

TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 7 - SOCIAL SECURITY
SUBCHAPTER II - FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE
BENEFITS

§ 404. Overpayments and underpayments

(a) Procedure for adjustment or recovery

(1) Whenever the Commissioner of Social Security finds that more or less than the correct amount of payment has been made to any person under this subchapter, proper adjustment or recovery shall be made, under regulations prescribed by the Commissioner of Social Security, as follows:

(A) With respect to payment to a person of more than the correct amount, the Commissioner of Social Security shall decrease any payment under this subchapter to which such overpaid person is entitled, or shall require such overpaid person or his estate to refund the amount in excess of the correct amount, or shall decrease any payment under this subchapter payable to his estate or to any other person on the basis of the wages and self-employment income which were the basis of the payments to such overpaid person, or shall obtain recovery by means of reduction in tax refunds based on notice to the Secretary of the Treasury as permitted under section 3720A of title 31, or shall apply any combination of the foregoing. A payment made under this subchapter on the basis of an erroneous report of death by the Department of Defense of an individual in the line of duty while he is a member of the uniformed services (as defined in section 410 (m) of this title) on active duty (as defined in section 410 (l) of this title) shall not be considered an incorrect payment for any month prior to the month such Department notifies the Commissioner of Social Security that such individual is alive.

(B) **(i)** Subject to clause (ii), with respect to payment to a person of less than the correct amount, the Commissioner of Social Security shall make payment of the balance of the amount due such underpaid person, or, if such person dies before payments are completed or before negotiating one or more checks representing correct payments, disposition of the amount due shall be made in accordance with subsection (d) of this section.

(ii) No payment shall be made under this subparagraph to any person during any period for which monthly insurance benefits of such person—

(I) are subject to nonpayment by reason of section 402 (x)(1) of this title, or

(II) in the case of a person whose monthly insurance benefits have terminated for a reason other than death, would be subject to nonpayment by reason of section 402 (x)(1) of this title but for the termination of such benefits,

until section 402 (x)(1) of this title no longer applies, or would no longer apply in the case of benefits that have terminated.

(iii) Nothing in clause (ii) shall be construed to limit the Commissioner's authority to withhold amounts, make adjustments, or recover amounts due under this subchapter, subchapter VIII or subchapter XVI that would be deducted from a payment that would otherwise be payable to such person but for such clause.

(2) Notwithstanding any other provision of this section, when any payment of more than the correct amount is made to or on behalf of an individual who has died, and such payment—

(A) is made by direct deposit to a financial institution;

(B) is credited by the financial institution to a joint account of the deceased individual and another person; and

(C) such other person was entitled to a monthly benefit on the basis of the same wages and self-employment income as the deceased individual for the month preceding the month in which the deceased individual died,

the amount of such payment in excess of the correct amount shall be treated as a payment of more than the correct amount to such other person. If any payment of more than the correct amount is made to a representative payee on behalf of an individual after the individual's death, the representative payee shall be liable for the repayment of the overpayment, and the Commissioner of Social Security shall establish an overpayment control record under the social security account number of the representative payee.

(b) No recovery from persons without fault

In any case in which more than the correct amount of payment has been made, there shall be no adjustment of payments to, or recovery by the United States from, any person who is without fault if such adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience. In making for purposes of this subsection any determination of whether any individual is without fault, the Commissioner of Social Security shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language).

(c) Nonliability of certifying and disbursing officers

No certifying or disbursing officer shall be held liable for any amount certified or paid by him to any person where the adjustment or recovery of such amount is waived under subsection (b) of this section, or where adjustment under subsection (a) of this section is not completed prior to the death of all persons against whose benefits deductions are authorized.

(d) Payment to survivors or heirs when eligible person is deceased

If an individual dies before any payment due him under this subchapter is completed, payment of the amount due (including the amount of any unnegotiated checks) shall be made—

- (1) to the person, if any, who is determined by the Commissioner of Social Security to be the surviving spouse of the deceased individual and who either
 - (i) was living in the same household with the deceased at the time of his death or
 - (ii) was, for the month in which the deceased individual died, entitled to a monthly benefit on the basis of the same wages and self-employment income as was the deceased individual;
- (2) if there is no person who meets the requirements of paragraph (1), or if the person who meets such requirements dies before the payment due him under this subchapter is completed, to the child or children, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such child, in equal parts to each such child);
- (3) if there is no person who meets the requirements of paragraph (1) or (2), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the parent or parents, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent);
- (4) if there is no person who meets the requirements of paragraph (1), (2), or (3), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the person, if any, determined by the Commissioner of Social Security to be the surviving spouse of the deceased individual;
- (5) if there is no person who meets the requirements of paragraph (1), (2), (3), or (4), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the person or persons, if any, determined by the Commissioner of Social Security to be the child or children of the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

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(6) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), or (5), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the parent or parents, if any, of the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent); or

(7) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), (5), or (6), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the legal representative of the estate of the deceased individual, if any.

(e) Adjustments due to supplemental security income payments

For payments which are adjusted by reason of payment of benefits under the supplemental security income program established by subchapter XVI of this chapter, see section 1320a–6 of this title.

(f) Collection of delinquent amounts

(1) With respect to any delinquent¹ amount, the Commissioner of Social Security may use the collection practices described in sections 3711 (f), 3716, 3717, and 3718 of title 31 and in section 5514 of title 5, all as in effect immediately after April 26, 1996.

(2) For purposes of paragraph (1), the term “delinquent amount” means an amount—

(A) in excess of the correct amount of payment under this subchapter;

(B) paid to a person after such person has attained 18 years of age; and

(C) determined by the Commissioner of Social Security, under regulations, to be otherwise unrecoverable under this section after such person ceases to be a beneficiary under this subchapter.

(g) Cross-program recovery of overpayments

For provisions relating to the cross-program recovery of overpayments made under programs administered by the Commissioner of Social Security, see section 1320b–17 of this title.

Footnotes

¹ So in original. Probably should be “delinquent”.

(Aug. 14, 1935, ch. 531, title II, § 204, 49 Stat. 624; Aug. 10, 1939, ch. 666, title II, § 201, 53 Stat. 1362, 1368; Aug. 28, 1950, ch. 809, title I, § 109(b)(1), 64 Stat. 523; Sept. 1, 1954, ch. 1206, title I, § 111(a), 68 Stat. 1085; Pub. L. 89–97, title III, § 329, July 30, 1965, 79 Stat. 401; Pub. L. 90–248, title I, §§ 152, 153 (a), 154 (a), Jan. 2, 1968, 81 Stat. 860, 861; Pub. L. 96–265, title V, § 501(b), June 9, 1980, 94 Stat. 470; Pub. L. 99–272, title XII, § 12113(a), Apr. 7, 1986, 100 Stat. 288; Pub. L. 101–239, title X, § 10305(b), Dec. 19, 1989, 103 Stat. 2483; Pub. L. 101–508, title V, § 5129(a), Nov. 5, 1990, 104 Stat. 1388–287; Pub. L. 103–296, title I, § 107(a)(4), Aug. 15, 1994, 108 Stat. 1478; Pub. L. 103–387, § 5(a), Oct. 22, 1994, 108 Stat. 4077; Pub. L. 104–134, title III, § 31001(z)(2)(A), Apr. 26, 1996, 110 Stat. 1321–379; Pub. L. 104–316, title I, § 115(g)(2)(E), Oct. 19, 1996, 110 Stat. 3835; Pub. L. 105–306, § 8(b)(1), Oct. 28, 1998, 112 Stat. 2929; Pub. L. 106–169, title II, §§ 201(a), 203 (c), Dec. 14, 1999, 113 Stat. 1831, 1832; Pub. L. 108–203, title II, § 210(b)(1), Mar. 2, 2004, 118 Stat. 517; Pub. L. 111–115, § 2(a), Dec. 15, 2009, 123 Stat. 3029.)

Amendments

2009—Subsec. (a)(1)(B). Pub. L. 111–115 designated existing provisions as cl. (i), substituted “Subject to clause (ii), with” for “With”, and added cls. (ii) and (iii).

2004—Subsec. (g). Pub. L. 108–203 amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: “For payments which are adjusted or withheld to recover an overpayment of supplemental security income benefits paid under subchapter XVI of this chapter (including State supplementary payments paid under an agreement pursuant to section 1382e (a) of this title or section 212(b) of Public Law 93–66), see section 1320b–17 of this title.”

1999—Subsec. (a)(2). Pub. L. 106–169, § 201(a), inserted at end “If any payment of more than the correct amount is made to a representative payee on behalf of an individual after the individual’s death, the representative payee shall be

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liable for the repayment of the overpayment, and the Commissioner of Social Security shall establish an overpayment control record under the social security account number of the representative payee.”

Subsec. (f)(1). Pub. L. 106–169, § 203(c), substituted “3711(f)” for “3711(e)” and inserted “all” before “as in effect”.

1998—Subsec. (g). Pub. L. 105–306 added subsec. (g).

1996—Subsec. (f). Pub. L. 104–134, which directed that subsec. (f) be amended to read as follows: “(f)(1) With respect to any delinquent amount, the Commissioner of Social Security may use the collection practices described in sections 3711 (f), 3716, 3717, and 3718 of title 31 and in section 5514 of title 5, as in effect immediately after April 26, 1996.”, was executed by substituting the new language for par. (1) only to reflect the probable intent of Congress. Prior to amendment, par. (1) read as follows: “With respect to any delinquent amount, the Commissioner of Social Security may use the collection practices described in sections 3711 (f), 3716, and 3718 of title 31 as in effect on October 1, 1994.”

Subsec. (f)(1). Pub. L. 104–316 substituted “sections 3711 (e)” for “sections 3711 (f)”.

1994—Subsecs. (a)(1), (b), (d)(1), (4), (5). Pub. L. 103–296, § 107(a)(4), substituted “Commissioner of Social Security” for “Secretary” wherever appearing.

Subsec. (f). Pub. L. 103–387 added subsec. (f).

1990—Subsec. (a)(1)(A). Pub. L. 101–508 inserted “or shall obtain recovery by means of reduction in tax refunds based on notice to the Secretary of the Treasury as permitted under section 3720A of title 31,” after “payments to such overpaid person.”

1989—Subsec. (b). Pub. L. 101–239 inserted at end “In making for purposes of this subsection any determination of whether any individual is without fault, the Secretary shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language).”

1986—Subsec. (a). Pub. L. 99–272 redesignated existing subsec. (a) as (a)(1) and pars. (1) and (2) thereof as subpars. (A) and (B), respectively, and added par. (2).

1980—Subsec. (e). Pub. L. 96–265 added subsec. (e).

1968—Subsec. (a). Pub. L. 90–248, § 152(a), incorporated in text preceding par. (1) part of existing provisions and broadened the Secretary’s authority to include recovery of overpayments.

Subsec. (a)(1). Pub. L. 90–248, § 153(a), inserted last sentence which provided that payments made on an erroneous report by the Defense Department of the death, in the line of duty, of a member of the uniformed services on active duty are not to be deemed incorrect payments until the Department notifies the Secretary that he is alive.

Subsec. (a)(2). Pub. L. 90–248, § 152(a), incorporated in par. (2) part of existing provisions and broadened Secretary’s authority to provide that in the case of underpayments, the Secretary is to pay the balance due the underpaid person but if he dies before receiving the full amount due him or before negotiating checks representing the correct payments, the balance due or the amount for which the checks were issued but not negotiated are to be paid under subsec. (d) of this section.

Subsec. (b). Pub. L. 90–248, § 152(b), authorized the Secretary to waive adjustment or recovery of overpayments from any person who is without fault, even where he is not the overpaid person and the latter is at fault, whereas heretofore a condition for waiver was that the overpaid person be without fault.

Subsec. (d). Pub. L. 90–248, § 154(a), struck out, in text preceding par. (1), provision excepting subsec. (d) from subsec. (a) and provision that the total amount due at the time of death may not exceed the amount of the monthly insurance benefit to which an individual was entitled for the month preceding the month in which he died, added cl. (ii) in par. (1), added pars. (2) to (6), designated existing provisions as par. (7) and inserted therein references to pars. (1) to (6).

1965—Subsec. (d). Pub. L. 89–97 added subsec. (d).

1954—Subsec. (a). Act Sept. 1, 1954, inserted “and self-employment income” after “wages” in second sentence.

1950—Act Aug. 28, 1950, substituted “Administrator” for “board”.

1939—Act Aug. 10, 1939, omitted former provisions relating to payments to aged individuals not qualified for benefits and substituted the present section relating to overpayments and underpayments.

Effective Date of 2009 Amendment

Pub. L. 111–115, § 2(c), Dec. 15, 2009, 123 Stat. 3030, provided that: “The amendments made by this section [amending this section and section 1383 of this title] shall be effective for payments that would otherwise be made on or after the date of the enactment of this Act [Dec. 15, 2009].”

Effective Date of 2004 Amendment

Pub. L. 108–203, title II, § 210(c), Mar. 2, 2004, 118 Stat. 517, provided that: “The amendments and repeal made by this section [amending this section and sections 1008, 1320b–17, and 1383 of this title and repealing section 1320b–18 of this title] shall take effect on the date of enactment of this Act [Mar. 2, 2004], and shall be effective with respect to overpayments under titles II, VIII, and XVI of the Social Security Act [subchapters II, VIII, and XVI of this chapter] that are outstanding on or after such date.”

Effective Date of 1999 Amendment

Pub. L. 106–169, title II, § 201(c), Dec. 14, 1999, 113 Stat. 1831, provided that: “The amendments made by this section [amending this section and section 1383 of this title] shall apply to overpayments made 12 months or more after the date of the enactment of this Act [Dec. 14, 1999].”

Amendment by section 203(c) of Pub. L. 106–169 applicable to debt outstanding on or after Dec. 14, 1999, see section 203(d) of Pub. L. 106–169, set out as a note under section 3701 of Title 31, Money and Finance.

Effective Date of 1998 Amendment

Pub. L. 105–306, § 8(c), Oct. 28, 1998, 112 Stat. 2930, provided that: “The amendments made by this section [enacting section 1320b–17 of this title and amending this section and section 1383 of this title] shall take effect on the date of the enactment of this Act [Oct. 28, 1998] and shall apply to amounts incorrectly paid which remain outstanding on or after such date.”

Effective Date of 1994 Amendments

Amendment by Pub. L. 103–387 applicable to collection activities begun on or after Oct. 22, 1994, see section 5(c) of Pub. L. 103–387, as amended, set out as a note under section 3701 of Title 31, Money and Finance.

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Effective Date of 1990 Amendment

Amendment by Pub. L. 101–508 effective Jan. 1, 1991, and inapplicable to refunds to which the amendments made by section 2653 of the Deficit Reduction Act of 1984, Pub. L. 98–369, do not apply, see section 5129(d) of Pub. L. 101–508, set out as a note under section 6402 of Title 26, Internal Revenue Code.

Effective Date of 1989 Amendment

Amendment by Pub. L. 101–239 applicable with respect to determinations made on or after July 1, 1990, see section 10305(f) of Pub. L. 101–239, set out as a note under section 403 of this title.

Effective Date of 1986 Amendment

Section 12113(c) of Pub. L. 99–272 provided that: “The amendments made by this section [amending this section and section 1383 of this title] shall apply only in the case of deaths of which the Secretary is first notified on or after the date of the enactment of this Act [Apr. 7, 1986].”

Effective Date of 1980 Amendment

Amendment by Pub. L. 96–265 applicable in the case of payments of monthly insurance benefits under this subchapter, entitlement for which is determined on or after July 1, 1981, see section 501(d) of Pub. L. 96–265, set out as an Effective Date note under section 1320a–6 of this title.

Effective Date of 1968 Amendment

Section 153(b) of Pub. L. 90–248 provided that: “The amendment made by this section [amending this section] shall apply with respect to benefits under title II of the Social Security Act [this subchapter] if the individual to whom such benefits were paid would have been entitled to such benefits in or after the month in which this Act was enacted [January 1968] if the report mentioned in the amendment made by subsection (a) of this section had been correct (but without regard to the provisions of section 202(j)(1) of such Act [section 402 (j)(1) of this title]).”

Effective Date of 1939 Amendment

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.