

Social Security Administration

§ 408.911

(2) Payment of less than the amount due for a period.

(c) For purposes of this section, payment has been made when certified by the Social Security Administration to the Department of the Treasury. Payment is not considered to have been made where payment has not been received by the designated payee, or where payment was returned.

§ 408.902 What is an overpayment?

As used in this subpart, the term overpayment means payment of more than the amount due for any period. For purposes of this section, payment has been made when certified by the Social Security Administration to the Department of the Treasury. Payment is not considered to have been made where payment has not been received by the designated payee, or where payment was returned.

§ 408.903 How do we determine the amount of an underpayment or overpayment?

(a) *General.* The amount of an underpayment or overpayment is the difference between the amount you are paid and the amount you are due for a given period. An underpayment or overpayment period begins with the first month for which there is a difference between the amount paid and the amount actually due for that month. The period ends with the month in which we make the initial determination of the overpayment or underpayment. With respect to the period established, there can be no underpayment to you if we paid you more than the correct amount of SVB, even though we waived recovery of any overpayment to you for that period under the provisions of §§ 408.910 through 408.914. A later initial determination of an overpayment will require no change with respect to a prior determination of overpayment or to the period relating to such prior determination to the extent that the basis of the prior overpayment remains the same.

(b) *Limited delay in payment of an underpayment.* Where we have detected a potential overpayment but we have not made a determination of the overpayment (see § 408.918(a)), we will not delay making a determination of under-

payment and paying you unless we can make an overpayment determination before the close of the month following the month in which we discovered the potential underpayment.

(c) *Delay in payment of underpayment to ineligible individual.* If you are no longer entitled to SVB, we will delay a determination and payment of an underpayment that is otherwise due you so that we can resolve all overpayments, incorrect payments, and adjustments.

§ 408.904 How will you receive an underpayment?

We will pay you the amount of any underpayment due you in a separate payment or by increasing the amount of your monthly payment. If you die before we pay you all or any part of an underpayment, the balance of the underpayment reverts to the general fund of the U.S. Treasury.

§ 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

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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 overpayment. 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

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(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 (as defined in § 408.912) and recovery would be against equity and good conscience. Recovery would be against equity and good conscience if you changed your position for the worse or gave up a valuable right in reliance on our notice that payment would be made or because of the incorrect payment itself. *Example:* Upon our notice that you are eligible for SVB payments, you signed a lease on an apartment renting for \$15 a month more than the one you previously occupied. You were subsequently found ineligible for SVB and no benefits are payable. In this case, recovery of the overpayment would be considered “against equity and good conscience.”

NOTICES

§ 408.918 What notices will you receive if you are overpaid or underpaid?

(a) *Notice of overpayment or underpayment determination.* Whenever we determine that you were overpaid or underpaid for a given period, as defined in § 408.903, we will send you a written notice of the correct and incorrect amounts you received for each month in the period, even if part or all of the underpayment must be withheld in accordance with § 408.905. The notice of