

TABLE 5.—HPC CSO OR CSN CYCLIC LIMITS BY ENGINE CONFIGURATION FOR TWIN-ENGINE AIRPLANE—Continued

| Engine model | Engine serial number (SN) | Engine configuration (CSO or CSN) | | | |
|---|--|-----------------------------------|-------|-------|-----|
| | | A | B | C | D |
| (4) PW4156, PW4156A, and PW4158. | All others not listed by SN in this Table. | 1,050 | 1,600 | 6,600 | 750 |
| (5) PW4052. | All engines. | 3,000 | 4,400 | 4,400 | 750 |
| (6) PW4056. | All engines. | 1,800 | 3,000 | 3,000 | 750 |
| (7) PW4060, PW4060A, PW4060C, and PW4062. | All engines. | 1,100 | 2,300 | 3,000 | 750 |

Minimum Build Standard

(f) After the effective date of this AD, do not install an engine with HPC and HPT modules where the CSO of the HPC is 1,500 cycles or more greater than the CSO of the HPT.

(g) After the effective date of this AD, any engine that undergoes an HPC overhaul must meet the build standard of the following PW SB's: PW4ENG 72-484, PW4ENG 72-486, PW4ENG 72-514, and PW4ENG 72-575. Engines that incorporate the Phase 3 configuration meet the build standard defined by PW SB PW4ENG 72-514.

(h) After the effective date of this AD, any engine that undergoes separation of the HPC and HPT modules after the effective date of this AD, must meet the build standard of PW SB PW4ENG 72-514. Engines that incorporate the Phase 3 configuration meet the build standard defined by PW SB PW4ENG 72-514.

(i) Within 100 CIS after the effective date of this AD, and thereafter, limit the number of engines with configuration D from Table 1 of this AD to one on each airplane.

(j) When a thrust rating change has been made by using the Electronic Engine Control (EEC) programming plug in the affected HPC overhaul period, the cyclic limits associated with the highest thrust rating must be utilized.

Definitions

(k) For the purposes of this AD, the following definitions apply:

(1) *HPC Overhaul*—an HPC overhaul is defined as restoration of the HPC stages 5 through 15 blade tip clearances to the limits specified in the applicable fits and clearances section of the engine manual.

(2) *HPT Overhaul*—an HPT overhaul is defined as restoration of the HPT module stage 1 and 2 HPT blade tip clearances to the applicable fits and clearances section of the engine manual.

(3) A *Phase 3 engine* is identified by a (-3) suffix after the engine model number on the data plate if incorporated at original manufacture, or a (-3C) suffix after the engine model number if the engine was converted using PW SB's PW4ENG 72-490, PW4ENG 72-504, or PW4ENG 72-572 after original manufacture.

Alternative Methods of Compliance

(l) An alternative method of compliance or adjustment of the compliance time that

provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(m) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(n) This amendment becomes effective August 10, 2001.

Issued in Burlington, Massachusetts on July 17, 2001.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

RIN 0960-AF13

Collection of Supplemental Security Income (SSI) Overpayments From Social Security Benefits

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are revising our regulations dealing with the recovery of overpayments under the Supplemental Security Income (SSI) program under title XVI of the Social Security Act (the Act). Under the revisions, we are modifying our regulations to permit SSA to recover SSI overpayments by adjusting the amount of social security benefits payable to the individual under

title II of the Act. This collection practice is limited to individuals who are not currently eligible to receive any cash payments under any provision of title XVI or State supplementary cash payments that we administer. Also, the amount of the title II benefits withheld in a month to recover the title XVI overpayment may not exceed 10 percent of the amount payable under title II unless the overpaid person requests us to withhold a different amount or the overpaid person (or his or her spouse) willfully misrepresented or concealed material information in connection with the overpayment. In a case involving willful misrepresentation or concealment, the entire title II benefit amount will be withheld to recover the overpayment. These revisions would permit SSA to recover SSI overpayments from title II benefits payable to the overpaid individual when SSI cash benefits are not payable. These revisions are necessary to implement section 1147 of the Act.

EFFECTIVE DATE: These regulations are effective August 27, 2001.

FOR FURTHER INFORMATION CONTACT:

Patricia Hora, Social Insurance Specialist, Office of Process and Innovation Management, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, (410) 965-7183 or TTY (410) 966-5609 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778.

SUPPLEMENTARY INFORMATION: Under the law in effect prior to the enactment of Pub. L. 105-306 on October 28, 1998, if an individual received an SSI overpayment and failed to refund the full overpayment amount, SSA was authorized to recover the overpayment by adjusting future SSI payments due the recipient or his or her eligible spouse. If the overpaid person was not receiving SSI payments but was entitled

to benefits under title II of the Act, he or she generally could elect voluntarily to have the overpayment recovered by adjusting the title II benefits. If an overpaid individual was no longer entitled to SSI payments, we could refer the overpayment to the Department of the Treasury for offset against any Federal tax refund due that individual.

Section 8 of Pub. L. 105-306 added new section 1147 to the Act, permitting SSA to use an additional collection tool to recover SSI overpayments. Under section 1147, SSA may recover SSI overpayments by adjusting the amount of any benefits payable to the overpaid individual under title II of the Act, without the consent of the individual. Throughout the remainder of this preamble, this type of overpayment recovery is referred to as "cross-program recovery."

Section 1147 limits the use of cross-program recovery to SSI overpayments made to individuals who are not currently eligible to receive cash payments, including State supplementary payments, under title XVI or under section 212(b) of Pub. L. 93-66. Also, section 1147 limits the amount of the SSI overpayment that may be recovered in any month through cross-program recovery to 10 percent of the benefit amount payable under title II in any month, unless the overpaid person requests that SSA withhold a higher amount or unless the overpaid person or his or her spouse willfully misrepresented or concealed material information in connection with the overpayment. If there is willful misrepresentation or concealment, section 1147 permits SSA to recover the overpayment by withholding 100 percent of the title II benefit payable.

Explanation of Changes

We are adding to our regulations new § 416.572 setting forth our rules on cross-program recovery. This new section:

- Defines certain terms;
- Explains the conditions for imposing cross-program recovery;
- Explains the rights of the overpaid individual to request waiver of the overpayment and review of our determination that he or she still owes us the overpayment balance; and
- Explains the rules for determining the amount to be withheld from the individual's title II benefits.

Specifically, in paragraph (a) of § 416.572, we define the following terms:

- "Cross-program recovery" is defined as the process we will use to collect SSI overpayments by adjusting title II benefits payable in a month.

- "Benefits payable in a month" is defined as the amount of title II benefits a person actually receives in a given month. Under our definition, "benefits payable in a month" includes any past due benefits a person receives, but does not include any amounts withheld from the person's benefits under the deductions or reductions listed in § 404.401(a) or (b) of our regulations. The definition also includes an example of how we determine the "benefits payable in a month."

- "Not currently eligible for SSI cash benefits" means that a person is receiving no cash payments, including State supplementary payments, under title XVI of the Act or under section 212(b) of Pub. L. 93-66.

In paragraph (b) of § 416.572, we explain that we may use cross-program recovery to collect SSI overpayments if the overpaid person is not currently receiving SSI cash benefits and is receiving benefits under title II of the Act. Thus, if a person whose title II benefits are being adjusted to recover an SSI overpayment again becomes eligible for SSI benefits, cross-program recovery will end with the month in which SSI cash benefits resume. When SSI benefits become payable to the overpaid person, we will resume the monthly adjustment of SSI payments to collect the overpayment. We will not start cross-program recovery if the overpaid person is refunding the title XVI overpayment by regular monthly installments or we are recovering a title II overpayment by withholding that person's title II benefits.

Paragraph (c) of § 416.572 lists the information that we will include in the notice we send to a person whose title II benefits are subject to cross-program recovery. The notice informs the person that he or she owes a specific SSI overpayment balance, that we will be using cross-program recovery to collect that balance and that we will withhold a specific amount from the title II benefits. The notice will state that the person may ask us to review our determination that he or she still owes the overpayment balance. The notice will also advise the person he or she may request a waiver of the overpayment under section 1631(b)(1)(B) of the Act and explain the circumstances under which we will waive the overpayment. The notice will inform the individual how to request a waiver. Unless the overpaid person or that person's spouse willfully misrepresented or concealed material information in connection with the overpayment, the notice will also state that the person may request that we withhold from the title II benefits a

different amount than the amount stated in the notice.

Paragraph (d) of § 416.572 explains that we will begin to withhold no sooner than 30 days after the date of the notice. If the individual pays the entire overpayment balance within that 30-day period, we will not impose cross-program recovery. If within the 30-day period the person asks us to waive the overpayment or asks us to review the determination that he or she still owes us the overpayment balance, we will not begin cross-program recovery until we review the matter and notify the person of our decision. If within the 30-day period, the person requests that we withhold a different amount, we will not begin cross-program recovery until we determine the amount we will withhold.

Paragraph (e) of § 416.572 explains that we will generally collect the overpayment at the rate of 10 percent of the title II benefits payable in any month. However, we will collect at a different rate if the person requests, and we approve, a different rate of withholding or if the overpaid person (or his or her spouse) willfully misrepresented or concealed material information in connection with the overpayment. If an overpaid person requests withholding at a lesser rate than 10 percent, we will set a rate that will not deprive the individual of income required for ordinary and necessary living expenses as prescribed in § 416.571 of our regulations. If there has been willful misrepresentation or concealment of material information in connection with the overpayment, we will recover the overpayment by withholding at the rate of 100 percent of the title II benefits payable. We will not collect at a lesser rate.

Other Revisions

We are revising § 404.401(c) to explain that we may adjust a person's title II benefits to recover an SSI overpayment using cross-program recovery.

We are revising § 416.570 to eliminate the reference to voluntary withholding of an SSI overpayment from title II benefits. Under section 1147 of the Act, we now have authority to use cross-program recovery to recover title XVI overpayments without the consent of the overpaid person.

Public Comments

On October 3, 2000, we published proposed rules in the **Federal Register** at 65 FR 58970 and provided a 60-day period for interested parties to comment. We received comments from 6 organizations. Because some of the

comments received were quite detailed, we have condensed, summarized or paraphrased them in the discussion below. We address all of the significant issues raised by the commenters that are within the scope of the proposed rules. We have made revisions to the proposed rules to address some of the concerns of the commenters.

Comment: Letters from three organizations recommended that we include language in the cross-program recovery notice advising individuals of their rights to request that we waive collection of the overpayment. One of these organizations expressed concern that SSA adopt procedural protections that meet the needs of these individuals (title II beneficiaries who previously received SSI and are disabled and/or elderly) and recommended that the final version of new § 416.572(c) require inclusion of information about the availability of waiver under the procedures of 20 CFR § 416.550 in the notice. Similarly, another organization recommended that SSA change new § 416.572(c) to state that the written notice to individuals subject to cross-program recovery should include information about the availability of waiver. The third organization expressed concern that individuals likely to be affected by our new statutory authority to apply cross-program recovery may not realize that they may request waiver at any time.

Response: After careful consideration, we have decided to include language about the availability of waiver in the written notice to individuals subject to cross-program recovery. We have changed new § 416.572(c) and (d) to provide that (1) our written notice to an individual subject to cross-program recovery will explain that the individual may request waiver, and (2) if an individual requests waiver within 30 days from the date of the notice, we will not start withholding title II benefits before we review the matter and notify the individual of our decision.

Comment: Two organizations sent comments relating to the overpaid individual's right to request that we collect the SSI overpayment from title II benefits at a rate that is lower than 10 percent of the title II benefits payable in a month. One organization recommended that the final regulation state that the individual may request a withholding rate of less than 10 percent under the same criteria applicable under 20 CFR 416.571 when we adjust SSI benefits. The other organization recommended that the notice portion of the final regulation state that an individual may request a rate that is higher or lower than the 10 percent

figure and state the criteria that SSA would use to determine the rate.

Response: With regard to the first recommendation, pertinent language of paragraph (e)(1)(i) of § 416.572 states that we will collect the overpayment by withholding 10 percent of title II benefits unless the overpaid person "request[s] and we approve a *different rate of withholding.*" Paragraph (c)(4) of § 416.572 provides that, in most cases, the notice on proposed cross-program recovery will state that the individual "may request that we withhold a *different amount * * **" Paragraph (d)(3) provides that if within 30 days from the date of the notice the individual asks us to "withhold a *different amount* than the amount stated in the notice, we will not begin cross-program recovery until we determine the amount we will withhold." The plain meaning of the terms "different rate of withholding" and "different amount" in these paragraphs encompasses an amount that is lower than 10 percent of the benefit payable in a month and an amount that is higher than the 10 percent figure. Therefore, we saw no need to revise the language in these paragraphs. However, we have revised the language in paragraph (e)(2) in § 416.572 to state that we will use the criteria in § 416.571 to determine whether we will grant an individual's request that we withhold less than the 10 percent figure mentioned in the cross-program recovery notice. Under these criteria, we would consider the individual's income, resources and financial obligations. We would attempt to establish a rate of withholding that would not deprive the individual of income needed to meet ordinary and necessary living expenses.

Comment: Two organizations asserted that there are problems in the administration of our programs that cause overpayments. Among the concerns are staffing in local offices, training for our employees, and documenting and acting on reports of changes potentially affecting eligibility or benefit amounts. One organization said we should correct the problems before developing new rules for and methods of collecting the overpayments.

Response: We are not adopting the suggestion that we delay implementation of cross-program recovery. Overpayments of benefits occur for many reasons. We take our responsibility for stewardship of the programs that we administer very seriously. That is why we constantly track our payment accuracy and strive to minimize overpayments. In addition, we are pursuing several initiatives that address the causes of overpayments and

other matters described by the organizations. Regardless of the reasons for overpayments, we are responsible for recovering as much of the overpaid money as possible consistent with the law.

Comment: One organization stated that SSA should delay the start of cross-program recovery until 60 days after the written notice to the individual concerning the planned benefit reduction. The organization felt that the 30-day period which SSA plans to use is not enough time for the individual to contact SSA in order to repay the debt, ask for a review, ask for a different rate of withholding or request waiver.

Response: We are not adopting the suggestion that we delay the reduction until 60 days after the written notice to the individual. We believe the 30-day period is adequate time for an individual to request review or ask for waiver or a different rate of withholding. Overpaid individuals do not have to submit all of the evidence within that 30-day period. They need only make their requests during the 30 days. After the request, they can review our records and gather and submit evidence.

SSA has been using this process for years in its efforts to collect overpayments. We believe that the process allows individuals adequate time to request review or waiver or lower withholding rates and to submit essential evidence.

Comment: One organization stated that we should include in the notice described in § 416.572(c) the same information about the overpaid amount that we include in the initial notice of overpayment. The organization states that the information should be included because it believes a person cannot adequately identify or question an overpayment without more information.

Response: After considering the organization's comment, we decided not to adopt the suggestion. The new notice described in § 416.572(c) will show the balance of the overpayment at the time we send the notice. The initial notice of overpayment previously sent to the overpaid person includes information such as the beginning balance of the overpayment, the general cause of the overpayment, and the monthly amounts received compared to the amounts that the person should have received during each month of the overpayment. We include the more detailed information in initial notices of overpayment because those notices give overpaid people the right to request appeal of the fact or amount of the overpayment. To exercise that right, overpaid people need to know specifically the

overpayment amount, when they incurred the overpayment, how the overpayment was calculated, and why the overpayment occurred.

The notice described in § 416.572(c) is sent to the overpaid person after the right to appeal the fact or the original amount of the overpayment has expired. Since the person's appeal rights on these matters have expired, the detailed information about the overpayment is not required in the new notice regarding cross-program recovery. Under the new regulation, the overpaid individual would have the right to have us review whether he or she still owes all or part of the overpayment balance. For example, the individual may have evidence that he or she refunded all or part of the balance or that we previously waived collection. We believe that the new notice of cross-program recovery gives sufficient information about the overpayment for the individual to determine whether to ask for such review.

In addition, it is our long-held policy to provide the detailed information on the amount of the initial overpayment balance and the cause of the overpayment in the initial notice of overpayment. We do not repeat that information with each subsequent overpayment-related notice we send. In subsequent notices to overpaid persons, we invite them to ask for more information about the overpayment if they want to know more detail. To facilitate the process of providing more information to overpaid persons, we provide them in our subsequent notices (including the new notice described in § 416.572(c)) with a variety of contact information, such as the Agency's national toll-free telephone number and the address and telephone number of the local office that is closest to them. When overpaid persons ask for more information, we provide them with the details contained in our records, including why the overpayment occurred, when it occurred, and how we calculate the overpayment.

Comment: One organization commented that the 100 percent withholding rate should not be imposed without SSA's final determination that the debt was the result of fraud or willful misrepresentation. The organization stated that this is necessary to protect vulnerable people from unjustified penalties.

Response: In determining to collect the SSI overpayment from title II benefits without regard to the 10 percent limitation under section 1147(a)(2) of the Act, we will apply the same procedures that we apply when we collect SSI overpayments from SSI

benefits under section 1631(b) of the Act. We will make an initial finding on willful concealment or misrepresentation. Then, we will send to the individual thought to be guilty of those acts written notification of our finding and our intention to withhold all of the individual's title II benefits until we collect the SSI overpayment balance. The notice will explain that the person may request a reconsideration of the initial determination. If the individual does not request reconsideration of our finding in a timely manner, the initial determination becomes our final determination and we will begin to impose the 100 percent withholding rate. If the individual requests reconsideration in a timely manner, we will not begin 100 percent withholding while we review the matter. If the individual requests reconsideration in a timely manner and we decide that our initial finding was correct, we will begin withholding at the 100 percent rate after we send the individual written notice of our reconsideration determination.

Comment: An organization urged us to include in the notice provisions of § 416.572(c) the elements required by the order issued by the Federal District Court for the Southern District of New York in the case of *Ellender v. Schweiker*, 575 F. Supp. 590 (1983), as modified November 21, 2000. The organization stated its view that this action was necessary to comply with the modified court order.

Response: For the reasons that follow, we are not adopting this recommendation. The court order in the *Ellender* case does not apply nationwide. It applies only to a narrow class comprised of individuals who meet all of the following criteria: they resided in New York State on October 26, 1982; they were entitled to title II benefits on that date; they were former SSI recipients, but not current SSI recipients, on that date. Moreover, we do not agree that the court order, as modified November 21, 2000, requires that we include in the regulation the notice elements listed in the order. The order requires that we include a statement in "instructions and directives issued by the Social Security Administration to its staff, including the Office of Hearings and Appeals", that these elements be included in notices sent to *Ellender* class members regarding recovery of SSI overpayments from title II benefits. We are preparing such a statement for our instructions in the Program Operations Manual System and the Hearings, Appeals and Litigation Law Manual (HALLEX), and we believe that inclusion of the

statement in those instructions is enough to satisfy the court order. We are also taking steps to ensure that cross-program recovery notices that do not contain the elements listed in the *Ellender* court order are not sent to *Ellender* class members.

Comment: One organization suggested that SSA use focus groups to ensure that the new written notice it proposes to use for cross-program recovery is understandable to individuals who receive it. The organization is concerned that the individuals will not understand the effect of the notices or their appeal rights.

Response: In developing the cross-program recovery notice, we have attempted to use, wherever possible, language that had previously been cleared within SSA and, in many cases, had already been tested using focus groups. In addition, any new language developed specifically for this notice was developed using the same notice standards (including plain-language) we use in developing all our notices. Therefore, we are not delaying implementation of cross-program recovery in order to further focus-test the language in the cross-program recovery notice.

Comment: One organization commented that SSA should include in its regulation a new section to provide notice of the right to request waiver and review (with an explanation of the difference between waiver and review) to individuals who were overpaid SSI, were subject to cross-program recovery, and who subsequently become eligible again for SSI payments.

Response: We are not adopting this recommendation. Under our current policies, we notify an individual that he or she is entitled to SSI benefits. That notice would state the amount of the benefits and explain any adjustment to the benefit amount, including adjustment to collect any outstanding overpayment balance. The notice informs the individual that he or she may appeal the determination but does not discuss waiver of collection of the overpayment.

We do not intend to add information on waiver to this type of notice. The individual would already have been notified several times about the right to request waiver. The initial notice of overpayment discusses waiver. If we select the debt for the Treasury Offset Program, we would send a pre-offset notice which explains waiver, as required by 31 U.S.C. 3720A. Under the provisions of new § 416.572(c) of the regulations, an individual who was subject to cross-program recovery would also have been given information about

waiver in the new written notice about our intent to collect the SSI debt from title II benefits. We believe these multiple notifications of the right to request waiver are sufficient. If an individual does request waiver when he or she becomes eligible for SSI, we would make our determination under section 1631(b)(1) of the Social Security Act, the regulations set out in 20 CFR §§ 416.550–416.556 and the procedures adopted to implement them.

Comment: One organization asserted that SSA should revise § 416.572(e) to allow individuals found guilty of willful misrepresentation or concealment of material information in connection with the overpayment to request a rate of withholding of less than 100 percent. The organization felt the person should be afforded the opportunity to prove that a 100 percent withholding would be a hardship because it would deprive him or her of ordinary and necessary living expenses.

Response: We are not adopting this suggestion. When an individual is found guilty of willful misrepresentation or concealment of material information in connection with the overpayment, section 1147(a)(2)(A) of the Social Security Act permits us to collect by withholding up to 100 percent of the benefits payable in a month until we collect the entire overpayment. We have a stewardship responsibility to ensure that the programs we administer are run efficiently and effectively, to recover overpayments and to prevent and deter fraud. Our longstanding policy is to collect debts arising from willful misrepresentation or concealment at the rate of 100 percent withholding. We believe that the 100 percent withholding is an appropriate penalty for such conduct and demonstrates to anyone who is contemplating such conduct that the consequences will be significant. In addition, we believe that allowing someone who obtains benefits through fraudulent acts to repay the debt over an extended period is not appropriate public policy.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final regulations meet the criteria for a significant regulatory action under Executive Order (E.O.) 12866. Thus, the regulations were reviewed by OMB. However, the estimated amounts of the savings or costs involved do not cross the threshold for an economically significant regulation as defined in E.O. 12866. The estimated program savings

from increased collections as a result of implementation of section 8 of Pub. L. 105–306 are \$15 million in each of fiscal years (FY) 2001 through 2003; \$40 million in FY 2004; and \$30 million in FY 2005 for a total increase of \$115 million over 5 years. The administrative savings estimate for FYs 2001 through 2005 is less than \$5 million.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final regulations will impose no new reporting or recordkeeping requirements requiring OMB clearance. In fact, these final rules would decrease the paperwork burden on the public by 833 burden hours per year. This is because, under the final rules, overpaid persons will no longer complete Form SSA–730–U2 (Request To Have Supplemental Security Income Overpayment Withheld From My Social Security Benefits), OMB Control Number 0960–0549, which provides SSA with the overpaid person's request that SSA collect a title XVI overpayment from the person's title II benefits. (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)

List of Subjects

20 CFR Part 404

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

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: May 7, 2001.

Larry G. Massanari,

Acting Commissioner of Social Security.

For the reasons set forth in the preamble, we are amending Chapter III of Title 20, 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 revised 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) and 1147 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) and 1320b–17).

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 title XVI of the Act. For the title II rules on adjustments to your benefits, see subpart F of this part. For the rules on adjusting your benefits to recover title XVI overpayments, see § 416.572 of this chapter.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED (PRIVATE)

3. The authority citation for subpart E of part 416 is revised to read as follows:

Authority: Secs. 702(a)(5), 1147, 1601, 1602, 1611(c) and (e), and 1631(a)–(d) and (g) of the Social Security Act (42 U.S.C. 902(a)(5), 1320b–17, 1381, 1381a, 1382(c) and (e), and 1383(a)–(d) and (g)); 31 U.S.C. 3720A.

4. Section 416.570 is amended by revising the third sentence to read as follows:

§ 416.570 Adjustment-general rule.

* * * Absent a specific request from the person from whom recovery is sought, no overpayment made under title II or XVIII of the Act will be recovered by adjusting SSI benefits.

* * * * *

5. Section 416.572 is added to read as follows:

§ 416.572 Are title II benefits subject to adjustment to recover title XVI overpayments?

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

(2) *Benefits payable in a month.* For purposes of this section, benefits payable in a month means the amount

of title II benefits you would actually 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.

Example: A person is entitled to monthly title II benefits of \$1000. The first benefit payment the person would receive includes past-due benefits of \$1000. The amount of benefits payable in that month for purposes of cross-program recovery is \$2000. So, if we were recovering 10 percent of that month's benefit, we would be recovering \$200. The monthly benefit payable for subsequent months is \$1000. So, if we were recovering 10 percent of that month's benefit, we would be recovering \$100. If \$200 would be deducted from the person's title II benefits in a later month because of excess earnings as described in §§ 404.415 and 404.416 of this chapter, the benefit payable in that month for purposes of cross-program recovery would be \$800. So, if we were recovering 10 percent of that month's benefit, we would be recovering \$80.

(3) *Not currently eligible for SSI cash benefits.* This means that a person is not receiving any cash payment, including State supplementary payments that we administer, under any provision of title XVI of the Act or under section 212(b) of Pub. L. 93-66 (42 U.S.C. 1382 note).

(b) *When we may collect title XVI overpayments using cross-program recovery.* (1) We may use cross-program recovery to collect a title XVI overpayment you owe if:

- (i) You are not currently eligible for SSI cash benefits, and
 - (ii) You are receiving title II benefits.
- (2) We will not start cross-program recovery if:

- (i) You are refunding your title XVI overpayment by regular monthly installments, or
- (ii) We are recovering a title II overpayment by adjusting your title II benefits under § 404.502 of this chapter.

(c) *Notice you will receive.* Before we collect an overpayment from you using cross-program recovery, we will send you a written notice that tells you the following information:

- (1) We have determined that you owe a specific overpayment balance that can be collected by cross-program recovery;
- (2) We will withhold a specific amount from the title II benefits payable to you in a month (see paragraph (e) of this section);
- (3) You may ask us to review this determination that you still owe this overpayment balance;
- (4) You may request that we withhold a different amount (the notice will not include this information if paragraph (e)(3) of this section applies); and
- (5) You may ask us to waive collection of this overpayment balance.

(d) *When we will begin cross-program recovery.* We will begin collecting the overpayment balance by cross-program recovery no sooner than 30 calendar days after the date of the notice described in paragraph (c) of this section.

(1) If within that 30-day period you pay us the full overpayment balance stated in the notice, we will not begin cross-program recovery.

(2) 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 cross-program recovery before we review the matter and notify you of our decision in writing.

(3) 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 cross-program recovery until we determine the amount we will withhold. This paragraph does not apply when paragraph (e)(3) of this section applies.

(4) If within that 30-day period you ask us to waive recovery of the overpayment balance, we will not begin cross-program recovery before we review the matter and notify you of our decision in writing. See §§ 416.550 through 416.556.

(e) *Rate of withholding.* (1) We will collect the overpayment at the rate of 10 percent of the title II benefits payable to you in any month, unless:

(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.

(2) In determining whether to grant your request that we withhold at a lower rate than 10 percent of the title II benefits payable in a month, we will use the criteria applied under § 416.571 to similar requests about withholding from title XVI benefits.

(3) If you or your spouse willfully misrepresented or concealed material information in connection with the overpayment, we will collect the overpayment at the rate of 100 percent of the title II benefits payable in any month. We will not collect at a lesser rate. (See § 416.571 for what we mean by concealment of material information.)

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

RIN 2125-AE87

National Standards for Traffic Control Devices; Manual on Uniform Traffic Control Devices for Streets and Highways; Corrections

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Corrections to the final amendments to the Manual on Uniform Traffic Control Devices.

SUMMARY: This document incorporates by reference into the Code of Federal Regulations errata corrections to the Manual on Uniform Traffic Control Devices (MUTCD). The MUTCD is incorporated by reference in the regulations on traffic control devices on Federal-aid and other streets and highways and recognized as the national standard for traffic control on all public roads. These editorial corrections affect the MUTCD in its entirety. These editorial corrections are issued to help improve the readability of the MUTCD, to provide clarification and consistency, and to correct the grammatical, mathematical, and typographical errors. Since the MUTCD is used by all State and local departments of transportation when installing traffic signs, traffic signals, and pavement markings on all roads open to public travel, it is very important that a correct document is available to them.

DATES: The final rule is effective on July 26, 2001. Incorporation by reference of the publication listed in this regulation is approved by the Director of the Office of the Federal Register as of July 26, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Huckaby, Office of Transportation Operations, Room 3408, (202) 366-9064, or Mr. Raymond Cuprill, Office of the Chief Counsel, Room 4230, (202) 366-0791, U.S. Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this action may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Office of the Federal Register's home page at: <http://www.nara.gov/>