\*\*Sections below in this color provide either/or options. Choose one option and delete the other option.

\*\*Sections below in this color are a reminder to include specific information about the case in the letter and/or to attach specific information to the letter

*All highlighted sections should be deleted or filled with client specific information and all highlighting removed before submitting to SSA.*

[DATE]

Social Security Administration

[ADDRESS]

[CLAIMANT NAME]

[CLAIMANT SSN]

Dear Sir or Madam:

I am writing regarding a [SSI or SSDI] overpayment of [AMOUNT] for [MONTH to MONTH] based on a notice dated [DATE]. This letter is in support of a **Request for Waiver of Overpayment**. The overpayment should be waived because the overpaid individual is not at fault and recovery would defeat the purpose of the Social Security Act or be against equity and good conscience.

**NO FAULT**

The determination that the individual has been overpaid is not a finding that the individual is at fault in causing the overpayment. SSA must make separate findings of fault for each individual who requests a waiver. If the waiver request is for an overpaid person who has a payee, SSA must consider only the fault of the overpaid person. If the person is not at fault, SSA must find them not at fault even if the representative payee was at fault. POMS GN 02250.005B.3; POMS GN 02250.021B.11.

**No Fault Presumptions**

SSA will presume that an individual is without fault where, as here, [ADD PRESUMPTION].

See POMS GN 02250.016 for the 20 situations where SSA will presume the individual is not at fault.

* If none of the presumptions apply, delete the section called “No Fault Presumptions.”
* If one of the presumptions applies, include it here. Delete the section below on “No Fault.”

**No Fault**

SSA can find an individual at fault only after SSA first finds that there is evidence that the overpayment occurred because the individual:

made an incorrect statement they knew or should have known was correct;

failed to furnish information that they knew or should have known was material; or

accepted payments that they knew or should have known was incorrect.

POMS GN 02250.005. SSA must consider the individual’s specific circumstances, such as the individual’s capabilities as demonstrated by their age, comprehension, education, memory, physical and mental condition (which may include medical institutionalization during part or all of the overpayment period), and linguistic limitations (including any lack of facility with the English language). SSA must consider the individual’s understanding of the reporting requirements, the agreement to report events affecting payments, knowledge of the occurrence of events that should have been reported, efforts and opportunities to comply with the reporting requirements, understanding of the obligation to return checks which were not due, and ability to comply with the reporting requirements (e.g., age, comprehension, memory, physical and mental condition). POMS GN 02250.005.

[ADD facts here indicating why the overpaid individual was not at fault]

**EQUITY & GOOD CONSCIENCE**

**Deemed Against Equity & Good Conscience**

Overpayment recovery is deemed to be against equity and good conscience where, as here, [ADD SITUATION].

See POMS GN 02250.150 for situations where SSA will deem recovery to be against equity and good conscience.

* If none of the situations apply, delete the section “Equity & Good Conscience.”
* If one of the situations applies, include it here. Delete the section “Defeat the Purpose.”

**DEFEAT THE PURPOSE**

If a “Equity & Good Conscience” situation applies, delete the entire section on “Defeat the Purpose.”

If a “Equity & Good Conscience” does not apply, then use one of these two options –

* If the individual or family member do not receive one of these needs-based programs or have income at or below 150% FPL, delete the section called “Deemed to Defeat the Purpose.”
* If the individual or family member receives a needs-based programs or 150% FPL, delete the section below called “Defeat the Purpose.”

**Deemed to Defeat the Purpose**

SSA will waive the overpayment under the deemed to defeat the purpose provision, if the overpaid individual or **any** household family member, currently receives one of the following needs-based assistance programs:

Supplemental Security Income (SSI);

Temporary Assistance for Needy Families (TANF);

Veterans Affairs (VA) service and non-service-related disability pension based on need;

Supplemental Nutrition Assistance Program (SNAP); or

Medicare Part D Extra Help Program (Low-Income Subsidy).

POMS GN 02250.110. This also applies if the individual’s**and** household members’ income is at or below 150% of the federal poverty level (FPL) and resources are within the limit for defeats the purpose (below $6,000 for an individual or $10,000 for an individual with a spouse or one dependent; plus $1200 for each additional dependent). POMS GN 02250.110; GN 02250.100.

The overpaid individual [OR household family member is] a current recipient of [Type of Needs Based Program or 150% FPL] so recovery is deemed to defeat the purpose and no review of expenses is necessary. The “deemed to defeat the purpose” provision is always reviewed before “defeat the purpose” and, if the former applies, then the latter is not needed. POMS GN 02250.100.

A waiver form (with pages 1-2 and 9 completed) and proof of needs-based program are attached.

**Defeat the Purpose**

Overpayment recovery will defeat the purpose of the Act where, as here, it would deprive the individual of the income and resources required for ordinary and necessary living expenses. “Whether expenses are considered ordinary and necessary will depend on the individual’s lifestyle and personal circumstances.” POMS GN 02250.100. Ordinary and necessary expenses include:

fixed expenses such as rent or mortgage payments; utilities, taxes, food, household supplies, personal care products and services (like a haircut), clothing, transportation, and insurance (life, homeowners, car, medical, etc.); out of pocket medical expenses; court ordered payments paid directly to the court; tuition and school expenses; expenses for the support of others for whom the overpaid individual is legally responsible; and miscellaneous ordinary and necessary living expenses which may be reasonably considered as part of the individual's standard of living, such as pet-related expenses and entertainment (e.g., cell phone, cable, internet, vacationing, or reading material).

POMS GN 02250.100. SSA will find the individual needs substantially all of their income to meet ordinary and necessary living expenses if monthly household income does not exceed monthly household expenses by more than $250. SSA will also look at whether recovery would reduce assets below $6,000 (for an individual) or $10,000 (for an individual with a spouse or one dependent); plus $1200 for each additional dependent. POMS GN 02250.100. Some assets are excluded from this calculation (IRAs, two vehicles, ABLE accounts, irrevocable trusts, etc.). Some documentation of household income, expenses, and assets may be required to meet this provision. POMS GN 02250.255 for examples of proof.

A waiver form (with pages 1-9 completed) and proof of income and resources are attached.

Sincerely,

[ADVOCATE NAME]