

Social Security Administration

§ 408.1000

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 TERMINATION 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).

SOURCE: 69 FR 25955, May 10, 2004, unless otherwise noted.

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;
- (g) Whether payments will be made, on your behalf, to a representative