

will withhold is limited to 10 percent of the maximum SVB monthly payment amount. This section also explains that you have the right to request a higher or lower rate of withholding and explains how we determine an appropriate lower rate of withholding when you request a lower rate. If we find that you engaged in fraud, misrepresentation or concealment of material information in connection with the overpayment, we will not limit the amount we will withhold from SVB each month.

- Section 408.930 explains that, if you received an SVB overpayment that you have not refunded to us and you are not currently receiving SVB payments, but are receiving title II benefits, we will adjust your title II benefits to recover the SVB overpayment. This section also explains the circumstances when we will not adjust your title II benefits.

- Section 408.931 explains that the rate of withholding we will use to recover an SVB overpayment from your title II benefits is limited to 10 percent of title II benefits payable to you in a month except that we will withhold 100 percent of your benefits if you willfully misrepresented or concealed material information in connection with the overpayment. This section also explains that you may request a higher or lower rate of withholding.

- Section 408.932 explains that we will send you a notice if we plan to adjust your title II benefits to recover an SVB overpayment. The notice will tell you (1) the amount of the overpayment that you owe, (2) the amount we plan to withhold from your title II benefits to recover the overpayment, (3) that you can ask us to review our determination that you still owe the amount stated in the notice, (4) that you may request a different rate of withholding, and (5) that you can request a waiver of recovery of the overpayment balance.

- Section 408.933 explains when we will begin adjusting your title II benefits to recover an SVB overpayment. We will not take any action for 30 days after the date of the notice. If you request review, waiver or a different rate of adjustment during that 30-day period, we will take no action before we send you written notice of our decision on the matter.

- Section 408.940 explains that, where an overpaid person does not refund an overpayment to us and is not currently receiving title II or SVB payments from which we can withhold the overpayment, we will refer the overpayment to the Department of the Treasury for withholding from any Federal income tax refund you may be due.

- Section 408.941 explains that we will send you a notice before we refer

an overpayment to Treasury for tax refund offset. The notice will (1) tell you the amount of the overpayment, (2) give you 60 days within which to either repay the amount or ask that we waive it, (3) explain the conditions under which we will waive the overpayment, (4) explain that we will review any evidence you wish to present that the overpayment is not past due or legally enforceable, and (5) explain your right to inspect or copy our records related to the overpayment.

- Section 408.942 explains that, before we refer an overpayment to Treasury for tax refund offset, you will have the chance to submit evidence that the debt is not past due or legally enforceable. After reviewing the evidence submitted, we will make findings.

- Section 408.943 explains that we will issue written findings to you, your attorney or other representative concerning whether the overpayment is past due and legally enforceable. These written findings are the final agency action on these issues.

- Section 408.944 explains that, if you tell us you wish to inspect or copy our records related to the overpayment, we will either notify you of the time and place you may do so or mail copies of the records to you.

- Section 408.945 explains that if, within 60 days after the date of the notice, you present evidence that the overpayment is not past-due or legally enforceable or ask us to waive collection of the overpayment, we will not refer the overpayment to Treasury for offset until we issue written findings on the matter.

- Section 408.946 explains that if a tax refund is insufficient to recover an overpayment in a given year, the case will remain with Treasury for recovery from future income tax refunds you may be due.

- Section 408.950 explains that, when appropriate, we may accept a compromise settlement (payment of less than the full amount of the overpayment) to discharge the entire overpayment debt or we may suspend or terminate our efforts to collect the overpayment. We would consider taking one of these actions if we find that you or your estate do not have the ability to pay the full amount of the overpayment presently or in the future within a reasonable period of time or that the cost of collection is likely to exceed the amount of recovery. In deciding whether to take any of these actions, we would apply the rules that we apply concerning such actions for title II overpayments at § 404.515(b)–(f) and other applicable rules, including the

Federal Claims Collection Standards (FCCS) at 31 CFR parts 902 and 903, established under the authority of 31 U.S.C. 3711(a)(d). If we suspend or terminate collection, we may take collection action in the future in accordance with Federal law and the FCCS. Failure to make payment in the manner and within the time that we require in a compromise settlement will result in reinstatement of our claim for the full amount of the overpayment less any amounts paid.

#### *Subpart J—Determinations and the Administrative Review Process*

This subpart would set forth our rules on administrative review of SVB initial determinations. Again, as with our rules in subpart I on overpayments, these rules follow closely our rules on administrative review of titles II and XVI initial determinations. Regarding the expedited appeals process, administrative law judge hearings, Appeals Council review of ALJ hearings or dismissals, Court remand cases, and time limits for reopening a final determination we previously made, the proposed rules provide cross-references to the appropriate SSI rules while noting any exceptions in those rules that are applicable to the title VIII program. Specifically:

- Section 408.1000 provides an overview of the administrative review process.

- Section 408.1001 defines certain terms used in subpart J.

- Section 408.1002 explains that initial determinations are the determinations we make that are subject to administrative and judicial review.

- Section 408.1003 lists administrative decisions we make that are initial determinations.

- Section 408.1004 lists administrative actions that are not initial determinations. Although we may review these actions, they are not subject to the administrative and judicial review process.

- Section 408.1005 explains that we will mail you a notice whenever we make an initial determination in your case. The notice will tell you what our determination is, our reasons for making the determination, and your right to request a reconsideration of the determination.

- Section 408.1006 explains that an initial determination is binding unless you request a reconsideration within the stated time period or we revise it.

- Section 408.1007 explains that reconsideration is the first step in the administrative review process if you are dissatisfied with the initial determination.