

Can bankruptcy eliminate(discharge) a social security overpayment?

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If this question caught your eye, you may have recently received a written demand from the social security administration to repay an overpayment and possibly a notice stating that future benefits will stop as well. This is a double whammy. It can be a mental shock, and no doubt will be a major change to the budget. But there may be help available to address this.

The quick answer to whether a social security overpayment can be eliminated in bankruptcy is *generally* yes; the social security administration is a creditor like anyone else and if afforded no special protection under the bankruptcy code. But there could be special facts in each case that could affect the outcome.

One concern would be whether fraud or false pretenses were involved in obtaining the funds. In this case, the social security administration could contest the elimination/discharge of the debt owed to it. It would have to take affirmative steps while the bankruptcy case is open to prove its case. If it was successful in this endeavor, the overpayment would not be eliminated. However, even if the social security administration could make a case for fraud, etc. it rarely takes that step.

With this issue, there may be wrinkle to the bankruptcy avenue. People want black and white; certainty in simple terms. But life, and especially the law, is usually more complicated than people want. The wrinkle is that even if you do get the overpayment eliminated in bankruptcy, it may not mean that you would start with a clean slate with the social security administration in the future. This potential wrinkle and any ramifications of a bankruptcy filing should be discussed with your future bankruptcy counsel.

There also may be an alternative to bankruptcy to address this. Sometimes bankruptcy is the only viable, reasonable option for someone facing financial issues. But if your only problem is a social security overpayment, there may be steps you could take within the social security administration's rules to address the overpayment. Although such efforts are usually unsuccessful, you may want to explore any alternative to bankruptcy you may have with counsel.

If you are facing a social security overpayment we encourage you to seek counsel to assist you in taking the best course of action. We would be happy to talk to you.

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