

§ 416.560

request waiver of adjustment or recovery of the overpayment under the provisions of § 416.550.

(b) *Notice of waiver determination.* Written notice of an initial determination of waiver shall be given the individual in accordance with § 416.1404 unless the individual was not given notice of the overpayment in accordance with paragraph (a) of this section.

(c) *Notice relating to installment payments to individuals whose drug addiction or alcoholism is a contributing factor material to the determination of disability.* Whenever a determination is made concerning the amount of any benefits due for a period that must be paid in installments, the written notice will also explain the amount of the installment payment and when an increased initial installment payment may be made (as described in § 416.544). This written notice will be sent to the individual and his or her representative payee.

[40 FR 47764, Oct. 10, 1975, as amended at 55 FR 33668, Aug. 17, 1990; 60 FR 8150, Feb. 10, 1995]

§ 416.560 Recovery—refund.

An overpayment may be refunded by the overpaid recipient or by anyone on his or her behalf. Refund should be made in every case where the overpaid individual is not currently eligible for SSI benefits. If the individual is currently eligible for SSI benefits and has not refunded the overpayment, adjustment as set forth in § 416.570 will be proposed.

[55 FR 33669, Aug. 17, 1990]

§ 416.570 Adjustment—general rule.

When a recipient has been overpaid, the overpayment has not been refunded, and waiver of adjustment or recovery is not applicable, any payment due the overpaid recipient or his or her eligible spouse (or recovery from the estate of either or both when either or both die before adjustment is completed) is adjusted for recovery of the overpayment. Adjustment will generally be accomplished by withholding each month the amount set forth in § 416.571 from the benefit payable to the individual except that, when the overpayment results from the disposition of resources as provided by §§ 416.1240(b)

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and 416.1244, the overpayment will be recovered by withholding any payments due the overpaid recipient or his or her eligible spouse before any further payment is made. Absent a specific request from the person from whom recovery is sought, no overpayment made under title XVIII of the Act will be recovered by adjusting SSI benefits. In no case shall an overpayment of SSI benefits be adjusted against title XVIII benefits. No funds properly deposited into a dedicated account (see §§ 416.546 and 416.640(e)) can be used to repay an overpayment while the overpaid individual remains subject to the provisions of those sections.

[70 FR 16, Jan. 3, 2005]

§ 416.571 10-percent limitation of recoupment rate—overpayment.

Any adjustment or recovery of an overpayment for an individual in current payment status is limited in amount in any month to the lesser of (1) the amount of the individual's benefit payment for that month or (2) an amount equal to 10 percent of the individual's total income (countable income plus SSI and State supplementary payments) for that month. The countable income used is the countable income used in determining the SSI and State supplementary payments for that month under § 416.420. When the overpaid individual is notified of the proposed SSI and/or federally administered State supplementary overpayment adjustment or recovery, the individual will be given the opportunity to request that such adjustment or recovery be made at a higher or lower rate than that proposed. If a lower rate is requested, a rate of withholding that is appropriate to the financial condition of the overpaid individual will be set after an evaluation of all the pertinent facts. An appropriate rate is one that will not deprive the individual of income required for ordinary and necessary living expenses. This will include an evaluation of the individual's income, resources, and other financial obligations. The 10-percent limitation does not apply where it is determined that the overpayment occurred because of fraud, willful misrepresentation, or concealment of material information committed by the