

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 overpayment will advise you about recovery of the overpayment, as explained in §§ 408.920–408.923, and your rights to appeal the determination and to request waiver of recovery of the overpayment under the provisions of § 408.910.

(b) *Notice of waiver determination.* Written notice of an initial determination regarding waiver of recovery will be mailed to you in accordance with § 408.1005 unless you were not given notice of the overpayment in accordance with paragraph (a) of this section.

Refund of Overpayments

§ 408.920 When will we seek refund of an SVB overpayment?

We will seek refund of an SVB overpayment in every case in which we have not waived recovery. An overpayment may be refunded by you or by anyone on your behalf. If you are receiving SVB currently and you have not refunded the overpayment, adjustment as set forth in § 408.922 will be proposed. If you die before we recover the full overpayment, we will seek refund of the balance from your estate.

Adjustment of SVB

§ 408.922 When will we adjust your SVB payments to recover an overpayment?

If you do not refund your overpayment to us, and waiver of recovery is not applicable, we will adjust any SVB payments due you to recover the overpayment. Adjustment will generally be accomplished by withholding each month the amount set forth in § 408.923 from the benefit payable to you.

§ 408.923 Is there a limit on the amount we will withhold from your SVB payments to recover an overpayment?

(a) *Amount of the withholding limit.* Except as provided in paragraphs (b) and (c) of this section, the amount we will withhold from your monthly SVB payment to recover an overpayment is limited to the lesser of (1) the amount of your Federal SVB payment or

(2) an amount equal to 10 percent of the maximum SVB monthly payment amount as defined in § 408.505(a).

(b) *Your right to request a different rate of withholding.* When we notify you of the rate we propose to withhold from your monthly SVB payment, we will give you the opportunity to request a higher or lower rate of withholding than that proposed. If you request a rate of withholding that is lower than the one established under paragraph (a) of this section, we will set a rate that is appropriate to your financial condition after we evaluate all the pertinent facts. An appropriate rate is one that will not deprive you of income required for ordinary and necessary living expenses. We will evaluate your income, resources, and expenses as described in § 404.508 of this chapter.

(c) *Fraud, misrepresentation or concealment of material information.* If we determine that there was fraud, willful misrepresentation, or concealment of material information by you in connection with the overpayment, the limits in paragraph (a)(2) of this section do not apply and we will not lower the rate of withholding under paragraph (b) of this section. Concealment of material information means an intentional, knowing, and purposeful delay in making or in failing to make a report that will affect your SVB payment amount and/or eligibility. It does not include a mere omission on your part; it is an affirmative act to conceal.

Adjustment of Title II Benefits

§ 408.930 When will we adjust your title II benefits to recover an SVB overpayment?

(a) *General rule.* Except as provided in paragraph (c) of this section, we will adjust your title II benefits payable in a month to recover the SVB overpayment if you are not currently eligible to receive SVB payments and you are receiving title II benefits.

(b) *Benefits payable in a month.* For purposes of this section, benefits payable in a month means the actual amount of title II benefits you receive in that month. It includes your monthly benefit and any past due benefits after any reductions or deductions listed in § 404.401(a) and (b) of this chapter.

(c) *When we will not adjust your title II benefits.* We will not adjust your title II benefits to recover an SVB overpayment if:

(1) You are refunding your SVB overpayment by regular monthly installments, or

(2) We are recovering a title II overpayment by adjusting your title II benefits.

(3) We are recovering a title XVI overpayment by adjusting your title II benefits under § 416.572 of this chapter.

§ 408.931 How much will we withhold from your title II benefits to recover an SVB overpayment?

(a) *Amount of withholding.* Except as provided in paragraphs (b) and (c) of this section, any recovery of an SVB overpayment from title II benefits in any month is limited to 10 percent of the title II benefit payable to you in that month.

(b) *Your right to request a different rate of withholding.* When we notify you of the proposed rate of withholding, we will give you the opportunity to request a higher or lower rate of withholding than that proposed. If you request a lower rate of withholding, we will set a rate in accordance with the rules in § 408.923(b).

(c) *When we will withhold the full amount of your title II benefits.* We will withhold the full amount of title II benefits payable to you in a month if you willfully misrepresented or concealed material information in connection with the overpayment as described in § 408.923(c).

§ 408.932 Will you receive a notice of our intention to adjust your title II benefits to recover an SVB overpayment?

Before we collect an SVB overpayment by adjusting your title II benefits, 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 adjusting your title II benefits;

(b) We will withhold the amount described in § 408.931;

(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 (this notice will not include this paragraph when § 408.931(c) applies); and

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

§ 408.933 When will we begin adjusting your title II benefits to recover an SVB overpayment?

We will begin adjusting your title II benefits no sooner than 30 calendar days after the date of the notice described in § 408.932.

(a) If within that 30-day period you pay us the full overpayment balance stated in the notice, we will not begin adjusting your title II benefits.

(b) If within that 30-day period you ask us to review our determination that you still owe us this overpayment