's *Waiver Decisionmaker* policy provides general waiver processing procedures for the technician making the decision and, when necessary, the decision reviewer.¹⁵ As of May 2023, neither *res judicata* identification nor its processing instructions are covered in this policy.

⁸ SSA, *POMS*, GN 02250.303 (September 19, 2022).

⁹ SSA's Evidence Portal includes the Certified Electronic Folder, the Non-Disability Repository for Evidentiary Documents, and Paperless.

¹⁰ Waiver determinations are recorded on Form SSA-635, *Waiver Determination*.

¹¹ See Footnote 8.

¹² SSA's Recovery of Overpayments, Accounting, and Reporting system controls the collection of Old-Age, Survivors and Disability Insurance overpayments. It contains the overpayment's cause, amount, and collection status. It contains any actions against the overpayment record, contains waiver or reconsideration information, and generates exceptions and alerts, accordingly.

¹³ SSA, *POMS*, GN 02250.303, E (September 19, 2022).

¹⁴ SSA, *POMS*, GN 04001.050 (October 4, 1994).

¹⁵ SSA, *POMS*, GN 02250.301 (June 30, 2016). SSA's *Waiver Decisionmaker* incorporates general overpayment processing instructions from multiple policies into one and directs personnel to more detailed instructions as needed.

We obtained an electronic data extract dated September 30, 2021 from one segment of the Master Beneficiary Record (MBR).¹⁶ From these data, we identified 1,352 debtors who had an at-fault waiver denial since January 1, 1995, and a new protest since January 1, 2010. To accomplish our objective, we reviewed a random sample of 100 debtors from this population. See Appendix A for more information on our scope and methodology.

RESULTS OF REVIEW

SSA did not always properly apply res judicata for waiver requests made after a previous request was denied. We determined 9 of 100 overpayment protests were processed in error. The errors resulted from technicians' misapplication of SSA's res judicata policy. Based on this error rate, we estimate SSA did not collect overpayments from 2,434 debtors across all 20 segments of the MBR for a minimum of 12 months following the new waiver request. As a result, we estimate approximately \$25.9 million in overpayments remains uncollected.¹⁷

Of the nine error cases, as of October 2022, SSA had stopped collection on six debt balances totaling \$94,112 for a minimum of 12 months. For these cases, res judicata should have been applied and collection resumed. As of December 2022, SSA technicians had not processed the res judicata denial for two of the six debt balances so collection activity could be resumed. The following examples illustrate how failure to apply the provision resulted in loss of collection opportunity:

- In June 2008, SSA denied a request for waiver of an overpayment balance totaling \$28,715 because the individual was at fault in causing the overpayment. In March 2020, the debtor submitted a new request for waiver on the same debt balance. After the field office technician recorded the new request, the technician did not record any further case development. Since there was no new or material evidence recorded or justification explaining that res judicata did not apply, the request should have been dismissed under the res judicata provision and collection resumed. As of May 2023, this waiver request remained unresolved with no collection since the March 2020 request.
- In March 2017, SSA denied a request for waiver of an overpayment balance totaling \$39,176 because the individual was at fault in causing the overpayment. In November 2018, the individual filed a new request for waiver on the same debt balance. The field office technician properly documented that res judicata applied and forwarded the case to the payment center for dismissal, as instructed in SSA policy.¹⁸ However, the payment center failed to process the dismissal, as required.¹⁹ Therefore, collection on the debt did not resume. As of May 2023, this waiver request remained unresolved with no collection since January 2019.

¹⁶ The MBR contains all current and previously entitled Old-Age, Survivors and Disability Insurance beneficiaries. SSA establishes the record when it receives an initial claims action. The MBR is divided into 20 equal segments that are separated based on the last 2 digits of the Social Security number.

¹⁷ This estimate is calculated as of October 2022.

¹⁸ SSA, POMS, GN 02250.303, D (September 19, 2022).

¹⁹ See Footnote 13.

SSA improperly waived overpayment balances for the three remaining error cases, totaling \$1,838, because res judicata was misapplied. For example, in July 2003, SSA denied a request for waiver of an overpayment balance totaling \$1,192 because the debtor was at fault in causing the overpayment. In May 2018, a new request for waiver on the same debt balance was recorded in SSA's DMS. On the same day the new waiver request was recorded, a technician approved the waiver request without providing the proper evidence or documentation to reopen the prior denial.²⁰ See Appendix B for more information on our sample results and projections.

As of May 2023, SSA's res judicata policy and systems instructions are not part of SSA's *Waiver Decisionmaker* step-by-step instructions. Incorporating res judicata identification and processing instructions into this, or another appropriate policy frequently used by technicians, could reduce the occurrence of incorrect waiver processing and therefore increase the Agency's ability to collect overpayments. Additionally, SSA could benefit from issuing periodic reminders concerning SSA's res judicata policy and systems processes.

CONCLUSIONS

Requests for waiver of overpayments that should be denied under res judicata are not always identified in SSA's field offices and, when they are, they are not always processed properly at the payment centers. When res judicata processing instructions are not followed, the Agency limits or eliminates its ability to collect certain debts. Specifically, within our scope of review, the Agency has over \$25 million in overpayments they have not collected. Without implementation of our recommendations, this problem will continue to exist.

RECOMMENDATIONS

We recommend SSA:

1. Reinstitute collection actions for the remaining four debtors identified in our sample, as appropriate.
2. Identify and re-institute collection actions, where needed, for all debtors who submitted a new request for waiver following an at-fault waiver denial.
3. Incorporate SSA's res judicata policy into SSA's *Waiver Decisionmaker* policy, or other appropriate policy, to alert technicians to review prior debt decisions.
4. Provide reminder items for technicians about identifying and processing res judicata in cases to ensure all appropriate debts are collected and not incorrectly waived.

AGENCY COMMENTS

SSA agreed with our recommendations, see Appendix C.

²⁰ See Footnote 8.

APPENDICES

Appendix A – SCOPE AND METHODOLOGY

Our review included all debtors with an at-fault¹ waiver denial since January 1, 1995 and a new protest since January 1, 2010.² From 1 segment of the Master Beneficiary Record (MBR), we reviewed a random sample of 100 debtors from a population of 1,352.³ We reviewed each sample item to determine whether res judicata⁴ should have been applied. For each instance where the rule should have been applied, we determined:

- whether SSA stopped collection actions for longer than 1 year as of October 2022;
- whether SSA granted improper waivers;
- why SSA technicians were not always following SSA's res judicata policies; and
- whether SSA policies and internal guidance concerning res judicata could be improved.

We conducted our audit in Birmingham, Alabama, from July to December 2022. We assessed the reliability of the MBR data by: (1) performing electronic testing; (2) reviewing existing information about the data and the system that produced it; and (3) tracing a statistically random sample of data to source documents. We determined the data used in this report were sufficiently reliable given our audit objective's intended use of the data.

We assessed the significance of internal controls necessary to satisfy the audit objective. This included an assessment of the five internal control components, including control environment, risk assessment, control activities, information and communicating, and monitoring. In addition, we reviewed the principles of internal controls associated with the audit objective. We identified the following component and principles as significant to the audit objective.

- Component 3: Control Activities
 - Principle 10: Design Control Activities
 - Principle 11: Design Activities for the Information System
- Component 5: Monitoring
 - Principle 16: Perform Monitoring Activities

¹ SSA, *POMS*, GN 02250.005 (August 26, 2021). SSA considers a debtor at fault when their actions cause, or help to cause, benefits to be overpaid.

² To further refine our population to potential findings, we only included instances where at least 90 days separated the at-fault denial and the new debt protest.

³ The MBR is a file of all current and previously entitled Old-Age, Survivors and Disability Insurance beneficiaries. SSA establishes the record when it receives an initial claims action. The MBR is divided into 20 equal segments that are separated based on the last 2 digits of the Social Security number. One segment represents 5 percent of the total population of wage earners. Because each segment contains similar characteristics, the characteristics of 1 segment are deemed to be representative of all 20 segments.

⁴ Res judicata applies to administrative proceedings and means the matter has been decided and may not be pursued further by the same parties.

The entity audited was the Office of the Deputy Commissioner for Operations. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Appendix B – SAMPLING METHODOLOGY AND RESULTS

From 1 segment of the Social Security Administration’s (SSA) Master Beneficiary Record (MBR), we identified a population of 1,352 debtors with an at-fault¹ waiver denial since January 1, 1995 and a new protest since January 1, 2010.² From our population of 1,352 debtors,³ we selected a random sample of 100 for review (see Table B–1).

Table B–1: Population and Sample Size

Description	Number of Debtors
Population Size	1,352
Sample Size	100
Estimated Total Population (Population Size x 20 Segments) ⁴	27,040

Sample Errors and Projections

Of the 100 sampled debtors, SSA did not properly apply *res judicata*⁵ for waiver requests made after a previous request was denied.⁶ Based on the sample errors, we estimate SSA did not collect on 2,434 overpayments totaling approximately \$25.9 million (see Table B–2).

Table B–2: Errors for Sampled Debtors

Description	Number of Debtors	Overpayment Total
Sample Results	9	\$95,950
Point Estimate	2,434	\$25,945,010
Projection – Lower Limit	1,293	\$3,434,711
Projection – Upper Limit	4,101	\$48,455,309

Note: All projections are at the 90-percent confidence level.

¹ SSA, *POMS*, GN 02250.005 (August 26, 2021). SSA considers a debtor at fault when their actions cause or help to cause benefits to be overpaid.

² To further refine our population to potential findings, we only included instances where at least 90 days separated the at-fault denial and the new debt protest.

³ See Appendix A for the scope and methodology of our review.

⁴ The MBR is a file of all current and previously entitled Old-Age, Survivors and Disability Insurance beneficiaries. SSA establishes the record when it receives an initial claims action. The MBR is divided into 20 equal segments that are separated based on the last 2 digits of the Social Security number. One segment represents 5 percent of the total population of wage earners. Because each segment contains similar characteristics, the characteristics of 1 segment are deemed to be representative of all 20 segments.

⁵ *Res judicata* applies to administrative proceedings and means the matter has been decided and may not be pursued further by the same parties.

⁶ The overpayment balances ranged from \$144 to \$39,176.

Appendix C – AGENCY COMMENTS



SOCIAL SECURITY

MEMORANDUM

Date: May 11, 2023

Refer To: TQA-1

To: Gail S. Ennis
Inspector General

From: Scott Frey 
Chief of Staff

Subject: Office of the Inspector General Draft Report “Processing New Waiver Requests After a Previous Request Was Denied” (A-08-21-51100) — INFORMATION

Thank you for the opportunity to review the draft report. We agree with the recommendations.

Please let me know if I can be of further assistance. You may direct staff inquiries to Trae Sommer at (410) 965-9102.



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