

**SOCIAL SECURITY ADMINISTRATION****20 CFR Parts 404 and 408**

RIN 0960-AF72

**Special Benefits for Certain World War II Veterans; Reporting Requirements, Suspension and Termination Events, Overpayments and Underpayments, Administrative Review Process, Claimant Representation, and Federal Administration of State Recognition Payments****AGENCY:** Social Security Administration (SSA).**ACTION:** Final rules.

**SUMMARY:** We are adding six new subparts to part 408 of our regulations and reserve an additional subpart for future use. Part 408 sets forth our rules applicable to claims for special veterans benefits (SVB) under title VIII of the Social Security Act (the Act). The title VIII program was effective in May 2000 and provides monthly benefits to certain World War II (WWII) veterans who previously were eligible for supplemental security income (SSI) payments under title XVI of the Act and reside outside the United States. In these final rules, we are setting forth six new subparts that deal with the following topics: the events you must report to us after you apply for SVB, the circumstances that will affect your SVB entitlement, how we handle overpayments and underpayments under the SVB program, how the administrative review process works, your right to appoint someone to represent you in your dealings with us, and administration agreements we may enter into with a State under which we will pay supplemental recognition payments to you on the State's behalf.

In addition, we are reserving for future use a subpart in part 408 that would explain when we will pay your SVB to someone else on your behalf. An NPRM that included that subpart was published in the **Federal Register** on September 25, 2003 (68 FR 55323). We plan to issue those final rules at a later date.

**EFFECTIVE DATE:** These final rules are effective on June 9, 2004.

*Electronic Version:* The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>. It is also available on the Internet Web site for SSA (*i.e.*, Social Security Online): <http://policy.ssa.gov/pnpublic.nsf/LawsRegs>.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Augustine, Social Insurance

Specialist, Office of Regulations, Social Security Administration, Room 100, Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, (410) 965-0020 or TTY (410) 966-5609. For information on eligibility or filing for benefits: Call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778 or visit our Internet Web site, Social Security Online, at <http://www.socialsecurity.gov>.

**SUPPLEMENTARY INFORMATION:****Statutory Provisions**

Section 251 of the Foster Care Independence Act of 1999 (Public Law No. 106-169), enacted on December 14, 1999, added a new title VIII to the Act (Special Benefits for Certain World War II Veterans). Title VIII requires SSA to pay special veteran's benefits (SVB) to certain WWII veterans who reside outside the United States. Establishing SVB entitlement is a two-step process: first, you need to show that you meet certain qualifying requirements; second, once we determine that you qualify for SVB, you will be entitled to SVB payments after you begin residing outside the U.S.

On April 4, 2003, we published final rules that set forth the rules we follow in determining whether you qualify for SVB, how you file for benefits, what evidence you must give us in connection with your claim and how we evaluate that evidence, and how we compute and pay SVB (67 FR 55774). We are now adding six subparts in part 408 that provide additional guidelines for the title VIII program with respect to the topics discussed below, and reserve for future use a subpart on representative payment in the title VIII program.

**Reporting Responsibilities Under the SVB Program**

Section 806 of the Act directs SSA to prescribe requirements related to the reporting of any events and changes in circumstances that may affect the amount of, your qualification for, or your continuing entitlement to receive SVB. Among the events and changes in circumstances that could affect the amount of, your qualification for, or your continuing entitlement to receive SVB and which therefore need to be reported to us are:

- You change your mailing address or the address where you live.
- You plan to return to the United States to live on a permanent basis or you plan to visit the United States for more than one full calendar month. To receive SVB, you must be residing outside the United States. If you return to the U.S. on a permanent basis, we

need to stop your SVB payments effective with the first full calendar month you begin residing in the United States. Although SVB is payable if you return to the United States for a temporary visit of less than one calendar month, your benefits may be suspended if you remain in the United States for more than one full calendar month. There are exceptions if you are unable to return to your foreign residence because of circumstances beyond your control or you are in the United States to present evidence or testimony in the appeal of a claim under any of the programs we administer.

- The amount of your other benefit income changes. Since the full SVB is reduced by the amount of any other benefit income you receive, a change in the amount of other benefit income you receive could result in an increase or decrease in the amount of the SVB we pay you.

- You die or your representative payee dies. If you die, your SVB entitlement ends. If your representative payee dies, we need to locate a new payee to receive your SVB payments on your behalf.

- Any of the SVB disqualifying events listed in section 804 of the Act occurs. This includes removal or deportation from the United States; fleeing from the United States to avoid prosecution, or custody or confinement after conviction, under the laws of the United States or the jurisdiction in the United States from which you flee, for a crime or an attempt to commit a crime that is a felony or, in the State of New Jersey, is a high misdemeanor; violating a condition of probation or parole imposed under Federal or State law; or, in the case of an individual who is not a citizen or national of the United States, taking up residence in a country to which payments are withheld by the Treasury Department (Treasury) under 31 U.S.C. 3329. If a disqualifying event occurs and we have not yet found you qualified for SVB, we will deny your SVB claim. If we found you met all the requirements for SVB when the disqualifying event occurs, we will suspend your SVB payments.

**Suspension and Termination of SVB**

Section 810(d) of the Act authorizes the Commissioner of SSA to prescribe appropriate regulations for suspending SVB payments and terminating SVB entitlement. Once you are qualified for SVB, we will suspend your SVB payments if:

- You are no longer residing outside the United States;
- You fail to give us information we need in connection with your claim;

- We are unable to locate you;
- The amount of your other benefit income increases so that it exceeds the maximum SVB payable (75 percent of the SSI Federal Benefit Rate (FBR) payable to an individual);
- You are removed (including deported) from the United States pursuant to section 237(a) or 212(a)(6)(A) of the Immigration and Nationality Act;
- You are fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the United States or the jurisdiction in the United States from which you fled, for a crime or an attempt to commit a crime that is a felony under the laws of the place from which you fled, or in the case of the State of New Jersey, is a high misdemeanor;
- You violate a condition of probation or parole imposed under Federal or State law; or
- You are not a citizen or national of the United States and begin residing in a country to which payments to residents of that country are withheld by the Treasury Department under 31 U.S.C. 3329.

We will terminate your SVB entitlement for any one of the following reasons:

- Your benefit payments are suspended for 12 consecutive calendar months;
- You file a written request that we terminate your entitlement; or
- You die.

#### *Overpayments and Underpayments*

Section 808 of the Act deals with overpayments and underpayments under the SVB program. With respect to overpayments, section 808 authorizes the Commissioner to recover an SVB overpayment by reducing the amount of any future SVB payments you are due unless you refund the full amount of the overpayment to us. If we are unable to recover the overpayment by direct refund or benefit withholding (for example, because your SVB payments are in suspense), section 808 authorizes us to adjust the amount of any social security benefits you receive under title II of the Act. We will also notify the Secretary of the Treasury to withhold the overpayment from any Federal income tax refund you may be due in the future, as authorized under 31 U.S.C. 3720A. Section 808(c) of the Act further stipulates that there will be no adjustment of benefits or other overpayment recovery if you were without fault in creating the overpayment and adjustment or recovery would defeat the purpose of title VIII or be against equity and good

conscience. If you die and have an outstanding SVB overpayment, we will seek refund of the overpayment from your estate.

With respect to underpayments, section 808 specifies that, if you are living at the time we take action on the underpayment, we will pay the amount due directly to you or to your representative payee, if one has been appointed. If you die before we make the payment to you, the amount due reverts to the general fund of the United States Treasury.

#### *Determinations and the Administrative Review Process*

Section 809 of the Act gives you the right to request that we review our determinations about your qualification for or entitlement to or the amount of your SVB payments. We also give you the right to request review of certain other determinations we make that you disagree with. We refer to determinations on which you may request administrative review as "initial determinations." Our administrative review process consists of several steps, which usually must be requested within certain time periods and in the following order:

- Reconsideration;
- Hearing before an administrative law judge (ALJ); and
- Appeals Council (AC) review.

These are the same steps we provide for review of initial determinations under the titles II and XVI programs.

#### *Claimant Representation*

Titles II and XVI of the Act contain detailed provisions on claimant representation that give individuals the right to select another person (including an attorney) to represent them in their dealings with us and that regulate many aspects of that relationship. Though title VIII contains no specific provisions on claimant representation, we propose to extend to the SVB program by regulation many of the rules we follow on claimant representation in the SSI program. Specifically, we believe the SSI rules on the appointment, authority, conduct, and standards of responsibility of a representative should also apply to the SVB program. We also believe that the SSI rules we follow when a representative violates any of these requirements, rules, or standards should apply to a representative under the SVB program. However, we do not plan to extend to the title VIII program the SSI rules that apply to fees a representative may charge.

#### *Federal Administration of State Recognition Payments*

Section 810A of the Act authorizes SSA to enter an agreement with any State (or one of its political subdivisions) that provides cash payments (referred to as State recognition payments) on a regular basis to individuals who are entitled to SVB under which SSA will make the payments on behalf of the State. Under section 810A, any State that enters into an agreement must pay to SSA an amount equal to the recognition payments made on its behalf as well as a separate fee to cover SSA's costs of administering the State program.

#### **Explanation of New Subparts**

We are adding six new subparts to part 408 of our regulations and reserving an additional subpart for future use. Following is a list of the new subparts that includes a brief description of each section in the subpart. We are also revising § 408.101 to add these new subparts to the overview of part 408.

##### *Subpart F (Reserved for Future Use)*

We reserve for future use subpart F in part 408 for our rules on representative payment of SVB. An NPRM that included that proposed subpart F was published in the **Federal Register** on September 25, 2003 (68 FR 55323). We plan to issue those final rules at a later date.

##### *Subpart G (Reports Required)*

This subpart explains which events you must report to us after you file for SVB, what information your reports must include, and when your reports are due. Specifically:

- Section 408.701 provides an overview of what subpart G is about.
- Section 408.704 explains that you are responsible for making your own reports if you receive your own benefits. If you have a representative payee, you or your representative must make the required reports, unless you have been legally adjudged incompetent. In that case, your representative payee is responsible for making required reports to us.
- Section 408.708 describes the events you must report to us.
- Section 408.710 describes the information that you must include in your report. This includes the name and social security number of the person about whom you are making the report, the event you are reporting and the date the event occurred, and your name, if you are not the beneficiary.
- Section 408.712 explains that you can make your report in writing, orally,

or using other means of reporting (e.g., fax).

- Section 408.714 explains that you should report an event as soon as a reportable event (described in § 408.708) occurs or, in cases where we request a report, within 30 days of our written request. If you fail to make a required report within the prescribed period, we may suspend your benefit payments.

#### *Subpart H (Suspension and Termination of SVB)*

This subpart explains the events that will cause us to suspend your SVB payments or terminate your SVB entitlement. Specifically:

- Section 408.801 provides an overview of what subpart H is about.
- Section 408.802 explains when suspension of your SVB payments is proper and when we will resume your payments.
- Section 408.803 explains the circumstances under which we will suspend your SVB payments for failing to comply with our request for necessary information.
- Section 408.806 explains the circumstances under which we will suspend your SVB payments because you are no longer residing outside the United States.
- Section 408.808 explains the circumstances under which we will suspend your SVB payments because your other benefit income exceeds the maximum SVB payable.
- Section 408.809 explains the circumstances under which we will suspend your SVB payments because you have been removed (including deported) from the United States under sections 237(a) or 212(a)(6)(A) of the Immigration and Nationality Act.
- Section 408.810 explains the circumstances under which we will suspend your SVB payments if you are fleeing the United States to avoid criminal prosecution or custody or confinement after a U.S. conviction for certain crimes or if you violate a condition of probation or parole under Federal or State law.
- Section 408.812 explains the circumstances under which we will suspend your SVB payments if you begin residing in a country to which payments are withheld by the Treasury Department under 31 U.S.C. 3329. This section only applies to you if you are not a citizen or national of the United States.
- Section 408.814 explains that you (or your representative payee) can request that your SVB entitlement be terminated. It also explains when your entitlement would end based on your request and the circumstances under

which you would be required to repay benefits you have already received.

- Section 408.816 explains that SVB entitlement ends with the month of death.
- Section 408.818 explains that your SVB entitlement will terminate if your SVB payments have been in suspense for 12 consecutive months.
- Section 408.820 explains that, whenever we plan to suspend or reduce your SVB payments or terminate your SVB entitlement, we will send you a notice of our intended action. The notice would explain your right to appeal that action and the time frames within which your appeal must be filed. The notice will also explain if you have a right to continue receiving benefits while you appeal the suspension, reduction or termination action, and your right to waive continued payment during your appeal.

#### *Subpart I (Overpayments and Underpayments)*

This subpart sets forth the rules we will follow when you receive more or less than you should have in SVB payments. These final rules are similar in many respects to the rules we currently follow in dealing with overpayments and underpayments under the titles II and XVI programs. Specifically:

- Section 408.900 provides an overview of what is covered in subpart I.
- Section 408.901 defines “underpayment”—payment of less than the amount due for a given period.
- Section 408.902 defines “overpayment”—payment of more than the amount due for a given period.
- Section 408.903 explains how we determine the amount that you are underpaid or overpaid. It also explains that there cannot be an underpayment for a period in which we paid more than the correct amount, even though we waived recovery of any overpayment for that period.
- Section 408.904 explains that, if you are underpaid, the amount due will be paid to you in a separate payment or by increasing the amount of your monthly SVB payment. It also explains that, if you die before we pay you any part of an underpayment, the balance of the underpayment reverts to the U.S. Treasury.
- Section 408.905 explains that we will withhold or adjust an underpayment due you for a period to reduce any overpayment to you for a different period.
- Section 408.910 explains the circumstances under which we will waive adjustment or recovery of an

overpayment. Specifically, we will waive adjustment or recovery if you were without fault in connection with the overpayment and recovery of the overpayment would defeat the purpose of the SVB program or be against equity and good conscience. These are the same criteria we use to determine whether we can waive recovery of an overpayment under the title II program.

- Section 408.911 explains that, when we waive recovery of an overpayment, this frees you from having to repay the overpaid amount.
- Section 408.912 explains how we determine whether you were without fault in creating an overpayment.
- Section 408.913 explains how we determine whether recovery of an overpayment would defeat the purpose of the SVB program.
- Section 408.914 explains the criteria we use to determine whether recovery of an overpayment would be against equity and good conscience.
- Section 408.918 explains that when you receive more or less than the correct amount of SVB, we will send you a notice about the incorrect payment. If you are overpaid, the notice will tell you about recovery of the overpayment and of your rights to appeal the overpayment determination and to request that we waive recovery of the overpayment.
- Section 408.920 explains that we will seek refund of the overpayment if we do not waive recovery. We will seek refund from your estate if you die before we recover the full amount of the overpayment.
- Section 408.922 explains that, if you are overpaid, have not refunded the overpayment to us, and are receiving SVB payments, we will adjust your future payments to recover the overpayment.
- Section 408.923 explains that, in adjusting your SVB payments to recover an overpayment, the amount that we 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. We inadvertently omitted the reference to title II from the version of § 408.940 that was published in the Notice of Proposed Rulemaking (NPRM). We have inserted that reference into the final regulation.

- 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 issue our written 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 900.3 and parts 902 and 903, established under the authority of 31 U.S.C. 3711(a)(d). We added a reference to 31 CFR 900.3 to the citation to the FCCS in the final regulations. This reference was inadvertently omitted from the NPRM. 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 sets 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, these final 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.

- Section 408.1009 explains that you must file a request for reconsideration within 60 days after you receive our notice of initial determination. This section also explains that you may ask for more time to request a reconsideration if you had good cause for missing the 60-day deadline.

- Section 408.1011 explains the standards we follow in determining whether you had good cause for missing the 60-day deadline to request a review.

- Section 408.1013 explains that, in requesting a review of our initial determination, you can ask for a case review or, in cases involving suspension, reduction, or termination of your SVB payments, an informal or formal conference. If you request a case review, you will be given the opportunity to review the evidence in our files and then present oral and written evidence to us. If you are permitted to request an informal conference, you will also have the opportunity to present witnesses. If you are permitted to request a formal conference, you will also be given the opportunity to request us to subpoena adverse witnesses and relevant documents and to cross-examine adverse witnesses.

- Section 408.1014 explains that, if you request a review of our initial determination on your application to receive SVB, you may elect only a case review.

- Section 408.1015 explains that, if we notify you that we plan to suspend, reduce or terminate your SVB payments, you have the choice of a case review, an informal conference, or a formal conference.

- Section 408.1016 explains the rules we follow if you request a formal or informal conference.

- Section 408.1020 explains how we make a reconsidered determination and that the person who makes it will have no prior involvement with the initial determination.

- Section 408.1021 explains that a reconsidered determination is binding unless you request the next stage of the administrative review process within the stated time.

- Section 408.1022 explains that we will send you a notice of our reconsidered determination that explains the reasons for our determination and your further appeal rights.

- Section 408.1030 provides a cross-reference to the SSI rules in §§ 416.1423–416.1428 that explain when you may use the expedited appeals process (EAP). Under the EAP, you may go directly to a Federal District Court without first completing the administrative review process if the only factor preventing a determination that is favorable to you is a provision of the law you believe is unconstitutional.

- Section 408.1040 provides a cross-reference to the SSI rules in §§ 416.1429–416.1440 that describe hearings before an ALJ and explain

when you may request an ALJ hearing. As explained in § 416.1436, we hold ALJ hearings in the 50 States, the District of Columbia and the Northern Mariana Islands.

- Section 408.1045 provides a cross-reference to the SSI rules in §§ 416.1444–416.1461 that describe additional procedures that apply when you request a hearing before an ALJ.

- Section 408.1050 provides a cross-reference to the SSI rules in §§ 416.1467–416.1482 that describe procedures before the Appeals Council and explain when you may request Appeals Council review of an ALJ decision.

- Section 408.1060 provides a cross-reference to the SSI rules in §§ 416.1483–416.1485 that explain what happens if a Federal Court remands your case back to SSA for further review.

- Section 408.1070 provides a cross-reference to the SSI rules in §§ 416.1487–416.1494 that explain the circumstances under which we will reopen and revise a final determination we previously made on your request for review.

#### *Subpart K (Representation of Parties)*

As explained above, we believe that a number of the SSI provisions on representation of parties should also apply under the SVB program. Section 408.1101, therefore, explains that, for purposes of claimant representation under the SVB program, we will follow the rules in §§ 416.1500–416.1505, 416.1507–416.1515 and 416.1540–416.1599 of our SSI rules.

#### *Subpart L (Federal Administration of State Recognition Payments)*

This subpart sets forth our rules on Federal administration of a State's recognition payment program. Specifically:

- Section 408.1201 explains what State recognition payments are.

- Section 408.1205 explains that a State may enter into an agreement with SSA under which SSA will administer the State's recognition payment program by determining your eligibility for the payments and by making recognition payments on the State's behalf.

- Section 408.1210 explains that a Federal-State agreement must, at a minimum, specify who is eligible for recognition payments; what fees the State must pay to SSA to administer the program; how long the agreement is valid; and how the agreement can be modified or terminated.

- Section 408.1215 explains how you establish eligibility for State recognition payments. Under this section, your

application for SVB under subpart C of this part is also an application for any Federally administered State recognition payments for which you may be eligible. We determine your eligibility for and the amount of your recognition payments using the rules in subparts A through K of part 408 of our regulations.

- Section 408.1220 explains that we pay State recognition payments on a monthly basis and include them with your SVB monthly payment.

- Section 408.1225 explains that if you receive an overpayment of State recognition payments, we will adjust future recognition payments to which you are entitled. Under this section, the rules we follow on recovery (or waiver) of SVB overpayments (see §§ 408.910 through 408.941) also apply to State recognition payments.

- Section 408.1226 explains that, if you are underpaid, we will pay the underpayment directly to you.

- Section 408.1230 explains that you can waive your right to State recognition payments by making a written request.

- Section 408.1235 explains that a State must transfer to SSA each month the amounts of its estimated recognition payments and administrative fees on the established transfer date. This section also provides for SSA to account for the funds it receives from the State and permits the State to audit the payments we make under the agreement.

#### **Conforming Changes on Overpayments**

As indicated above, § 408.930 of these final rules reflects the authority in section 808(a)(1)(B) of the Act to adjust your title II benefits to recover a title VIII overpayment. To conform to this change, we are also revising our title II rules at § 404.401(c) to explain that we may adjust your title II benefits to recover a title VIII overpayment. The NPRM also included a proposed revision to § 416.570 to indicate that we will not adjust your SSI benefits to recover an SVB overpayment unless you specifically request us to do so. However, this revision was previously made in final rules that were published on June 4, 2002 (67 FR 38383). We have, therefore, removed this duplicate revision from these final rules.

#### **Public Comments**

On November 5, 2003, we published proposed rules in the **Federal Register** at 68 FR 62670 and provided a 60-day period for interested parties to comment. We received no comments. We are, therefore, publishing these rules substantially unchanged. We made a few technical corrections described above, added 31 U.S.C. 3720A to the list

of authorities for subpart I, and made a few additional revisions to improve readability.

### Regulatory Procedures

#### Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were not subject to OMB review.

We have also determined that these final rules meet the plain language requirement of Executive Order 12866 as amended by Executive Order 13258.

#### Regulatory Flexibility Act

We certify that these final rules will not have a significant impact on a substantial number of small entities since they affect only individuals claiming benefits under title VIII of the Act. Therefore, a regulatory flexibility analysis, as provided for in the Regulatory Flexibility Act, as amended, is not required.

#### Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 specifies that no one is required to respond to a collection of information unless it displays a valid OMB control number. In accordance with the PRA, SSA is providing notice that OMB has approved the information collection requirements contained in 20 CFR 408, subparts G, H, I, J and L of these final rules. The OMB Control Number for these collections is 0960-0683, expiring January 31, 2007.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income; 96.020, Special Benefits for Certain World War II Veterans)

#### List of Subjects 20 CFR Part 404

Administrative practice and procedure; Death benefits; Blind, Disability benefits; Old-Age, Survivors and Disability Insurance; Reporting and recordkeeping requirements, Social Security.

#### List of Subjects 20 CFR Part 408

Administrative practice and procedure; Aged; Reporting and recordkeeping requirements, Social security; Special veterans benefits; Veterans.

Dated: April 28, 2004.

**Jo Anne B. Barnhart,**  
*Commissioner of Social Security.*

■ For the reasons set out in the preamble, we are amending Chapter III of Title 20 of the Code of Federal Regulations as follows:

### PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

■ 1. The authority citation for subpart E of part 404 is amended to read as follows:

**Authority:** Secs. 202, 203, 204(a) and (e), 205(a) and (c), 222(b), 223(e), 224, 225, 702(a)(5), 808 and 1129A of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 422(b), 423(e), 424a, 425, 902(a)(5), 1008 and 1320a-8a).

■ 2. Section 404.401 is amended by revising paragraph (c) to read as follows:

#### § 404.401 Deduction, reduction, and nonpayment of monthly benefits or lump-sum death payments.

(c) *Adjustments.* We may adjust your benefits to correct errors in payments under title II of the Act. We may also adjust your benefits if you received more than the correct amount due under titles VIII or XVI of the Act. For the title II rules on adjustment to your benefits, see subpart F of this part. For the rules on adjusting your benefits to recover title VIII overpayments, see § 408.930 of this chapter. For the rules on adjusting your benefits to recover title XVI overpayments, see § 416.572 of this chapter.

\* \* \* \* \*

### PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS

■ 3. The authority citation for subpart A continues to read as follows:

**Authority:** Secs. 702(a)(5) and 801-813 of the Social Security Act (42 U.S.C. 902(a)(5) and 1001-1013).

■ 4. Section 408.101 is amended by adding new paragraphs (f) through (l) to read as follows:

#### § 408.101 What is this part about?

\* \* \* \* \*

(f) Subpart F is reserved for future use.

(g) Subpart G contains the provisions on your requirement to report certain events to us.

(h) Subpart H contains the provisions on suspension and termination of title VIII entitlement.

(i) Subpart I contains the provisions on underpayments and overpayments.

(j) Subpart J contains the provisions on determinations and the administrative review process.

(k) Subpart K contains the provisions on claimant representation.

(l) Subpart L contains the provisions on Federal administration of State recognition payments.

■ 5. Subparts F, G, H, I, J, K, and L are added to part 408 to read as follows:

\* \* \* \* \*

#### Subpart F—[Reserved]

#### Subpart G—Reporting Requirements

Sec.

- 408.701 What is this subpart about?  
408.704 Who must make reports?  
408.708 What events must you report to us?  
408.710 What must your report include?  
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408.803 What happens to your SVB payments if you fail to comply with our request for information?  
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408.809 What happens to your SVB payments if you are removed or deported from the United States?  
408.810 What happens to your SVB payments if you are fleeing from the United States to avoid criminal prosecution, or custody or confinement after conviction, for certain crimes, or if you violate a condition of probation or parole?  
408.812 What happens to your SVB payments if you are not a citizen or national of the United States and you begin residing in a country to which the Treasury Department restricts payments?

- 408.814 Can you request termination of your SVB entitlement?  
408.816 When does SVB entitlement end due to death?  
408.818 When does SVB entitlement end if your benefits have been in suspense for 12 consecutive months?  
408.820 Will we send you a notice of intended action affecting your SVB payment status?

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- 408.900 What is this subpart about?  
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408.903 How do we determine the amount of an underpayment or overpayment?  
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 408.943 What happens after we make our determination on your request for review or your request for waiver?  
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\* \* \* \* \*

#### Subpart F—[Reserved]

#### Subpart G—Reporting Requirements

**Authority:** Secs. 702(a)(5), 802, 803, 804, 806, 807, and 810 of the Social Security Act (42 U.S.C. 902(a)(5), 1002, 1003, 1004, 1006, 1007, and 1010).

##### § 408.701 What is this subpart about?

To achieve efficient administration of the Special Veterans Benefit (SVB) program, we require you (or your representative) to report certain events to us. It is important for us to know about these events because they may affect your right to receive SVB or the amount of your benefits. This subpart tells you what events you must report; what your reports must include; how you should make your report; and when reports are due.

##### § 408.704 Who must make reports?

(a) If you receive your own benefits, you are responsible for making required reports to us.

(b) If you have a representative payee, and you have not been legally adjudged incompetent, either you or your representative payee must make the required reports.

(c) If you have a representative payee and you have been legally adjudged incompetent, you are not responsible for making reports to us; however, your representative payee is responsible for making required reports to us.

##### § 408.708 What events must you report to us?

This section describes the events that you must report to us. They are—

(a) *A change of address or residence.* You must report to us any change in your mailing address and any change in your residence, *i.e.*, the address where you live.

(b) *A change in your other benefit income.* You must report to us any increase or decrease in your other benefit income as described in § 408.220.

(c) *Certain deaths.* (1) If you are a representative payee, you must report the death of the entitled individual.

(2) If you have a representative payee, you must report the death of your representative payee.

(d) *Entry into the United States.* You must report to us if you enter the United States to visit or live even if you have no intention of abandoning your residence outside the United States.

(e) *Removal (including deportation) from the United States.* You must report to us if you are removed (including deported) from the United States under section 237(a) or 212(a)(6)(A) of the Immigration and Nationality Act.

(f) *Fleeing to avoid criminal prosecution or custody or confinement after conviction, or violating probation or parole.* You must report to us that you are—

(1) Fleeing to avoid prosecution, under the laws of the United States or the jurisdiction within the United States from which you flee, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which you flee (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State);

(2) Fleeing to avoid custody or confinement after conviction under the laws of the United States or the jurisdiction within the United States from which you flee, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which you flee (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State); or

(3) Violating a condition of probation or parole imposed under Federal or State law.

#### **§ 408.710 What must your report include?**

When you make a report, you must tell us—

(a) The name and social security number of the person to whom the report applies;

(b) The event you are reporting and the date it happened; and

(c) Your name if you are not the person to whom the report applies.

#### **§ 408.712 How should you make your report?**

You should make your report in any of the ways described in this section.

(a) *Written reports.* You may write a report on your own paper or on a printed form supplied by us. You may mail a written report or bring it to one of our offices.

(b) *Oral reports.* You may report to us by telephone, or you may come to one of our offices and tell one of our employees what you are reporting.

(c) *Other methods of reporting.* You may use any other suitable method of

reporting—for example, a telegram or a cable.

#### **§ 408.714 When are reports due?**

(a) *A reportable event happens.* You should report to us as soon as an event listed in § 408.708 happens.

(b) *We request a report.* We may request a report from you if we need information to determine continuing entitlement or the correct amount of your SVB payments. If you do not make the report within 30 days of our written request, we may determine that you may not continue to receive SVB. We will suspend your benefits effective with the month following the month in which we determine that you are not entitled to receive SVB because of your failure to give us necessary information (see § 408.803).

### **Subpart H—Suspensions and Terminations**

**Authority:** Secs. 702(a)(5) and 810(d) of the Social Security Act (42 U.S.C. 902(a)(5) and 1010(d)).

#### **§ 408.801 What is this subpart about?**

This subpart explains the circumstances that will result in suspension of your SVB payments or termination of your SVB entitlement.

#### **Suspension**

#### **§ 408.802 When will we suspend your SVB payments?**

(a) *When suspension is proper.* Suspension of SVB payments is required when you no longer meet the SVB qualification requirements (see subpart B of this part) and termination in accordance with §§ 408.814 through 408.818 does not apply. (This subpart does not cover suspension of payments for administrative reasons, as, for example, when mail is returned as undeliverable by the Postal Service and we do not have a valid mailing address for you or when your representative payee dies and a search is underway for a substitute representative payee.)

(b) *Effect of suspension.* When we correctly suspend your SVB payments, we will not resume them until you again meet all qualification requirements except the filing of a new application. If you request reinstatement, you are required to submit the evidence necessary to establish that you again meet all requirements for eligibility under this part. Your SVB payments will be reinstated effective with the first month in which you meet all requirements for eligibility except the filing of a new application.

#### **§ 408.803 What happens to your SVB payments if you fail to comply with our request for information?**

(a) *Effective date of suspension.* We will suspend your SVB payments effective with the month following the month in which we determine in accordance with § 408.714(b) that you may no longer receive SVB payments because you failed to comply with our request for necessary information.

(b) *Resumption of payments.* When we have information to establish that SVB is again payable, your benefit payments will be reinstated for any previous month for which you continue to meet the requirements of § 408.202.

(c) *When we will not suspend your payments.* We will not suspend your payments for failing to comply with our request for information for any month we can determine your eligibility for or the amount of your payment based on information on record. If we cannot determine your eligibility or the amount of your payment based on the information on record, we will send you a notice of suspension of payment because you failed to comply with our request for information in accordance with §§ 408.820 and 408.1005.

#### **§ 408.806 What happens to your SVB payments if you are no longer residing outside the United States?**

(a) *Suspension effective date.* We will suspend your SVB payments effective the first full calendar month you are no longer residing outside the United States.

(b) *Resumption of payments.* If otherwise payable, we will resume your SVB payments effective with the first full calendar month you are again residing outside the United States.

#### **§ 408.808 What happens to your SVB payments if you begin receiving additional benefit income?**

(a) *Suspension effective date.* We will suspend your SVB payments for any month your other benefit income (as described in § 408.220(a)) exceeds the maximum SVB amount payable for a month (see § 408.505(a)).

(b) *Resumption of payments.* If otherwise payable, we will resume your SVB payments effective with the first month your other benefit income is less than the maximum SVB amount payable for a month.

#### **§ 408.809 What happens to your SVB payments if you are removed (including deported) from the United States?**

(a) *Suspension effective date.* We will suspend your SVB payments effective with the month after the month in which we receive notice from the United States Citizenship and

Immigration Service that you have been removed (including deported) from the United States under section 237(a) or 212(a)(6)(A) of the Immigration and Nationality Act.

(b) *Resumption of payments.* If otherwise payable, we will resume your SVB effective with the first month after the month of your removal that you were granted the status of a lawful permanent resident of the United States.

**§ 408.810 What happens to your SVB payments if you are fleeing to avoid criminal prosecution or custody or confinement after conviction, or because you violate a condition of probation or parole?**

(a) *Basis for suspension.* You may not receive SVB for any month during which you are—

(1) Fleeing to avoid prosecution under the laws of the United States or the jurisdiction within the United States from which you flee for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which you flee (or that, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State); or

(2) Fleeing to avoid custody or confinement after conviction under the laws of the United States or the jurisdiction within the United States from which you flee, for a crime, or an attempt to commit a crime, that is a felony under the laws of the place from which you flee (or that, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State); or

(3) Violating a condition of probation or parole imposed under Federal or State law.

(b) *Suspension effective date.* Suspension of SVB payments because you are a fugitive as described in paragraph (a)(1) or (a)(2) of this section or a probation or parole violator as described in paragraph (a)(3) of this section is effective with the first day of whichever of the following months is earlier—

(1) The month in which a warrant or order for your arrest or apprehension, an order requiring your appearance before a court or other appropriate tribunal (e.g., a parole board), or similar order is issued by a court or other duly authorized tribunal in the United States on the basis of an appropriate finding that you—

(i) Are fleeing, or have fled, to avoid prosecution as described in paragraph (a)(1) of this section;

(ii) Are fleeing, or have fled, to avoid custody or confinement after conviction as described in paragraph (a)(2) of this section;

(iii) Are violating, or have violated, a condition of your probation or parole as described in paragraph (a)(3) of this section; or

(2) The first month during which you fled to avoid such prosecution, fled to avoid such custody or confinement after conviction, or violated a condition of your probation or parole, if indicated in such warrant or order, or in a decision by a court or other appropriate tribunal in the United States.

(c) *Resumption of payments.* If otherwise payable, we will resume your SVB payments beginning with the first month throughout which you are determined to be no longer fleeing to avoid prosecution, fleeing to avoid custody or confinement after conviction, or violating a condition of your probation or parole.

**§ 408.812 What happens to your SVB payments if you are not a citizen or national of the United States and you begin residing in a Treasury-restricted country?**

(a) *Suspension effective date.* If you are not a citizen or national of the United States, we will suspend your SVB payments effective with the first full calendar month you are residing in a country to which the Treasury Department restricts payments under 31 U.S.C. 3329.

(b) *Resumption of payments.* If benefits are otherwise payable, they will be resumed effective with the first day of the first month in which you are not residing in a Treasury-restricted country.

**Termination**

**§ 408.814 Can you request termination of your SVB entitlement?**

You, your legal guardian, or your representative payee, may voluntarily terminate your SVB entitlement by filing a written request for termination. If your representative payee requests termination, it must be shown that no hardship would result to you if the request is processed. When a termination request is filed, your SVB entitlement ends effective with the month following the month you file your request with us unless you specify some other month. However, we will not terminate your entitlement for any month for which payment has been or will be made unless you repay (or there is an assurance you will repay) any amounts paid for those months. When we process a voluntary request for termination of your SVB entitlement, we will send you a notice of our determination in accordance with § 408.1005. Once terminated, your entitlement can be reestablished only if

you file a new application, except as provided by § 408.1009.

**§ 408.816 When does SVB entitlement end due to death?**

Your SVB entitlement ends with the month in which you die. Payments are terminated effective with the month after the month of death.

**§ 408.818 When does SVB entitlement terminate if your benefit payments have been in suspense for 12 consecutive months?**

We will terminate your SVB entitlement following 12 consecutive months of benefit suspension for any reason beginning with the first month you were no longer entitled to SVB. We will count the 12-month suspension period from the start of the first month that you are no longer entitled to SVB (see § 408.802(a)). This termination is effective with the first day of the 13th month after the suspension began.

**§ 408.820 Will we send you a notice of intended action affecting your SVB payment status?**

(a) *Advance written notice requirement.* Before we suspend, reduce (see subpart E of this part), or terminate your SVB payments, we will send you a written notice explaining our intention to do so, except where we have factual information confirming your death, e.g., as specified in § 404.704(b) of this chapter, or a report by a surviving spouse, a legal guardian, a parent or other close relative, or a landlord.

(b) *Continuation of payment pending an appeal.* The written notice of our intent to suspend, reduce, or terminate payments will give you 60 days after the date you receive the notice to request the appropriate appellate review. If your benefit payments are reduced or suspended and you file an appeal within 10 days after you receive the notice, payments will be continued or reinstated at the previously established payment level (subject to the effects of intervening events on the payment which are not appealed within 10 days of receipt of a required advance notice or which do not require advance notice, e.g., an increase in the benefit amount) until a decision on your initial appeal is issued, unless you specifically waive in writing your right to continuation of payment at the previously established level in accordance with paragraph (c) of this section. Where the request for the appropriate appellate review is filed more than 10 days after the notice is received but within the 60-day period specified in § 408.1009 of this part, you have no right to continuation or reinstatement of payment at the

previously established level unless you establish good cause under the criteria specified in § 408.1011 of this part for failure to appeal within 10 days after receipt of the notice. For purposes of this paragraph, we will presume you received our notice of intent to suspend, reduce, or terminate payments 5 days after the date on the face of the notice, unless there is a reasonable showing to the contrary.

(c) *Waiver of right to continued payment.* In order to avoid the possibility of an overpayment of benefits, you may waive continuation of payment at the previously established level (subject to intervening events which would have increased the benefit for the month in which the incorrect payment was made, in which case the higher amount shall be paid), after you receive a full explanation of your rights. Your request for waiver of continuation of payment must be in writing, state that waiver action is being initiated solely at your request, and state that you understand your right to receive continued payment at the previously established level.

### Subpart I—Underpayments and Overpayments

**Authority:** Secs. 702(a)(5) and 808 of the Social Security Act (42 U.S.C. 902(a)(5) and 1008); 31 U.S.C. 3720A.

#### General Rules

##### § 408.900 What is this subpart about?

This subpart explains what happens when you receive less or more than the correct amount of SVB than you are entitled to receive. Sections 408.901 through 408.903 define overpayment and underpayment and describe how we determine the amount of the overpayment or underpayment. When you receive less than the correct amount of SVB (which we refer to as an underpayment), we will take the actions described in §§ 408.904 and 408.905. Waiver of recovery of overpayments (payments of more than the correct amount) is discussed in §§ 408.910 through 408.914, and the methods we use to recover overpayments are discussed in §§ 408.920 through 408.946. In § 408.950, we explain when we will accept a compromise settlement of an overpayment or suspend or terminate collection of an overpayment.

##### § 408.901 What is an underpayment?

(a) An underpayment can occur only with respect to a period for which you filed an application for benefits and met all conditions of eligibility for benefits.

(b) An underpayment is:

(1) Nonpayment, where payment was due but was not made; or

(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 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 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 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

(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 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 would 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, or

(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 balance, we will not begin adjusting your title II benefits before we review the matter and notify you of our decision in writing.

(c) If within that 30-day period you ask us to withhold a different amount than the amount stated in the notice, we will not begin adjusting your title II benefits until we determine the amount we will withhold. This paragraph does not apply when § 408.931(c) applies.

(d) If within that 30-day period you ask us to waive recovery of the overpayment balance, we will not begin adjusting your title II benefits before we review the matter and notify you of our decision in writing. See §§ 408.910–408.914.

**Tax Refund Offset**

**§ 408.940 When will we refer an SVB overpayment to the Department of the Treasury for tax refund offset?**

(a) *General.* The standards we will apply and the procedures we will follow before requesting the Department of the Treasury to offset income tax refunds due you to recover outstanding overpayments are set forth in §§ 408.940 through 408.946 of this subpart. These standards and procedures are authorized by 31 U.S.C. 3720A, as implemented through Department of the Treasury regulations at 31 CFR 285.2.

(b) We will use the Department of the Treasury tax refund offset procedure to collect overpayments that are certain in amount, past due and legally enforceable and eligible for tax refund offset under regulations issued by the Secretary of the Treasury. We will use these procedures to collect overpayments from you only when you are not currently entitled to monthly SVB under title VIII of the Act, and we are not recovering your SVB overpayment from your monthly benefits payable under title II of the Act. We will refer an overpayment to the Secretary of the Treasury for offset against tax refunds no later than 10

years after our right to collect the overpayment first accrued.

**§ 408.941 Will we notify you before we refer an SVB overpayment for tax refund offset?**

We will make a request for collection by reduction of Federal income tax refunds only after we determine that you owe an overpayment that is past due and provide you with 60-calendar days written notice. Our notice of intent to collect an overpayment through Federal income tax refund offset will state:

(a) The amount of the overpayment;

(b) That unless, within 60 calendar days from the date of our notice, you repay the overpayment, send evidence to us at the address given in our notice that the overpayment is not past due or not legally enforceable, or ask us to waive collection of the overpayment under § 408.910, we intend to seek collection of the overpayment by requesting that the Department of the Treasury reduce any amounts payable to you as refunds of Federal income taxes by an amount equal to the amount of the overpayment;

(c) The conditions under which we will waive recovery of an overpayment under section 808(c) of the Act;

(d) That we will review any evidence presented that the overpayment is not past due or not legally enforceable;

(e) That you have the right to inspect and copy our records related to the overpayment as determined by us and you will be informed as to where and when the inspection and copying can be done after we receive notice from you requesting inspection and copying.

**§ 408.942 Will you have a chance to present evidence showing that the overpayment is not past due or is not legally enforceable?**

(a) *Notification.* If you receive a notice as described in § 408.941 of this subpart, you have the right to present evidence that all or part of the overpayment is not past due or not legally enforceable. To exercise this right, you must notify us and present evidence regarding the overpayment within 60 calendar days from the date of our notice.

(b) *Submission of evidence.* You may submit evidence showing that all or part of the debt is not past due or not legally enforceable as provided in paragraph (a) of this section. Failure to submit the notification and evidence within 60 calendar days will result in referral of the overpayment to the Department of the Treasury, unless, within this 60-day time period, you ask us to waive collection of the overpayment under § 408.910 and we have not yet determined whether we can grant the

waiver request. If you ask us to waive collection of the overpayment, we may ask you to submit evidence to support your request.

(c) *Review of the evidence.* If you submit evidence on a timely basis, we will consider all available evidence related to the overpayment. We will make findings based on a review of the written record, unless we determine that the question of indebtedness cannot be resolved by a review of the documentary evidence.

(d) *Written findings.* We will issue our written findings including supporting rationale to you, your attorney or other representative. The findings will be our final action with respect to the past-due status and enforceability of the overpayment.

**§ 408.943 What happens after we make our determination on your request for review or your request for waiver?**

(a) If we make a determination that all or part of the overpayment is past due and legally enforceable and/or your waiver request cannot be granted, we will refer the overpayment to the Department of the Treasury for recovery from any Federal income tax refund due you. We will not suspend our referral of the overpayment to the Department of the Treasury under § 408.945 of this subpart pending any further administrative review of the waiver determination that you may seek.

(b) We will not refer the overpayment to the Department of the Treasury if we reverse our prior finding that the overpayment is past due and legally enforceable or, upon consideration of a waiver request, we determine that waiver of recovery of the overpayment is appropriate.

**§ 408.944 How can you review our records related to an SVB overpayment?**

(a) *What you must do.* If you intend to inspect or copy our records related to the overpayment, you must notify us stating your intention to inspect or copy.

(b) *What we will do.* If you notify us that you intend to inspect or copy our records related to the overpayment as described in paragraph (a) of this section, we will notify you of the location and time when you may do so. We may also, at our discretion, mail copies of the overpayment-related records to you.

**§ 408.945 When will we suspend tax refund offset?**

If, within 60 days of the date of the notice described in § 408.941 of this subpart, you notify us that you are exercising a right described in § 408.942(a) of this subpart and submit

evidence pursuant to § 408.942(b) of this subpart or request a waiver under § 408.910 of this subpart, we will suspend any notice to the Department of the Treasury until we have issued written findings that affirm that an overpayment is past due and legally enforceable and, if applicable, make a determination that a waiver request cannot be granted.

**§ 408.946 What happens if your tax refund is insufficient to cover the amount of your SVB overpayment?**

If your tax refund is insufficient to recover an overpayment in a given year, the case will remain with the Department of the Treasury for succeeding years, assuming that all criteria for certification are met at that time.

**Compromise Settlements, or Suspensions or Terminations of Collection**

**§ 408.950 Will we accept a compromise settlement of an overpayment debt or suspend or terminate collection of an overpayment?**

(a) *General.* If we find that you do not, or your estate does not, have the present or future ability to pay the full amount of the overpayment within a reasonable time or the cost of collection is likely to exceed the amount of recovery, we may take any of the following actions, as appropriate.

(1) We may accept a compromise settlement (payment of less than the full amount of the overpayment) to discharge the entire overpayment debt.

(2) We may suspend our efforts to collect the overpayment.

(3) We may terminate our efforts to collect the overpayment.

(b) *Rules we apply.* In deciding whether to take any of the actions described in paragraph (a) of this section, we will apply the rules in § 404.515(b), (c), (d), (e), and (f) of this chapter and other applicable rules, including the Federal Claims Collection Standards (31 CFR 900.3 and parts 902 and 903).

(c) *Effect of compromise, suspension or termination.* When we suspend or terminate collection of the overpayment debt, we may take collection action in the future in accordance with provisions of the Social Security Act, other laws, and the standards set forth in 31 CFR chapter IX. A compromise settlement satisfies the obligation to repay the overpayment if you or your estate comply with the terms of the settlement.

Failure to make payment in the manner and within the time that we require in the 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**

**Authority:** Secs. 702(a)(5) and 809 of the Social Security Act (42 U.S.C. 902(a)(5) and 1009).

**Introduction, Definitions, and Initial Determinations**

**§ 408.1000 What is this subpart about?**

(a) *Explanation of the administrative review process.* This subpart explains the procedures we follow in determining your appeal rights under title VIII of the Social Security Act. The regulations describe the process of administrative review and explain your right to judicial review after you have taken all the necessary administrative steps. The administrative review process consists of several steps, which usually must be requested within certain time periods and in the following order:

(1) *Initial determination.* This is a determination we make about whether you qualify for and can become entitled to SVB or whether your SVB entitlement can continue. It can also be about any other matter, as discussed in § 408.1003, that gives you a right to further review.

(2) *Reconsideration.* If you are dissatisfied with an initial determination, you may ask us to reconsider it.

(3) *Hearing before an administrative law judge.* If you are dissatisfied with the reconsideration determination, you may request a hearing before an administrative law judge.

(4) *Appeals Council review.* If you are dissatisfied with the decision of the administrative law judge, you may request that the Appeals Council review the decision.

(5) *Federal court review.* When you have completed the steps of the administrative review process listed in paragraphs (a)(1) through (a)(4) of this section, we will have made our final decision. If you are dissatisfied with our final decision, you may request judicial review by filing an action in a Federal district court.

(6) *Expedited appeals process.* At some time after your initial determination has been reviewed, if you have no dispute with our findings of fact and our application and interpretation of the controlling laws, but you believe that a part of the law is unconstitutional, you may use the expedited appeals process. This process permits you to go directly to a Federal district court so that the constitutional issue may be resolved.

(b) *Nature of the administrative review process.* In making a determination or decision in your case, we conduct the administrative review process in an informal, nonadversary manner. In each step of the review process, you may present any information you feel is helpful to your case. Subject to the limitations on Appeals Council consideration of additional evidence, we will consider at each step of the review process any information you present as well as all the information in our records. You may present the information yourself or have someone represent you, including an attorney. If you are dissatisfied with our decision in the review process, but do not take the next step within the stated time period, you will lose your right to further administrative review and your right to judicial review, unless you can show us that there was good cause for your failure to make a timely request for review.

#### **§ 408.1001 Definitions.**

As used in this subpart:

Date you receive notice means 5 days after the date on the notice, unless you show us that you did not receive it within the 5-day period.

Decision means the decision made by an administrative law judge or the Appeals Council.

Determination means the initial determination or the reconsidered determination.

Mass change means a State-initiated change in the level(s) of federally administered State recognition payments applicable to all recipients of such payments due, for example, to State legislative or executive action.

Remand means to return a case for further review.

SVB, for purposes of this subpart, includes qualification for SVB, entitlement to SVB and payments of SVB.

Vacate means to set aside a previous action.

Waive means to give up a right knowingly and voluntarily.

We, us, or our refers to the Social Security Administration.

You or your refers to any person claiming or receiving SVB.

#### **§ 408.1002 What is an initial determination?**

Initial determinations are the determinations we make that are subject to administrative and judicial review. The initial determination will state the important facts and give the reasons for our conclusions.

#### **§ 408.1003 Which administrative actions are initial determinations?**

Initial determinations regarding SVB include, but are not limited to, determinations about—

- (a) Whether you qualify for SVB;
- (b) Whether you are entitled to receive SVB payments on the basis of your residence outside the United States;
- (c) The amount of your SVB payments;
- (d) Suspension or reduction of your SVB payments;
- (e) Termination of your SVB entitlement;
- (f) Whether an overpayment of benefits must be repaid to us;
- (e) Whether payments will be made, on your behalf, to a representative payee, unless you are legally incompetent;
- (f) Who will act as your payee if we determine that representative payment will be made;
- (g) A claim for benefits under § 408.351 based on alleged misinformation; and
- (h) Our calculation of the amount of change in your federally administered State recognition payment amount (*i.e.*, a reduction, suspension, or termination) which results from a mass change as defined in § 408.1001.

#### **§ 408.1004 Which administrative actions are not initial determinations?**

Administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative review process provided by this subpart and they are not subject to judicial review. These actions include, but are not limited to, an action about—

- (a) Denial of a request to be made your representative payee;
- (b) Denial of your request to use the expedited appeals process;
- (c) Denial of your request to reopen a determination or a decision;
- (d) Disqualifying or suspending a person from acting as your representative in a proceeding before us;
- (e) Denial of your request to extend the time period for requesting review of a determination or a decision;
- (f) Denial of your request to readjudicate your claim and apply an Acquiescence Ruling;
- (g) Declining under § 408.351(f) to make a determination on a claim for benefits based on alleged misinformation because one or more of the conditions specified in § 408.351(f) are not met;
- (h) Findings on whether we can collect an overpayment by using the Federal income tax refund offset procedure. (See § 408.943).

(i) The determination to reduce, suspend, or terminate your federally administered State recognition payments due to a State-initiated mass change, as defined in § 408.1001, in the levels of such payments, except as provided in § 408.1003(h).

#### **§ 408.1005 Will we mail you a notice of the initial determination?**

(a) We will mail a written notice of the initial determination to you at your last known address. Generally, we will not send a notice if your benefits are stopped because of your death, or if the initial determination is a redetermination that your eligibility for benefits and the amount of your benefits have not changed.

(b) The notice that we send will tell you—

- (1) What our initial determination is;
- (2) The reasons for our determination; and
- (3) What rights you have to a reconsideration of the determination.

(c) If our initial determination is that we must suspend, reduce your SVB payments or terminate your SVB entitlement, the notice will also tell you that you have a right to a reconsideration before the determination takes effect (see § 408.820).

#### **§ 408.1006 What is the effect of an initial determination?**

An initial determination is binding unless you request a reconsideration within the stated time period, or we revise the initial determination.

#### **Reconsideration**

#### **§ 408.1007 What is reconsideration?**

Reconsideration is the first step in the administrative review process that we provide if you are dissatisfied with the initial determination. If you are dissatisfied with our reconsideration determination, you may request a hearing before an administrative law judge.

#### **§ 408.1009 How do you request reconsideration?**

(a) *When you must file your request.* We will reconsider an initial determination if you file a written request within 60 days after the date you receive notice of the initial determination (or within the extended time period if we extend the time as provided in paragraph (c) of this section).

(b) *Where to file your request.* You can file your request for reconsideration at:

- (1) Any of our offices;
- (2) The Veterans Affairs Regional Office in the Philippines;

(3) An office of the Railroad Retirement Board if you have 10 or more years of service in the railroad industry; or

(4) A competent authority or agency of a country with which the United States has a totalization agreement (see § 404.1927 of this chapter).

(c) *When we will extend the time period to request a reconsideration.* If you want a reconsideration of the initial determination but do not request one within 60 days after the date you receive notice of the initial determination, you may ask us for more time to request a reconsideration. You must make your request in writing and explain why it was not filed within the stated time period. If you show us that you had good cause for missing the deadline, we will extend the time period. To determine whether good cause exists, we use the standards explained in § 408.1011.

**§ 408.1011 How do we determine whether you had good cause for missing the deadline to request review?**

(a) In determining whether you have shown that you have good cause for missing a deadline to request review we consider—

(1) What circumstances kept you from making the request on time;

(2) Whether our action misled you;

(3) Whether you did not understand the requirements of the Act resulting from amendments to the Act, other legislation, or court decisions; and

(4) Whether you had any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which prevented you from filing a timely request or from understanding or knowing about the need to file a timely request for review.

(b) Examples of circumstances where good cause may exist include, but are not limited to, the following situations:

(1) You were seriously ill and were prevented from contacting us in person, in writing, or through a friend, relative, or other person.

(2) There was a death or serious illness in your immediate family.

(3) Important records were destroyed or damaged by fire or other accidental cause.

(4) You were trying very hard to find necessary information to support your claim but did not find the information within the stated time periods.

(5) You asked us for additional information explaining our action within the time limit, and within 60 days of receiving the explanation you requested reconsideration or a hearing, or within 30 days of receiving the

explanation you requested Appeals Council review or filed a civil suit.

(6) We gave you incorrect or incomplete information about when and how to request administrative review or to file a civil suit.

(7) You did not receive notice of the initial determination or decision.

(8) You sent the request to another Government agency in good faith within the time limit and the request did not reach us until after the time period had expired.

(9) Unusual or unavoidable circumstances exist, including the circumstances described in paragraph (a)(4) of this section, which show that you could not have known of the need to file timely, or which prevented you from filing timely.

**§ 408.1013 What are the methods for reconsideration?**

If you request reconsideration, we will give you a chance to present your case. How you can present your case depends upon the issue involved and whether you are asking us to reconsider an initial determination on an application or an initial determination on an SVB suspension, reduction or termination action. The methods of reconsideration include the following:

(a) *Case review.* We will give you an opportunity to review the evidence in our files and then to present oral and written evidence to us. We will then make a decision based on all of this evidence. The official who reviews the case will make the reconsidered determination.

(b) *Informal conference.* In addition to following the procedures of a case review, an informal conference allows you an opportunity to present witnesses. A summary record of this proceeding will become part of the case record. The official who conducts the informal conference will make the reconsidered determination.

(c) *Formal conference.* In addition to following the procedures of an informal conference, a formal conference allows you an opportunity to request us to subpoena adverse witnesses and relevant documents and to cross-examine adverse witnesses. A summary record of this proceeding will become a part of the case record. The official who conducts the formal conference will make the reconsidered determination.

**§ 408.1014 What procedures apply if you request reconsideration of an initial determination on your application for SVB?**

When you appeal an initial determination on your application for benefits, we will offer you a case review, and will make our determination on the basis of that review.

**§ 408.1015 What procedures apply if you request reconsideration of an initial determination that results in suspension, reduction, or termination of your SVB?**

If you have been entitled to SVB and we notify you that we are going to suspend, reduce or terminate your benefit payments, you can appeal our determination within 60 days of the date you receive our notice. The 60-day period may be extended if you have good cause for an extension of time under the conditions stated in § 408.1011(b). If you appeal, you have the choice of a case review, informal conference or formal conference.

**§ 408.1016 What happens if you request a conference?**

(a) As soon as we receive a request for a formal or informal conference, we will set the time, date and place for the conference. Formal and informal conferences are held only in the United States.

(b) We will send you a written notice about the conference (either by mailing it to your last known address or by personally serving you with it) at least 10 days before the conference. However, we may hold the conference sooner if we all agree. We will not send written notice of the time, date, and place of the conference if you waive your right to receive it.

(c) We will schedule the conference within 15 days after you request it, but, at our discretion or at your request, we will delay the conference if we think the delay will ensure that the conference is conducted efficiently and properly.

(d) We will hold the conference at one of our offices in the United States, by telephone or in person, whichever you prefer. However, if you are outside the United States, we will hold the conference by telephone only if you request that we do so and time and language differences permit. We will hold the conference in person elsewhere in the United States if you show circumstances that make this arrangement reasonably necessary.

**§ 408.1020 How do we make our reconsidered determination?**

After you request a reconsideration, we will review the evidence considered in making the initial determination and any other evidence we receive. We will make our determination based on this evidence. The person who makes the reconsidered determination will have had no prior involvement with the initial determination.

**§ 408.1021 How does the reconsidered determination affect you?**

The reconsidered determination is binding unless—

(a) You request a hearing before an administrative law judge within the stated time period and a decision is made;

(b) The expedited appeals process is used; or

(c) The reconsidered determination is revised.

**§ 408.1022 How will we notify you of our reconsidered determination?**

We will mail a written notice of the reconsidered determination to you at your last known address. We will state the specific reasons for the determination and tell you about your right to a hearing. If it is appropriate, we will also tell you how to use the expedited appeals process.

**Expedited Appeals Process**

**§ 408.1030 When can you use the expedited appeals process?**

(a) *General rules.* Under the expedited appeals process (EAP), you may go directly to a Federal District Court without first completing the administrative review process. For purposes of this part, we use the same EAP rules we use in the title XVI program (see §§ 416.1423–416.1428 of this chapter) except as noted in paragraph (b) of this section.

(b) *Exceptions.* In § 416.1425, the words “one of our offices” in paragraph (b) are deemed to read “any of the offices listed in § 408.1009(b)” and the reference in the last sentence of paragraph (c) to “§ 416.1411” is deemed to read “§ 408.1011.”

**Hearing Before an Administrative Law Judge**

**§ 408.1040 When can you request a hearing before an administrative law judge (ALJ)?**

(a) *General rules.* For purposes of this part, we use the same rules on hearings before an administrative law judge (ALJ) that we use in the title XVI program (see §§ 416.1429–416.1440 of this chapter), except as noted in paragraph (b) of this section.

(b) *Exceptions.* In § 416.1433, the words “one of our offices” in paragraph (b) are deemed to read “any of the offices listed in § 408.1009(b)” and the reference in the last sentence of § 416.1433(c) to “§ 416.1411” is deemed to read “§ 408.1011.”

**Administrative Law Judge Hearing Procedures**

**§ 408.1045 What procedures apply if you request an ALJ hearing?**

(a) *General rules.* For purposes of this part, we use the same rules on ALJ hearing procedures that we use in the

title XVI program (see §§ 416.1444–416.1461 of this chapter), except as noted in paragraph (b) of this section.

(b) *Exceptions.* (1) In § 416.1446(b)(1), the last sentence does not apply under this part.

(2) In § 416.1452(a)(1)(i), the words “supplemental security income” are deemed to read “SVB.”

(3) In § 416.1457, the provisions of paragraph (c)(4) do not apply under this part.

**Appeals Council Review**

**§ 408.1050 When can you request Appeals Council review of an ALJ hearing decision or dismissal of a hearing request?**

(a) *General rules.* For purposes of this part, we use the same rules on Appeals Council review that we use in the title XVI program (see §§ 416.1467–416.1482 of this chapter), except as noted in paragraph (b) of this section.

(b) *Exceptions.* (1) In § 416.1468(b), the words “one of our offices” in the third sentence are deemed to read “any of the offices listed in § 408.1009(b).”

(2) In § 416.1469(d), the last sentence does not apply under this part.

(3) In § 416.1471, paragraph (b) does not apply under this part.

(4) In § 416.1482, the reference to “§ 416.1411” in the last sentence is deemed to read “§ 408.1011.”

**Court Remand Cases**

**§ 408.1060 What happens if a Federal Court remands your case to the Commissioner?**

For purposes of this part, we use the same rules on court remand cases that we use in the title XVI program (see §§ 416.1483–416.1485 of this chapter).

**Reopening and Revising Determinations and Decisions**

**§ 408.1070 When will we reopen a final determination?**

(a) *General rules.* For purposes of this part, we use the same rules on reopening and revising determinations and decisions that we use in the title XVI program (see §§ 416.1487–416.1494 of this chapter), except as noted in paragraph (b) of this section.

(b) *Exceptions.* (1) In addition to the rule stated in § 416.1488, a determination, revised determination, or revised decision may be reopened at any time if it was wholly or partially unfavorable to you, but only to correct—

(i) A clerical error; or

(ii) An error that appears on the face of the evidence that we considered when we made the determination or decision.

(2) In § 416.1492(b), the parenthetical clause is deemed to read “(see

§ 408.820),” and paragraph (d) does not apply to this part.

(3) In § 416.1494, the words “one of our offices” in the first sentence are deemed to read “any of the offices listed in § 408.1009(b).”

**Subpart K—Representation of Parties**

**Authority:** Secs. 702(a)(5) and 810(a) of the Social Security Act (42 U.S.C. 902(a)(5) and 1010(a)).

**§ 408.1101 Can you appoint someone to represent you?**

(a) *General rules.* You may appoint someone to represent you in any of your dealings with us. For purposes of this part, the rules on representation of parties in §§ 416.1500–416.1505, 416.1507–416.1515 and 416.1540–416.1599 of this chapter apply except as noted in paragraph (b) of this section.

(b) *Exceptions.* For purposes of this part:

(1) In § 416.1500, paragraph (c) does not apply.

(2) The last sentence of § 416.1503 is deemed to read: “You refers to any person claiming or receiving SVB.”

(3) In § 416.1507(c), the words “one of our offices” are deemed to read “any of the offices listed in § 408.1009(b).”

(4) In § 416.1510(b), the reference to “title XVI of the Act” is deemed to read “title VIII of the Act,” and the reference to “§ 416.315” is deemed to read “§ 408.315.”

(5) In § 416.1540, the parenthetical clause in paragraph (b), the second sentences in paragraphs (b)(1) and (b)(2), and paragraph (c)(2) do not apply, and the references to “§ 416.1411(b)” in paragraphs (c)(4) and (c)(7)(i) are deemed to read “§ 408.1011(b).”

(6) In § 416.1545, paragraph (c) does not apply.

(7) In § 416.1599, paragraph (d) is deemed to read: “The Appeals Council will not grant the request unless it is reasonably satisfied that the person will in the future act according to the provisions of our regulations.”

**Subpart L—Federal Administration of State Recognition Payments**

**Authority:** Secs. 702(a)(5) and 810A of the Social Security Act (42 U.S.C. 902(a)(5) and 1010a).

**§ 408.1201 What are state recognition payments?**

(a) *State recognition payments; defined.* State recognition payments are any payments made by a State or one of its political subdivisions to an individual who is entitled to SVB, if the payments are made:

(1) As a supplement to monthly SVB payments; and

(2) Regularly, on a periodic recurring, or routine basis of at least once a quarter; and

(3) In cash, which may be actual currency, or any negotiable instrument convertible into cash upon demand.

(b) *State; defined.* For purposes of this subpart, State means a State of the United States or the District of Columbia.

**§ 408.1205 How can a State have SSA administer its State recognition payment program?**

A State (or political subdivision) may enter into a written agreement with SSA, under which SSA will make recognition payments on behalf of the State (or political subdivision). The regulations in effect for the SVB program also apply in the Federal administration of State recognition payments except as necessary for the effective and efficient administration of both the SVB program and the State's recognition payment program.

**§ 408.1210 What are the essential elements of an administration agreement?**

(a) *Payments.* The agreement must provide that recognition payments can only be made to individuals who are receiving SVB payments.

(b) *Administrative costs.*

(1) *General rule.* SSA will assess each State that elects Federal administration of its recognition payments an administration fee for administering those payments.

(2) *Determining the administration fee.* The administration fee is assessed and paid monthly and is derived by multiplying the number of State recognition payments we make on behalf of a State for any month in a fiscal year by the applicable dollar rate for the fiscal year. The number of recognition payments we make in a month is the total number of checks we issue, and direct deposits we make, to recipients in that month, that are composed in whole or in part of State recognition funds. The dollar amounts are as follows:

- (i) For fiscal year 2001, \$8.10;
- (ii) For fiscal year 2002, \$8.50; and
- (iii) For fiscal year 2003 and each succeeding fiscal year—

(A) The applicable rate in the preceding fiscal year, increased by the percentage, if any, by which the Consumer Price Index for the month of June of the calendar year of the increase exceeds the Consumer Price Index for the month of June of the calendar year preceding the calendar year of the increase, and rounded to the nearest whole cent; or

(B) A different rate if the Commissioner determines the different

rate is appropriate for the State considering the complexity of administering the State's recognition payment program.

(c) *Agreement period.* The agreement period for a State that has elected Federal administration of its recognition payments extends for one year from the date the agreement was signed unless otherwise designated in the agreement. The agreement will be automatically renewed for a period of one year unless either the State or SSA gives written notice not to renew, at least 90 days before the beginning of the new period. For a State to elect Federal administration of its recognition payment program, it must notify SSA of its intent to enter into an agreement, furnishing the necessary payment specifications, at least 120 days before the first day of the month for which it wishes Federal administration to begin, and have executed such agreement at least 30 days before such day.

(d) *Modification or termination.* The agreement may be modified at any time by mutual consent. The State or SSA may terminate the agreement upon 90 days' written notice to the other party, provided the effective date of the termination is the last day of a quarter. However, the State may terminate the agreement upon 45 days written notice to SSA if: (1) The State does not wish to comply with a regulation promulgated by SSA after the execution of the agreement; and (2) the State provides its written notice within 30 days of the effective date of the regulation. The Commissioner is not precluded from terminating the agreement in less than 90 days if the State has failed to materially comply with the provisions of § 408.1235 on State transfer of funds to SSA.

**§ 408.1215 How do you establish eligibility for Federally administered State recognition payments?**

(a) *Applications.* When you file an application for SVB under subpart C of this part, you are deemed to have filed an application for any Federally administered State recognition payments for which you may be eligible unless you waive your right to such payments as provided for in § 408.1230. However, you will be required to give us a supplemental statement if additional information is necessary to establish your eligibility or to determine the correct amount of your State recognition payment.

(b) *Evidence requirements.* The evidence requirements and developmental procedures of this part also apply with respect to Federally

administered State recognition payments.

(c) *Determination.* Where not inconsistent with the provisions of this subpart, we determine your eligibility for and the amount of your State recognition payment using the rules in subparts A through K of this part.

**§ 408.1220 How do we pay Federally administered recognition payments?**

(a) *Payment procedures.* We make Federally administered State recognition payments on a monthly basis and we include them in the same check as your SVB payment. The State recognition payment is for the same month as your SVB payment.

(b) *Maximum amount.* Except as specified in paragraph (c) of this section, there is no restriction on the amount of a State recognition payment that SSA will administer on behalf of a State.

(c) *Minimum amount.* SSA will not administer State recognition payments in amounts less than \$1 per month. Hence, recognition payment amounts of less than \$1 will be raised to a dollar.

**§ 408.1225 What happens if you receive an overpayment?**

If we determine that you received an overpayment, we will adjust future Federally administered State recognition payments you are entitled to. Our rules and requirements (see §§ 408.910 through 408.941) that apply to recovery (or waiver) of SVB overpayments also apply to the recovery (or waiver) of Federally administered State recognition overpayments. If your entitlement to State recognition payments ends before you have repaid the overpayment, we will annotate your record (specifying the amount of the overpayment) to permit us to recoup the overpaid amount if you become reentitled to recognition payments from the same State.

**§ 408.1226 What happens if you are underpaid?**

If we determine that you are due an underpayment of State recognition payments, we will pay the amount you were underpaid directly to you, or to your representative.

**§ 408.1230 Can you waive State recognition payments?**

(a) *Waiver request in writing.* You may waive your right to receive State recognition payments if you make a written request. If you make your request before you become entitled to SVB, you will not be entitled to State recognition payments. If you make your request after you become entitled to SVB, your request will be effective with

the month we receive your request, or with an earlier month if you refund to us the amount of any recognition payment(s) we made to you for the earlier period.

(b) *Cancelling your waiver.* You may cancel your waiver of State recognition payments at any time by making a written request with us. The cancellation will be effective the month in which it is filed. The date your request is received in a Social Security office or the postmarked date, if the written request was mailed, will be the filing date, whichever is earlier.

**§ 408.1235 How does the State transfer funds to SSA to administer its recognition payment program?**

(a) *Payment transfer and adjustment.*  
(1) Any State that has entered into an agreement with SSA which provides for Federal administration of such State's recognition payments will transfer to SSA:

(i) An amount of funds equal to SSA's estimate of State recognition payments for any month which will be made by SSA on behalf of such State; and

(ii) An amount of funds equal to SSA's estimate of administration fees for any such month determined in the manner described in § 408.1210(b).

(3) In order for SSA to make State recognition payments on behalf of a State for any month as provided by the agreement, the estimated amount of State funds referred to in paragraph (a)(1)(i) of this section together with the estimated amount of administration fees referred to in paragraph (a)(1)(ii) of this section, for that month, must be on deposit with SSA on the State recognition payment transfer date, which is:

(i) the business day preceding the date that the Commissioner pays such monthly recognition payments; or  
(ii) with respect to such monthly payments paid for the month that is the last month of the State's fiscal year, the fifth business day following such date.

(b) *Accounting of State funds.* (1) As soon as feasible after the end of each calendar month, SSA will provide the State with a statement showing, cumulatively, the total amounts paid by SSA on behalf of the State during the current Federal fiscal year; the fees charged by SSA to administer such recognition payments; the State's total liability; and the end-of-month balance of the State's cash on deposit with SSA.

(2) SSA will provide the State with an accounting of State funds received as State recognition payments and administration fees within three

calendar months following the termination of an agreement under § 408.1210(d).

(3) Adjustments will be made because of State funds due and payable or amounts of State funds recovered for calendar months for which the agreement was in effect. Interest will be incurred by SSA and the States with respect to the adjustment and accounting of State recognition payments funds in accordance with applicable laws and regulations of the United States Department of the Treasury.

(c) *State audit.* Any State entering into an agreement with SSA which provides for Federal administration of the State's recognition payments has the right to an audit (at State expense) of the payments made by SSA on behalf of such State. The Commissioner and the State shall mutually agree upon a satisfactory audit arrangement to verify that recognition payments paid by SSA on behalf of the State were made in accordance with the terms of the administration agreement under § 408.1205. Audit findings will be resolved in accordance with the provisions of the State's agreement with SSA.

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