

## §416.571

SSI benefits, and absent a specific request, no overpayment of SSI benefits shall be adjusted against benefits payable under title II of the Act. 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.

[55 FR 33669, Aug. 17, 1990; 55 FR 42148, Oct. 17, 1990; 61 FR 67206, Dec. 20, 1996]

### **§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 individual or his or her spouse. Concealment of material information means an intentional, knowing, and purposeful delay in making or failure

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to make a report that will affect payment amount and/or eligibility. It does not include a mere omission on the part of the recipient; it is an affirmative act to conceal. The 10-percent limitation does not apply to the recovery of overpayments incurred under agreements to dispose of resources pursuant to §416.1240. In addition, the 10-percent limitation does not apply to the reduction of any future SSI benefits as a consequence of the misuse of funds set aside in accordance with §416.1231(b) to meet burial expenses. Adjustment or recovery will be suspended if the recipient is subject to a reduced benefit rate under §416.414 because of residing in a medical facility in which Medicaid is paying a substantial portion of the recipient's cost of care.

[55 FR 33669, Aug. 17, 1990]

### **§416.580 Referral of overpayments to the Department of the Treasury for tax refund offset—General.**

(a) The standards we will apply and the procedures we will follow before requesting the Department of the Treasury to offset income tax refunds due taxpayers who have an outstanding overpayment are set forth in §§416.580 through 416.586 of this subpart. These standards and procedures are authorized by the Deficit Reduction Act of 1984 [31 U.S.C. §3720A], as implemented through Department of the Treasury regulations at 31 CFR 285.2.

(b) We will use the Department of the Treasury tax refund offset procedure to collect overpayments that are certain in amount, past due and legally enforceable, and eligible for tax refund offset under regulations issued by the Secretary of the Treasury. We will use these procedures to collect overpayments only from individuals who are not currently entitled to monthly supplemental security income benefits under title XVI of the Act. We will refer an overpayment to the Secretary of the Treasury for offset against tax refunds no later than 10 years after our right to collect the overpayment first accrued.

[62 FR 49439, Sept. 22, 1997]