

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 Are title II and title XVI benefits subject to adjustment to recover title VIII overpayments?**

(a) *Definitions—(1) Cross-program recovery.* Cross-program recovery is the process that we will use to collect title VIII overpayments from benefits payable to you under title II or title XVI of the Social Security Act.

(2) *Benefits payable.* For purposes of this section, benefits payable means the amount of title II or title XVI benefits you actually would receive. For title II benefits, it includes your monthly benefit and your past-due benefits after any reductions or deductions listed in § 404.401(a) and (b) of this chap-

ter. For title XVI benefits, it includes your monthly benefit and your past-due benefits as described in § 416.420 of this chapter.

(b) *When may we collect title VIII overpayments using cross-program recovery?* We may use cross-program recovery to collect a title VIII overpayment you owe when benefits are payable to you under title II, title XVI, or both.

[70 FR 15, Jan. 3, 2004]

**§ 408.931 How much will we withhold from your title II and title XVI benefits to recover a title VIII overpayment?**

(a) If past-due benefits are payable to you, we will withhold the lesser of the entire overpayment balance or the entire amount of past-due benefits.

(b)(1) We will collect the overpayment from current monthly benefits due in a month under title II and title XVI by withholding the lesser of the amount of the entire overpayment balance or:

(i) 10 percent of the monthly title II benefits payable for that month and

(ii) in the case of title XVI benefits, an amount no greater than the lesser of the benefit payable for that month or an amount equal to 10 percent of your income for that month (including such monthly benefit but excluding payments under title II when recovery is also made from title II benefits and excluding income excluded pursuant to §§ 416.1112 and 416.1124 of this chapter).

(2) Paragraph (b)(1) of this section does not apply if:

(i) You request and we approve a different rate of withholding, or

(ii) You or your spouse willfully misrepresented or concealed material information in connection with the overpayment.

(c) In determining whether to grant your request that we withhold less than the amount described in paragraph (b)(1) of this section, we will use the criteria applied under § 408.923 to similar requests about withholding from title VIII benefits.

(d) If you or your spouse willfully misrepresented or concealed material information in connection with the overpayment, we will collect the overpayment by withholding the lesser of the overpayment balance or the entire