

§ 404.535

20 CFR Ch. III (4-1-10 Edition)

to you under title VIII and title XVI of the Act.

(2) *Benefits payable.* For purposes of this section, benefits payable means the amount of title VIII or title XVI benefits you actually would receive. For title VIII benefits, it includes your monthly benefit and any past-due benefits after any reduction by the amount of income for the month as described in §§ 408.505 through 408.515 of this chapter. For title XVI benefits, it includes your monthly benefit and any past-due benefits as described in § 416.420 of this chapter.

(b) *When may we collect title II overpayments using cross-program recovery?* We may use cross-program recovery to collect a title II overpayment you owe when benefits are payable to you under title VIII, title XVI, or both.

[70 FR 15, Jan. 3, 2005]

§ 404.535 How much will we withhold from your title VIII and title XVI benefits to recover a title II overpayment?

(a) If past-due benefits are payable to you, we will withhold the lesser of the entire overpayment balance or the entire amount of past-due benefits.

(b)(1) We will collect the overpayment from current monthly benefits due in a month under title VIII and title XVI by withholding the lesser of the amount of the entire overpayment balance or:

(i) 10 percent of the monthly title VIII benefits payable for that month and

(ii) in the case of title XVI benefits, an amount no greater than the lesser of the benefit payable for that month or an amount equal to 10 percent of your income for that month (including such monthly benefit but excluding payments under title II when recovery is also made from title II benefits and excluding income excluded pursuant to §§ 416.1112 and 416.1124 of this chapter).

(2) Paragraph (b)(1) of this section does not apply if:

(i) You request and we approve a different rate of withholding, or

(ii) You or your spouse willfully misrepresented or concealed material information in connection with the overpayment.

(c) In determining whether to grant your request that we withhold less than the amount described in paragraph (b)(1) of this section, we will use the criteria applied under § 404.508 to similar requests about withholding from title II benefits.

(d) If you or your spouse willfully misrepresented or concealed material information in connection with the overpayment, we will collect the overpayment by withholding the lesser of the overpayment balance or the entire amount of title VIII and title XVI benefits payable to you. We will not collect at a lesser rate. (See § 416.571 of this chapter for what we mean by concealment of material information.)

[70 FR 15, Jan. 3, 2005]

§ 404.540 Will you receive notice of our intention to apply cross-program recovery?

Before we collect an overpayment from you using cross-program recovery, we will send you a written notice that tells you the following information:

(a) We have determined that you owe a specific overpayment balance that can be collected by cross-program recovery;

(b) We will withhold a specific amount from the title VIII or title XVI benefits (see § 404.535);

(c) You may ask us to review this determination that you still owe this overpayment balance;

(d) You may request that we withhold a different amount from your current monthly benefits (the notice will not include this information if § 404.535(d) applies); and

(e) You may ask us to waive collection of this overpayment balance.

[70 FR 15, Jan. 3, 2005]

§ 404.545 When will we begin cross-program recovery from current monthly benefits?

(a) We will begin collecting the overpayment balance from your title VIII or title XVI current monthly benefits or payments by cross-program recovery no sooner than 30 calendar days after the date of the notice described in § 404.540. If within that 30-day period