

payee with respect to which the Commissioner of Social Security makes the determination of misuse on or after Jan. 1, 1995, see section 101(d) of Pub. L. 108-203, set out as a note under section 405 of this title.

Amendment by section 103(b) of Pub. L. 108-203 effective on the first day of the thirteenth month beginning after Mar. 2, 2004, see section 103(d) of Pub. L. 108-203, set out as a note under section 405 of this title.

Amendment by section 105(b) of Pub. L. 108-203 applicable to benefit misuse by a representative payee in any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after 180 days after Mar. 2, 2004, see section 105(d) of Pub. L. 108-203, set out as a note under section 405 of this title.

Amendment by section 106(b) of Pub. L. 108-203 effective 180 days after Mar. 2, 2004, see section 106(d) of Pub. L. 108-203, set out as a note under section 405 of this title.

§ 1008. Overpayments and underpayments

(a) In general

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, as follows:

(1) 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 the overpaid person (if a qualified individual) is entitled, or shall require the overpaid person or his or her estate to refund the amount in excess of the correct amount, or, if recovery is not obtained under these two methods, shall seek or pursue recovery by means of reduction in tax refunds based on notice to the Secretary of the Treasury, as authorized under section 3720A of title 31.

(2) With respect to payment of less than the correct amount to a qualified individual who, at the time the Commissioner of Social Security is prepared to take action with respect to the underpayment—

(A) is living, the Commissioner of Social Security shall make payment to the qualified individual (or the qualified individual's representative payee designated under section 1007 of this title) of the balance of the amount due the underpaid qualified individual; or

(B) is deceased, the balance of the amount due shall revert to the general fund of the Treasury.

(b) Waiver of recovery of overpayment

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 the Commissioner of Social Security determines that the adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.

(c) Limited immunity for disbursing officers

A disbursing officer may not be held liable for any amount paid by the officer if the adjustment or recovery of the amount is waived under subsection (b), or adjustment under subsection (a) is not completed before the death of the qualified individual against whose benefits deductions are authorized.

(d) Authorized collection practices

(1) In general

With respect to any delinquent amount, the Commissioner of Social Security may use the collection practices described in sections 3711(e), 3716, and 3718 of title 31, as in effect on October 1, 1994.

(2) Definition

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

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

(B) determined by the Commissioner of Social Security to be otherwise unrecoverable under this section from a person who is not a qualified individual under this subchapter.

(e) 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.

(Aug. 14, 1935, ch. 531, title VIII, § 808, as added Pub. L. 106-169, title II, § 251(a), Dec. 14, 1999, 113 Stat. 1850; amended Pub. L. 108-203, title II, § 210(b)(2), Mar. 2, 2004, 118 Stat. 517.)

PRIOR PROVISIONS

For prior provisions, see note set out under section 1001 of this title.

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108-203, § 210(b)(2)(A), substituted “any payment” for “any payment—”, struck out “(A)” before “under this subchapter”, substituted “section 3720A of title 31.” for “section 3720A of title 31; or”, and struck out subpar. (B) which read as follows: “under subchapter II of this chapter to recover the amount in excess of the correct amount, if the person is not currently eligible for payment under this subchapter.”

Subsec. (b) to (d). Pub. L. 108-203, § 210(b)(2)(B), redesignated subsecs. (c) to (e) as (b) to (d), respectively, and struck out heading and text of subsec. (b). Text read as follows: “In any case in which the Commissioner of Social Security takes action in accordance with subsection (a)(1)(B) of this section to recover an amount incorrectly paid to an individual, that individual shall not, as a result of such action—

“(1) become qualified for benefits under this subchapter; or

“(2) if such individual is otherwise so qualified, become qualified for increased benefits under this subchapter.”

Subsec. (e). Pub. L. 108-203, § 210(b)(2)(B), (C), added subsec. (e) and redesignated former subsec. (e) as (d).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-203 effective Mar. 2, 2004, and effective with respect to overpayments under subchapters II, VIII, and XVI of this chapter that are outstanding on or after such date, see section 210(c) of Pub. L. 108-203, set out as a note under section 404 of this title.

§ 1009. Hearings and review

(a) Hearings

(1) In general

The Commissioner of Social Security shall make findings of fact and decisions as to the rights of any individual applying for payment under this subchapter. The Commissioner of