



What is Recoupment?



I received a letter from my pension plan stating that it has been overpaying me. The letter says that the plan is going to reduce my monthly payments and that I will also have to pay an additional amount to the plan. What can I do?

In recent years, the Pension Rights Center has seen an increase in the number of calls and e-mails from retirees who have been asked to pay money back to their pension plan. Most often this happens because the plan made a mistake in calculating the amount of the pension, and the retiree had no way of knowing that he or she was receiving the wrong amount. The process of taking back overpayments is called "recoupment."

How does recoupment work?

When a pension plan realizes that it has made a mistake and has been overpaying a retiree, it typically reduces the retiree's future monthly payments to the correct amount and then seeks to recover – or recoup – the amounts that have been overpaid. The plan recoups by reducing the retiree's future monthly payments even more, by demanding a lump-sum repayment, or both. In extreme cases, monthly benefits are reduced to zero until the overpaid amount has been fully recovered. In addition, plans may charge interest on the overpayment, which increases the recoupment amount.

Since overpayments are often made for many years before the plan realizes that a mistake has been made, the amounts demanded by the plan can be very large. There is typically no warning to the retirees before they receive the recoupment notice and no formal process for challenging the plan's action.

What should I do if I receive an overpayment notice from my pension plan?

- **Don't panic.**
- **Check the plan's new calculation.**
 - Ask the person running your plan to explain how the mistake happened;
 - Ask to see both the old and new calculations of your benefit; and
 - Compare the plan's new figure with **benefit statements** you have received.
- **Ask for a hardship waiver** if the reduction in your benefit will cause you financial hardship or if the plan is asking for a lump-sum repayment that you cannot afford to pay.

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- Your pension plan may not be aware that federal rules permit it to waive all or part of recoupments if they will cause financial hardship to retirees.
- **Seek help.**
 - There may be a pension counseling project, legal services provider, or government agency that can:
 - Help you check the plan's calculation;
 - Help you file a hardship waiver, which may require writing a letter or filling out a complicated form that is several pages long;
 - Negotiate with the plan on your behalf for a less burdensome repayment schedule, if your hardship waiver is denied; and
 - Advise you whether the plan is likely to sue you if you do not respond to a demand for repayment of a lump sum. (In many cases, a lawsuit would not be worth the cost to the plan.)
 - **Regional Pension Counseling and Information Projects** provide free legal assistance to anyone with a question about their retirement plan in 30 states. They have years of experience in handling recoupment cases and can advise you on your legal rights and options.
 - If you do not live in a state served by a pension counseling project, **PensionHelp America**, an online referral service, can direct you to a legal services provider or government agency in your area that may be able to help.
 - You can also call the Pension Rights Center at 1-888-420-6550.

Are there limits on how much a plan can take back?

Plans can always reduce future benefits to the corrected amount. However, in some instances, there are limits to the additional benefit reductions that the plan can make.

- The amount that a plan can recoup each month may be limited by the rules of the plan. This is most common in multiemployer pension plans.
- Recoupments of overpayments by the federal pension insurance program, the **Pension Benefit Guaranty Corporation**, are limited by law.
- If you are a retiree who has been overpaid, and you die before the overpayment is fully repaid, your widow or widower will not have to pay back the amount that

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you owed to the plan at the time of your death. The plan can, however, recoup against a widow or widower's benefit, if the survivor's benefit was overpaid.

What causes an overpayment?

Overpayments most often occur when:

- A plan miscalculates a participant's benefits.
- A participant receives income from some other source, such as disability benefits or Social Security, that should have reduced the pension benefit according to the rules of the plan.
- An early retiree in a multiemployer plan returns to work in the industry or trade in the geographic area covered by his or her plan, and the retiree's benefits should have been suspended under the plan's rules.
- An early retiree receives a special benefit equal to Social Security that was supposed to end at age 62, but the plan did not stop the special benefit.
- The Pension Benefit Guaranty Corporation (PBGC) takes over a plan and takes several years to determine whose pensions must be reduced to conform to the **PBGC's guarantee limit**. During that time, any retiree whose pension is above the agency's guarantee limit is being overpaid.

Why are plans permitted to recoup overpayments?

Plans justify recoupment actions by claiming that they are obligated by law to act in the interests of all plan members and, therefore, have a "fiduciary duty" to collect overpayments as a way of preserving the assets of the plan or to avoid tax penalties. However, recoupment is not a plan's only option. Companies can choose to contribute to the plan to make up for the overpayments, and some have. In addition, fiduciary insurance policies may cover the costs of losses resulting from mistakes by plan officials.

In March 2015, the Internal Revenue Service published a **Revenue Procedure**, which states that, depending on the circumstances, pension plans are not obligated to recoup overpayments and a plan can take other steps to make up for an overpayment. This is important, because plans often claim that the IRS requires them to recoup.

What should be done?

The Pension Rights Center does not think that retirees should be subjected to unexpected and excessive financial burdens because of a plan's mistake. Retirees should receive the benefits they earned, no more or less, but the repayment process should be fair. Some of the changes to the recoupment process that we support include:

- A retiree's benefits should not be reduced until the retiree has been given the opportunity to challenge the plan's actions recoupment through claims and appeals procedures.

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- Plans should be required to offer retirees the opportunity to apply for hardship waivers and provide them with free assistance in filling out hardship waiver applications.
- Plans should not be allowed to collect overpayments for mistakes made more than three years before the recoupment process begins.
- Pensions should not be reduced by more than 10 percent of a retiree's monthly benefit to recover overpayments, even if this means that the entire amount will not be repaid during the retiree's lifetime.
- Plans should not be allowed to charge interest on overpayments.
- Plans should not be allowed to demand lump-sum repayments. Recoupment should be achieved only by reducing the monthly benefit (subject to the 10 percent limit), even if this means that the entire amount will not be repaid during the retiree's lifetime.
- If a retiree could not reasonably have known that a mistake had been made, the plan should look to other sources of income – including contributions from employers and insurance policies – to repay the plan.