

§ 408.905 Will we withhold or adjust an underpayment to reduce an overpayment if that overpayment occurred in a different period?

We will withhold or adjust any underpayment due you to reduce any overpayment to you that we determine for a different period, unless we have waived recovery of the overpayment under the provisions of §§ 408.910 through 408.914.

WAIVER OF RECOVERY OF SVB
OVERPAYMENTS

§ 408.910 When will we waive recovery of an SVB overpayment?

We will waive recovery of an overpayment when:

- (a) You are without fault in connection with the overpayment, and
- (b) Recovery of such overpayment would either:
 - (1) Defeat the purpose of the title VIII program, or
 - (2) Be against equity and good conscience.

§ 408.911 What happens when we waive recovery of an SVB overpayment?

Waiver of recovery of an overpayment from you (or, after your death, from your estate) frees you and your estate from the obligation to repay the amount of the overpayment covered by the waiver. *Example:* You filed for waiver of recovery of a \$600 overpayment. We found that you are eligible for waiver of recovery of \$260 of that amount. Only \$340 of the overpayment would be recoverable from you or your estate.

§ 408.912 When are you without fault regarding an overpayment?

(a) *General—when fault is relevant.* If you request waiver of recovery of an overpayment, we must determine whether you were without fault. You are not relieved of liability and are not without fault solely because we may have been at fault in making the overpayment.

(b) *The factors we consider to determine whether you were without fault.* When we determine whether you were without fault, we consider all the pertinent circumstances relating to the overpay-

ment. We consider your understanding of your obligation to give us information affecting your payments, your agreement to report events, your knowledge of the occurrence of events that should have been reported, the efforts you made to comply with the reporting requirements, the opportunities you had to comply with the reporting requirements, your ability to comply with the reporting requirements (e.g., your age, comprehension, memory, physical and mental condition), and your understanding of the obligation to return payments that were not due. In determining whether you are without fault based on these factors, we will take into account any physical, mental, educational, or language limitations (including any lack of facility with the English language) you may have. We will determine that you were at fault if, after considering all of the circumstances, we find that the overpayment resulted from one of the following:

- (1) Your failure to furnish information which you knew or should have known was material;
- (2) An incorrect statement you made which you knew or should have known was incorrect (this includes furnishing your opinion or conclusion when you were asked for facts), or
- (3) You did not return a payment, which you knew, or could have been expected to know, was incorrect.

§ 408.913 When would overpayment recovery defeat the purpose of the title VIII program?

We will waive recovery of an overpayment when you are without fault (as defined in § 408.912) and recovery of the overpayment would defeat the purpose of the title VIII program. Recovery of an overpayment would defeat the purpose of the title VIII program to the extent that our recovery action would deprive you of income and resources you need to meet your ordinary and necessary living expenses as described in § 404.508(a) of this chapter.

§ 408.914 When would overpayment recovery be against equity and good conscience?

We will waive recovery of an overpayment when you are without fault