

### § 408.903

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 underpayment 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

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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 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