and show good cause why the request should not be dismissed. The decision-maker shall advise you in writing of any action he or she takes.

§ 418.3675 How does our decision affect you?

Our decision is binding unless you file an action in Federal district court seeking review of our final decision or we revise it as provided in § 418.3678. You may file an action in Federal district court within 60 days after the date you receive notice of the decision. You may request that the time for filing an action in Federal district court be extended. The request must be in writing and it must give the reasons why the action was not filed within the stated time period. The request must be filed with the decision-maker who issued the final decision in your case. If you show that you had good cause for missing the deadline, we will extend the deadline. We will use the standards in § 418.3640 to decide if you had good cause to miss the deadline.

§ 418.3678 What is the process for correcting Agency clerical errors?

If we become aware within 60 days of the date of our initial determination or our decision following a case review or telephone hearing, that a clerical error was made in determining whether or not you are eligible for a subsidy (either in whole or in part), we may issue a revised initial determination which would be effective back to the date you originally filed your application or the effective date of a subsidy changing event, provided you meet the requirements in § 418.3101. We may revise an initial determination or decision regardless of whether such revised determination or decision is favorable or unfavorable to you. If the revised determination or decision (which is a new initial determination) is not favorable to you, you will not be responsible for paying back any subsidy received prior to the revised determination or decision. We will mail you a notice of the revised determination which will explain to you that we have made a revised determination and that this determination replaces an earlier determination, how this determination affects your subsidy eligibility, and your right to request a hearing.

§ 418.3680 What happens if your case is remanded by a Federal court?

When a Federal court remands a case to the Commissioner for further consideration, the decision-maker (as described in § 418.3625) acting on behalf of the Commissioner, may make a decision. That component will follow the procedures in § 418.3625, unless we decide that we can make a decision that is fully favorable to you without another hearing. Any issues relating to your subsidy may be considered by the decision-maker whether or not they were raised in the administrative proceedings leading to the final decision in your case.

[70 FR 77675, Dec. 30, 2005, as amended at 75 FR 33169, June 11, 2010]

PART 422—ORGANIZATION AND PROCEDURES

Subpart A—Organization and Functions of the Social Security Administration

Sec.

Subpart B—General Procedures

Subpart J—Protecting the Public and Our Personnel To Ensure Operational Effectiveness

SOURCE: 32 FR 13653, Sept. 29, 1967, unless otherwise noted.

Subpart A—Organization and Functions of the Social Security Administration

AUTHORITY: Secs. 205, 218, 221, and 701–704 of the Social Security Act (42 U.S.C. 405, 418, 421, and 901–904).

§ 422.1 Organization and functions.

(a) *General.* A complete description of the organization and functions of the Social Security Administration (pursuant to 5 U.S.C. 552(a), as amended by Pub. L. 90–23, the Public Information Act) was published in the FEDERAL REGISTER of July 15, 1967 (32 FR 10458), and was subsequently revised on April 16, 1968 (33 FR 5828), and amended on July 18, 1968 (33 FR 10292). Further amendments to or revisions of the description will be published in the FEDERAL REGISTER when and if required by changes in the organization or functions of the Social Security Administration. Such description (referred to as the SSA Statement of Organization, Functions, and Delegations of Authority) is printed and kept up to date in the Social Security Administration Organizational Manual, a copy of which is maintained in each district office and branch office of the Social Security Administration and is available for inspection and copying.

(b) *Information included in description.* This description includes information about the organization and functions of each component of the Social Security Administration. It also includes a listing of all district offices and branch offices within the organization of the Bureau of District Office Operations, and a listing of field offices within the organization of the Bureau of Hearings and Appeals where the public may secure information, make submittals or requests, or obtain decisions.

[34 FR 435, Jan. 11, 1969, as amended at 62 FR 38456, July 18, 1997]

§ 422.5 District offices and branch offices.

There are over 700 social security district offices and branch offices located in the principal cities and other urban areas or towns of the United States. In addition, there are over 3,300 contact stations, located in population and trading centers, which are visited on a regularly, recurring, preannounced basis. A schedule of these visits can be obtained from the nearest district office or branch office. The address of the nearest district office or branch office can be obtained from the local telephone directory or from the post office. Each district office and branch office has a list of all district offices and branch offices throughout the country and their addresses. The principal officer in each district office is the manager. The principal officer in each branch office is the officer-in-charge. Each district office and branch office also has a list of field offices of the Bureau of Hearings and Appeals and their addresses. The administrative hearing examiner is the principal officer in each field office. For procedures relating to claims see § 422.130, subpart J of part 404 of this chapter, and § 404.1520 of this chapter (the latter relating to disability determinations). For procedures on request for hearing by an Administrative Law Judge and review by the Appeals Council see subpart C of this part 422.

Subpart B—General Procedures

AUTHORITY: Secs. 205, 232, 702(a)(5), 1131, and 1143 of the Social Security Act (42 U.S.C. 405, 432, 902(a)(5), 1320b–1, and 1320b–13), and sec. 7213(a)(1)(A) of Pub. L. 108–458.

§ 422.101 Material included in this subpart.

This subpart describes the procedures relating to applications for and assignment of social security numbers, maintenance of earnings records of individuals by the Social Security Administration, requests for statements of earnings or for revision of earnings records, and general claims procedures, including filing of applications, submission of evidence, determinations, and reconsideration of initial determinations.

§ 422.103 Social security numbers.

(a) *General.* The Social Security Administration (SSA) maintains a record of the earnings reported for each individual assigned a social security number. The individual's name and social security number identify the record so that the wages or self-employment income reported for or by the individual can be properly posted to the individual's record. Additional procedures concerning social security numbers may be found in Internal Revenue Service, Department of the Treasury regulation 26 CFR 31.6011(b)–2.

(b) *Applying for a number*—(1) *Application.* An individual needing a Social Security number may apply for one by completing a prescribed application and submitting the required evidence. An individual outside the United States (U.S.) may apply for a Social Security number card at the Department of Veterans Affairs Regional Office, Manila, Philippines, at any U.S. Foreign Service post, or at a U.S. military post outside the United States. (See § 422.106 for special procedures for filing applications with other government agencies.) Additionally, a U.S. resident may apply for a Social Security number for a nonresident dependent when the number is necessary for U.S. tax purposes or some other valid reason, the evidence requirements of § 422.107 are met, and we determine that a personal interview with the dependent is not required.

(2) *Birth registration document.* We may enter into an agreement with officials of a State, including, for this purpose, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and New York City, to establish, as part of the official birth registration process, a procedure to assist us in assigning Social Security numbers to newborn children. Where an agreement is in effect, a parent, as part of the official birth registration process, need not complete a prescribed application and may request that we assign a Social Security number to the newborn child.

(3) *Immigration form.* We may enter into an agreement with the Department of State (DOS) and the Department of Homeland Security (DHS) to assist us by collecting enumeration data as part of the immigration process. Where an agreement is in effect, an alien need not complete a prescribed application and may request, through DOS or DHS, as part of the immigration process, that we assign a Social Security number and issue a Social Security number card to him or her. An alien will request the assignment of a Social Security number through this process in the manner provided by DOS and DHS.

(c) *How numbers are assigned*—(1) *Application.* If you complete a prescribed application, we will require you to furnish evidence, as necessary, to assist us in establishing your age, U.S. citizenship or alien status, true identity, and previously assigned Social Security number(s), if any. (See § 422.107 for evidence requirements.) We may require you to undergo a personal interview before we assign a Social Security number. If you request evidence to show that you have filed a prescribed application for a Social Security number card, we may furnish you with a receipt or equivalent document. We will electronically screen the data from the prescribed application against our files. If we find that you have not been assigned a Social Security number previously, we will assign one to you and issue a Social Security number card. However, if we find that you have been

assigned a Social Security number previously, we will issue a replacement Social Security number card.

(2) *Request on birth registration document.* Where a parent has requested a social security number for a newborn child as part of an official birth registration process described in paragraph (b)(2) of this section, the State vital statistics office will electronically transmit the request to SSA's central office in Baltimore, MD, along with the child's name, date and place of birth, sex, mother's maiden name, father's name (if shown on the birth registration), address of the mother, and birth certificate number. This birth registration information received by SSA from the State vital statistics office will be used to establish the age, identity, and U.S. citizenship of the newborn child. Using this information, SSA will assign a number to the child and send the social security number card to the child at the mother's address.

(3) *Request on immigration document.* Where an alien has requested a social security number as part of the immigration process described in paragraph (b)(3) of this section, Department of Homeland Security will electronically transmit to SSA's central office in Baltimore, MD, the data elements collected for immigration purposes, by both Department of Homeland Security and DOS, that SSA needs to assign the alien a social security number along with other data elements as agreed upon by SSA and DOS or Department of Homeland Security. The data elements received by SSA will be used to establish the age, identity, and lawful alien status or authority to work of the alien. Using this data, SSA will assign a social security number to the alien and send the social security number card to him/her at the address the alien provides to DOS or Department of Homeland Security (or to the sponsoring agency of a refugee, if no personal mailing address is available).

(d) *Social security number cards.* A person who is assigned a social security number will receive a social security number card from SSA within a reasonable time after the number has been assigned. (See § 422.104 regarding the assignment of social security number cards to aliens.) Social security number cards are the property of SSA and must be returned upon request.

(e) *Replacement of social security number card*— (1) *When we may issue you a replacement card.* We may issue you a replacement Social Security number card, subject to the limitations in paragraph (e)(2) of this section. You must complete a prescribed application to receive a replacement Social Security number card. We follow the evidence requirements in § 422.107 when we issue you a replacement Social Security number card.

(2) *Limits on the number of replacement cards.* There are limits on the number of replacement social security number cards we will issue to you. You may receive no more than three replacement social security number cards in a year and ten replacement social security number cards per lifetime. We may allow for reasonable exceptions to these limits on a case-by-case basis in compelling circumstances. We also will consider name changes (*i.e.*, verified legal changes to the first name and/or surname) and changes in alien status which result in a necessary change to a restrictive legend on the SSN card (see paragraph (e)(3) of this section) to be compelling circumstances, and will not include either of these changes when determining the yearly or lifetime limits. We may grant an exception if you provide evidence establishing that you would experience significant hardship if the card were not issued. An example of significant hardship includes, but is not limited to, providing SSA with a referral letter from a governmental social services agency indicating that the social security number card must be shown in order to obtain benefits or services.

(3) *Restrictive legend change defined.* Based on a person's immigration status, a restrictive legend may appear on the face of an SSN card to indicate that work is either not authorized or that work may be performed only with Department of Homeland Security (DHS) authorization. This restrictive legend appears on the card above the individual's name and SSN. Individuals without work authorization in the U.S.

receive SSN cards showing the restrictive legend, ''Not Valid for Employment;'' and SSN cards for those individuals who have temporary work authorization in the U.S. show the restrictive legend, ''Valid For Work Only With DHS Authorization.'' U.S. citizens and individuals who are permanent residents receive SSN cards without a restrictive legend. For the purpose of determining a change in restrictive legend, the individual must have a change in immigration status or citizenship which results in a change to or the removal of a restrictive legend when compared to the prior SSN card data. An SSN card request based upon a change in immigration status or citizenship which does not affect the restrictive legend will count toward the yearly and lifetime limits, as in the case of Permanent Resident Aliens who attain U.S. citizenship.

[55 FR 46664, Nov. 6, 1990, as amended at 63 FR 56554, Oct. 22, 1998; 69 FR 55076, Sept. 13, 2004; 70 FR 74651, Dec. 16, 2005; 71 FR 43056, July 31, 2006; 80 FR 47833, Aug. 10, 2015]

§ 422.104 Who can be assigned a social security number.

(a) *Persons eligible for SSN assignment.* We can assign you a social security number if you meet the evidence requirements in § 422.107 and you are:

(1) A United States citizen; or

(2) An alien lawfully admitted to the United States for permanent residence or under other authority of law permitting you to work in the United States (§ 422.105 describes how we determine if a nonimmigrant alien is permitted to work in the United States); or

(3) An alien who cannot provide evidence of alien status showing lawful admission to the U.S., or an alien with evidence of lawful admission but without authority to work in the U.S., if the evidence described in § 422.107(e) does not exist, but only for a valid nonwork reason. We consider you to have a valid nonwork reason if:

(i) You need a social security number to satisfy a Federal statute or regulation that requires you to have a social security number in order to receive a Federally-funded benefit to which you have otherwise established entitlement and you reside either in or outside the U.S.; or

(ii) You need a social security number to satisfy a State or local law that requires you to have a social security number in order to receive public assistance benefits to which you have otherwise established entitlement, and you are legally in the United States.

(b) *Annotation for a nonwork purpose.* If we assign you a social security number as an alien for a nonwork purpose, we will indicate in our records that you are not authorized to work. We will also mark your social security card with a legend such as ''NOT VALID FOR EMPLOYMENT.'' If earnings are reported to us on your number, we will inform the Department of Homeland Security of the reported earnings.

[68 FR 55308, Sept. 25, 2003]

§ 422.105 Presumption of authority of nonimmigrant alien to engage in employment.

(a) *General rule.* Except as provided in paragraph (b) of this section, if you are a nonimmigrant alien, we will presume that you have permission to engage in employment if you present a Form I–94 issued by the Department of Homeland Security that reflects a classification permitting work. (*See* 8 CFR 274a.12 for Form I–94 classifications.) If you have not been issued a Form I–94, or if your Form I–94 does not reflect a classification permitting work, you must submit a current document authorized by the Department of Homeland Security that verifies authorization to work has been granted e.g., an employment authorization document, to enable SSA to issue an SSN card that is valid for work. (*See* 8 CFR 274a.12(c)(3).)

(b) *Exception to presumption for foreign academic students in immigration classification F–1.* If you are an F–1 student and do not have a separate DHS employment authorization document as described in paragraph (a) of this section *and* you are not authorized for curricular practical training (CPT) as shown on your Student and Exchange Visitor Information System (SEVIS) Form I–20, Certificate of Eligibility for Nonimmigrant (F–1) Student Status, we will not presume you have authority to engage in employment without additional evidence. Before we will assign an SSN to you that is valid for

work, you must give us proof (as explained in § 422.107(e)(2)) that:

(1) You have authorization from your school to engage in employment, and

(2) You are engaging in, or have secured, employment.

[69 FR 55075, Sept. 13, 2004]

§ 422.106 Filing applications with other government agencies.

(a) *Agreements.* In carrying out its responsibilities to assign social security numbers, SSA enters into agreements with the United States Attorney General, other Federal officials, and State and local welfare agencies. An example of these agreements is discussed in paragraph (b) of this section.

(b) *States.* SSA and a State may enter into an agreement that authorizes employees of a State or one of its subdivisions to accept social security number card applications from some individuals who apply for or are receiving welfare benefits under a State-administered Federal program. Under such an agreement, a State employee is also authorized to certify the application to show that he or she has reviewed the required evidence of the applicant's age, identity, and U.S. citizenship. The employee is also authorized to obtain evidence to assist SSA in determining whether the applicant has previously been assigned a number. The employee will then send the application to SSA which will issue a social security number card.

[55 FR 46665, Nov. 6, 1990, as amended at 63 FR 56555, Oct. 22, 1998]

§ 422.107 Evidence requirements.

(a) *General.* To obtain an original Social Security number card, you must submit convincing evidence of your age, U.S. citizenship or alien status, and true identity, as described in paragraphs (b) through (e) of this section. If you apply for a replacement Social Security number card, you must submit convincing evidence of your true identity, as described in paragraph (c) of this section, and you may also be required to submit convincing evidence of your age and U.S. citizenship or alien status, as described in paragraphs (b), (d), and (e) of this section. If you apply for an original or replacement Social Security number card, you are also required to submit evidence to assist us in determining the existence and identity of any previously assigned Social Security number(s). We will not assign a Social Security number or issue an original or replacement card unless we determine that you meet all of the evidence requirements. We require an in-person interview if you are age 12 or older and are applying for an original Social Security number, unless you are an alien who requests a Social Security number as part of the immigration process described in § 422.103(b)(3). We may require an in-person interview of other applicants. All paper or other tangible documents submitted as evidence must be originals or copies of the original documents certified by the custodians of the original records and are subject to verification. We may also verify your eligibility factors, as described in paragraphs (b) through (e) of this section, through other means, including but not limited to data matches or other agreements with government agencies or other entities that we determine can provide us with appropriate and secure verification of your eligibility factors.

(b) *Evidence of age.* An applicant for an original social security number is required to submit convincing evidence of age. An applicant for a replacement social security number card may also be required to submit evidence of age. Examples of the types of evidence which may be submitted are a birth certificate, a religious record showing age or date of birth, a hospital record of birth, or a passport. (*See* § 404.716.)

(c) *Evidence of identity.* (1) If you apply for an original Social Security number or a replacement Social Security number card, you are required to submit convincing evidence of your identity. Evidence of identity may consist of a driver's license, identification card, school record, medical record, marriage record, passport, Department of Homeland Security document, or other similar evidence serving to identify you. The evidence must contain sufficient information to identify you, including your name and:

(i) Your age, date of birth, or parents' names; or

(ii) Your photograph or physical description.

(2) A birth record is not sufficient evidence to establish identity for these purposes.

(d) *Evidence of U.S. citizenship.* Generally, an applicant for an original or replacement social security number card may prove that he or she is a U.S. citizen by birth by submitting a birth certificate or other evidence, as described in paragraphs (b) and (c) of this section, that shows a U.S. place of birth. Where a foreign-born applicant claims U.S. citizenship, the applicant for a social security number or a replacement social security number card is required to present documentary evidence of U.S. citizenship. If required evidence is not available, a social security number card will not be issued until satisfactory evidence of U.S. citizenship is furnished. Any of the following is generally acceptable evidence of U.S. citizenship for a foreign-born applicant:

(1) Certificate of naturalization;

(2) Certificate of citizenship;

(3) U.S. passport;

(4) U.S. citizen identification card issued by the Department of Homeland Security;

(5) Consular report of birth (State Department form FS–240 or FS–545); or

(6) Other verification from the Department of Homeland Security, U.S. Department of State, or Federal or State court records confirming citizenship.

(e) *Evidence of alien status*—(1) *General evidence rules.* When a person who is not a U.S. citizen applies for an original social security number or a replacement social security number card, he or she is required to submit, as evidence of alien status, a current document issued by the Department of Homeland Security in accordance with that agency's regulations. The document must show that the applicant has been lawfully admitted to the United States, either for permanent residence or under authority of law permitting him or her to work in the United States, or that the applicant's alien status has changed so that it is lawful for him or her to work. If the applicant fails to submit such a document, a social security number card will not be issued. If the applicant submits an unexpired Department of Homeland Security document(s) which shows current authorization to work, a social security number will be assigned or verified and a card which can be used for work will be issued. If the authorization of the applicant to work is temporary or subject to termination by the Department of Homeland Security, the SSA records may be so annotated. If the document(s) does not provide authorization to work and the applicant wants a social security number for a work purpose, no social security number will be assigned. If the applicant requests the number for a nonwork purpose and provides evidence documenting that the number is needed for a valid nonwork purpose, the number may be assigned and the card issued will be annotated with a nonwork legend. The SSA record will be annotated to show that a number has been assigned and a card issued for a nonwork purpose. In that case, if earnings are later reported to SSA, the Department of Homeland Security will be notified of the report. SSA may also notify that agency if earnings are reported for a social security number that was valid for work when assigned but for which work authorization expired or was later terminated by the Department of Homeland Security SSA may also annotate the record with other remarks, if appropriate.

(2) *Additional evidence rules for F–1 students*—(i) *Evidence from your designated school official.* If you are an F–1 student and do not have a separate DHS employment authorization document as described in § 422.105(a) *and* you are not authorized for curricular practical training (CPT) as shown on your SEVIS Form I–20, Certificate of Eligibility for Nonimmigrant (F–1) Student Status, you must give us documentation from your designated school official that you are authorized to engage in employment. You must submit your SEVIS Form I–20, Certificate of Eligibility for Nonimmigrant (F–1) Student Status. You must also submit documentation from your designated school official that includes:

(A) The nature of the employment you are or will be engaged in, and

(B) The identification of the employer for whom you are or will be working.

(ii) *Evidence of your employment.* You must also provide us with documentation that you are engaging in, or have secured, employment; e.g., a statement from your employer.

(f) *Failure to submit evidence.* If the applicant does not comply with a request for the required evidence or other information within a reasonable time, SSA may attempt another contact with the applicant. If there is still no response, a social security number card will not be issued.

(g) *Inability to verify eligibility factors.* We will not issue an original or replacement Social Security number card when you present invalid or expired documents or when we are unable to verify the required evidence through other means, as described in paragraph (a) of this section. Invalid documents are either forged documents that supposedly were issued by the custodian of the record, or properly issued documents that were improperly changed after they were issued. An expired document is one that was valid for only a limited time and that time has passed.

[55 FR 46665, Nov. 6, 1990, as amended at 60 FR 32446, June 22, 1995; 62 FR 38456, July 18, 1997; 63 FR 56555, Oct. 22, 1998; 68 FR 55308, Sept. 25, 2003; 69 FR 55076, Sept. 13, 2004; 70 FR 74651, Dec. 16, 2005; 80 FR 47834, Aug. 10, 2015]

§ 422.108 Criminal penalties.

A person may be subject to criminal penalties for furnishing false information in connection with earnings records or for wrongful use or misrepresentation in connection with social security numbers, pursuant to section 208 of the Social Security Act and sections of title 18 U.S.C. (42 U.S.C. 408; 18 U.S.C. 1001 and 1546).

[39 FR 10242, Mar. 19, 1974]

§ 422.110 Individual's request for change in record.

(a) *Application.* If you wish to change the name or other personal identifying information you previously submitted in connection with an application for a Social Security number card, you must complete a prescribed application, except as provided in paragraph (b) of this section. You must prove your identity, and you may be required to provide other evidence. (See § 422.107 for evidence requirements.) You may complete a request for change in records in the manner we designate, including at any Social Security office, or, if you are outside the U.S., to the Department of Veterans Affairs Regional Office, Manila, Philippines, or to any U.S. Foreign Service post or U.S. military post. If your request is for a change of name on the card (that is, verified legal changes to the first name or surname, or both), we may issue you a replacement Social Security number card bearing the same number and the new name. We will grant an exception to the limitations specified in § 422.103(e)(2) for replacement Social Security number cards representing a change in name or, if you are an alien, a change to a restrictive legend shown on the card. (See § 422.103(e)(3) for the definition of a change to a restrictive legend.)

(b) *Assisting in enumeration.* We may enter into an agreement with officials of the Department of State and the Department of Homeland Security to assist us by collecting, as part of the immigration process, information to change the name or other personal identifying information you previously submitted in connection with an application or request for a social security number card. If your request is to change a name on the card (*i.e.*, verified legal changes to the first name and/or surname) or to correct the restrictive legend on the card to reflect a change in alien status, we may issue you a replacement card bearing the same number and the new name or legend. We will grant an exception from the limitations specified in § 422.103(e)(2) for replacement social security number cards representing a change of name or, if you are an alien, a change to a restrictive legend shown on the card. (See § 422.103(e)(3) for the definition of a change to a restrictive legend.)

[71 FR 43056, July 31, 2006, as amended at 80 FR 47834, Aug. 10, 2015]

§ 422.112 Employer identification numbers.

(a) *General.* Most employers are required by section 6109 of the Internal Revenue Code and by Internal Revenue Service (IRS) regulations at 26 CFR 31.6011(b)–1 to obtain an employer identification number (EIN) and to include it on wage reports filed with SSA. A sole proprietor who does not pay wages to one or more employees or who is not required to file any pension or excise tax return is not subject to this requirement. To apply for an EIN, employers file Form SS–4, ''Application for Employer Identification Number,'' with the IRS. For the convenience of employers, Form SS–4 is available at all SSA and IRS offices. Household employers, agricultural employers, and domestic corporations which elect social security coverage for employees of foreign subsidiaries who are citizens or residents of the U.S. may be assigned an EIN by IRS without filing an SS–4.

(b) *State and local governments.* When a State submits a modification to its agreement under section 218 of the Act, which extends coverage to periods prior to 1987, SSA will assign a special identification number to each political subdivision included in that modification. SSA will send the State a Form SSA–214–CD, ''Notice of Identifying Number,'' to inform the State of the special identification number(s). The special number will be used for reporting the pre-1987 wages to SSA. The special number will also be assigned to an interstate instrumentality if pre-1987 coverage is obtained and SSA will send a Form SSA–214–CD to the interstate instrumentality to notify it of the number assigned.

[60 FR 42433, Aug. 16, 1995, as amended at 64 FR 33016, June 21, 1999]

§ 422.114 Annual wage reporting process.

(a) *General.* Under the authority of section 232 of the Act, SSA and IRS have entered into an agreement that sets forth the manner by which SSA and IRS will ensure that the processing of employee wage reports is effective and efficient. Under this agreement, employers are instructed by IRS to file annual wage reports with SSA on paper Forms W-2, ''Wage and Tax Statement,'' and Forms W–3, ''Transmittal of Income and Tax Statements,'' or equivalent W-2 and W–3 magnetic media reports. Special versions of these forms for Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands are also filed with SSA. SSA processes all wage reporting forms for updating to SSA's earnings records and IRS tax records, identifies employer reporting errors and untimely filed forms for IRS penalty assessment action, and takes action to correct any reporting errors identified, except as provided in paragraph (c) of this section. SSA also processes Forms W–3c, ''Transmittal of Corrected Income Tax Statements,'' and W-2c, ''Statement of Corrected Income and Tax Amounts'' (and their magnetic media equivalents) that employers are required to file with SSA when certain previous reporting errors are discovered.

(b) *Magnetic media reporting requirements.* Under IRS regulations at 26 CFR 301.6011–2, employers who file 250 or more W-2 wage reports per year must file them on magnetic media in accordance with requirements provided in SSA publications, unless IRS grants the employer a waiver. Basic SSA requirements are set out in SSA's Technical Instruction Bulletin No. 4, ''Magnetic Media Reporting.'' Special filing requirements for U.S. territorial employers are set out in SSA Technical Instruction Bulletins No. 5 (Puerto Rico), No. 6 (Virgin Islands), and No. 7 (Guam and American Samoa). At the end of each year, SSA mails these technical instructions to employers (or third parties who file wage reports on their behalf) for their use in filing wage reports for that year.

(c) *Processing late and incorrect magnetic media wage transmittals.* If an employer's transmittal of magnetic media wage reports is received by SSA after the filing due date, SSA will notify IRS of the late filing so that IRS can decide whether to assess penalties for late filing, pursuant to section 6721 of the Internal Revenue Code. If reports do not meet SSA processing requirements (unprocessable reports) or are out of balance on critical money amounts, SSA will return them to the employer

to correct and resubmit. In addition, beginning with wage reports filed for tax year 1993, if 90 percent or more of an employer's magnetic media wage reports have no social security numbers or incorrect employee names or social security numbers so that SSA is unable to credit their wages to its records, SSA will not attempt to correct the errors, but will instead return the reports to the employer to correct and resubmit (see also § 422.120(b)). An employer must correct and resubmit incorrect and unprocessable magnetic media wage reports to SSA within 45 days from the date of the letter sent with the returned report. Upon request, SSA may grant the employer a 15-day extension of the 45-day period. If an employer does not submit corrected reports to SSA within the 45-day (or, if extended by SSA, 60-day) period, SSA will notify IRS of the late filing so that IRS can decide whether to assess a penalty. If an employer timely resubmits the reports as corrected magnetic media reports, but they are unprocessable or out of balance on W-2 money totals, SSA will return the resubmitted reports for the second and last time for the employer to correct and return to SSA. SSA will enclose with the resubmitted and returned forms a letter informing the employer that he or she must correct and return the reports to SSA within 45 days or be subject to IRS penalties for late filing.

(d) *Paper form reporting requirements.* The format and wage reporting instructions for paper forms are determined jointly by IRS and SSA. Basic instructions on how to complete the forms and file them with SSA are provided in IRS forms materials available to the public. In addition, SSA provides standards for employers (or third parties who file wage reports for them) to follow in producing completed reporting forms from computer software; these standards appear in SSA publication, ''Software Specifications and Edits for Annual Wage Reporting.'' Requests for this publication should be sent to: Social Security Administration, Office of Financial Policy and Operations, Attention: AWR Software Standards Project, P.O. Box 17195, Baltimore, MD 21235.

(e) *Processing late and incorrect paper form reports.* If SSA receives paper form wage reports after the due date, SSA will notify IRS of the late filing so that IRS can decide whether to assess penalties for late filing, pursuant to section 6721 of the Internal Revenue Code. SSA will ask an employer to provide replacement forms for illegible, incomplete, or clearly erroneous paper reporting forms, or will ask the employer to provide information necessary to process the reports without having to resubmit corrected forms. (For wage reports where earnings are reported without a social security number or with an incorrect name or social security number, see § 422.120.) If an employer fails to provide legible, complete, and correct W-2 reports within 45 days, SSA may identify the employers to IRS for assessment of employer reporting penalties.

(f) *Reconciliation of wage reporting errors.* After SSA processes wage reports, it matches them with the information provided by employers to the IRS on Forms 941, ''Employer's Quarterly Federal Tax Return,'' for that tax year. Based upon this match, if the total social security or medicare wages reported to SSA for employees is less than the totals reported to IRS, SSA will write to the employer and request corrected reports or an explanation for the discrepancy. If the total social security or medicare wages reported to SSA for employees is more than the totals reported to IRS, IRS will resolve the difference with the employer. If the employer fails to provide SSA with corrected reports or information that shows the wage reports filed with SSA are correct, SSA will ask IRS to investigate the employer's wage and tax reports to resolve the discrepancy and to assess any appropriate reporting penalties.

[60 FR 42433, Aug. 16, 1995]

§ 422.120 Earnings reported without a social security number or with an incorrect employee name or social security number.

(a) *Correcting an earnings report.* If an employer reports an employee's wages to SSA without the employee's social security number or with a different

employee name or social security number than shown in SSA's records for him or her, SSA will write to the employee at the address shown on the wage report and request the missing or corrected information. If the wage report does not show the employee's address or shows an incomplete address, SSA will write to the employer and request the missing or corrected employee information. SSA notifies IRS of all wage reports filed without employee social security numbers so that IRS can decide whether to assess penalties for erroneous filing, pursuant to section 6721 of the Internal Revenue Code. If an individual reports self-employment income to IRS without a social security number or with a different name or social security number than shown in SSA's records, SSA will write to the individual and request the missing or corrected information. If the employer, employee, or self-employed individual does not provide the missing or corrected report information in response to SSA's request, the wages or self-employment income cannot be identified and credited to the proper individual's earnings records. In such cases, the information is maintained in a ''Suspense File'' of uncredited earnings. Subsequently, if identifying information is provided to SSA for an individual whose report is recorded in the Suspense File, the wages or self-employment income then may be credited to his or her earnings record.

(b) *Returning incorrect reports.* SSA may return to the filer, unprocessed, an employer's annual wage report submittal if 90 percent or more of the wage reports in that submittal are unidentified or incorrectly identified. In such instances, SSA will advise the filer to return corrected wage reports within 45 days to avoid any possible IRS penalty assessment for failing to file correct reports timely with SSA. (See also § 422.114(c).) Upon request, SSA may grant the employer a 15-day extension of the 45-day period.

[60 FR 42434, Aug. 16, 1995]

§ 422.122 Information on deferred vested pension benefits.

(a) *Claimants for benefits.* Each month, SSA checks the name and social security number of each new claimant for social security benefits or for hospital insurance coverage to see whether the claimant is listed in SSA's electronic pension benefit record. This record contains information received from IRS on individuals for whom private pension plan administrators have reported to IRS, as required by section 6057 of the Internal Revenue Code, as possibly having a right to future retirement benefits under the plan. SSA sends a notice to each new claimant for whom it has pension benefit information, as required by section 1131 of the Act. If the claimant filed for the lump-sum death payment on the social security account of a relative, SSA sends the claimant the pension information on the deceased individual. In either case, SSA sends the notice after it has made a decision on the claim for benefits. The notice shows the type, payment frequency, and amount of pension benefit, as well as the name and address of the plan administrator as reported to the IRS. This information can then be used by the claimant to claim any pension benefits still due from the pension plan.

(b) *Requesting deferred vested pension benefit information from SSA files.* Section 1131 of the Act also requires SSA to provide available pension benefit information on request. SSA will provide this pension benefit information only to the individual who has the pension coverage (or a legal guardian or parent, in the case of a minor, on the individual's behalf). However, if the individual is deceased, the information may be provided to someone who would be eligible for any underpayment of benefits that might be due the individual under section 204(d) of the Act. All requests for such information must be in writing and should contain the following information: the individual's name, social security number, date of birth, and any information the requestor may have concerning the name of the pension plan involved and the month and year coverage under the plan ended; the name and address of the person to whom the information is to be sent; and the requester's signature under the following statement: ''I am the individual to whom the information applies (or ''I am related to the individual as

his or her _____''). I know that if I make any representation which I know is false to obtain information from Social Security records, I could be punished by a fine or imprisonment or both.'' Such requests should be sent to: Social Security Administration, Office of Central Records Operations, P.O. Box 17055, Baltimore, Maryland 21235.

[60 FR 42434, Aug. 16, 1995]

§ 422.125 Statements of earnings; resolving earnings discrepancies.

(a) *Obtaining a statement of earnings and estimated benefits.* An individual may obtain a statement of the earnings on his earnings record and an estimate of social security benefits potentially payable on his record either by writing, calling, or visiting any social security office, or by waiting until we send him one under the procedure described in § 404.812 of this chapter. An individual may request this statement by completing the proper form or by otherwise providing the information the Social Security Administration requires, as explained in § 404.810(b) of this chapter.

(b) *Statement of earnings and estimated benefits.* Upon receipt of such a request or as required by section 1143(c) of the Social Security Act, the Social Security Administration will provide the individual, without charge, a statement of earnings and benefit estimates or an earnings statement. See §§ 404.811 through 404.812 of this chapter concerning the information contained in these statements.

(c) *Detailed earnings statements.* A more detailed earnings statement will be furnished upon request, generally without charge, where the request is program related under § 402.170 of this part. If the request for a more detailed statement is not program related under § 402.170 of this part, a charge will be imposed according to the guidelines set out in § 402.175 of this part.

(d) *Request for revision of earnings records.* If an individual disagrees with a statement of earnings credited to his social security account, he may request a revision by writing to the Bureau of Data Processing and Accounts, Social Security Administration, Baltimore, MD 21235, or by calling at or writing to any social security district office or branch office or, if the individual is in the Philippines, by calling at or writing to the Veterans' Administration Regional Office, Manila, Philippines. Upon receipt of a request for revision, the Social Security Administration will initiate an investigation of the individual's record of earnings. Form OAR–7008, ''Statement of Employment for Wages and Self-Employment,'' is used by the Social Security Administration for obtaining information from the individual requesting a revision to aid the Administration in the investigation. These forms are available at any of the sources listed in this paragraph. If an individual receives a Form OAR–7008 from the Bureau of Data Processing and Accounts, the completed form should be returned to that office. In the course of the investigation the district office or branch office, where appropriate, contacts the employer and the employee or the self-employed individual, whichever is applicable, for the purpose of obtaining the information and evidence necessary to reconcile any discrepancy between the allegations of the individual and the records of the Administration. See subpart I of part 404 of this chapter for requirements for filing requests for revision, and for limitation on the revision of records of earnings.

(e) *Notice to individual of determination.* After the investigation has been completed and a determination affecting the individual's earnings record has been made, the Social Security Administration will notify the individual in writing of the status of his earnings record and inform him at the same time of the determination made in his case and of his right to a reconsideration if he is dissatisfied with such determination (see § 422.140).

(f) *Notice to individual of adverse adjustment of his account.* Written notice is given to an individual or his survivor in any case where the Social Security Administration adversely adjusts the individual's self-employment income. Where, subsequent to the issuance of a statement of earnings to an individual, an adverse adjustment is made of an amount of wages included in the statement, written notice of the adverse adjustment is given to the individual or

his survivor. Written notice of the adverse adjustment is also given to the survivor if the statement of earnings had been given to such survivor. The individual or his survivor is requested to notify the Social Security Administration promptly if he disagrees, and he is informed that the adjustment will become final unless he notifies the Administration of his disagreement (if any) within 6 months from the date of the letter, or within 3 years, 3 months, and 15 days after the year to which the adjustment relates, whichever is later.

[32 FR 13653, Sept. 29, 1967, as amended at 35 FR 7891, May 22, 1970; 35 FR 8426, May 29, 1970; 39 FR 26721, July 23, 1974; 41 FR 50998, Nov. 19, 1976; 50 FR 28568, July 15, 1985; 57 FR 54919, Nov. 23, 1992; 61 FR 18078, Apr. 24, 1996; 65 FR 16816, Mar. 30, 2000]

§ 422.130 Claim procedure.

(a) *General.* The Social Security Administration provides facilities for the public to file claims and to obtain assistance in completing them. An appropriate application form and related forms for use in filing a claim for monthly benefits, the establishment of a period of disability, a lump-sum death payment, or entitlement to hospital insurance benefits or supplementary medical insurance benefits can be obtained from any district office, branch office, contact station, or resident station of the Social Security Administration, from the Division of Foreign Claims, Post Office Box 1756, Baltimore, MD 21203, or from the Veteran's Administration Regional Office, Manila, Philippines. See § 404.614 of this chapter for offices at which applications may be filed. See 42 CFR part 405, subpart A, for conditions of entitlement to hospital insurance benefits and 42 CFR part 405, subpart B, for information relating to enrollment under the supplementary medical insurance benefits program.

(b) *Submission of evidence.* An individual who files an application for monthly benefits, the establishment of a period of disability, a lump-sum death payment, or entitlement to hospital insurance benefits or supplementary medical insurance benefits, either on his own behalf or on behalf of another, must establish by satisfactory evidence the material allegations in his application, except as to earnings shown in the Social Security Administration's records (*see* subpart H of part 404 of this chapter for evidence requirements in nondisability cases and subpart P of part 404 of this chapter for evidence requirements in disability cases). Instructions, report forms, and forms for the various proofs necessary are available to the public in district offices, branch offices, contact stations, and resident stations of the Social Security Administration, and the Veteran's Administration Regional Office, Manila, Philippines. These offices assist individuals in preparing their applications and in obtaining the proofs required in support of their applications.

(c) *Determinations and notice to individuals.* In the case of an application for benefits, the establishment of a period of disability, a lump-sum death payment, a recomputation of a primary insurance amount, or entitlement to hospital insurance benefits or supplementary medical insurance benefits, after obtaining the necessary evidence, we will determine, based on the preponderance of the evidence (see §§ 404.901 and 416.1401 of this chapter) as to the entitlement of the individual claiming or for whom is claimed such benefits, and will notify the applicant of the determination and of his right to appeal. Section 404.1503 of this chapter has a discussion of the respective roles of State agencies and the Administration in the making of disability determinations and information regarding initial determinations as to entitlement or termination of entitlement in disability claims. See section 1869(a) of the Social Security Act for determinations under the health insurance for the aged program and sections 1816 and 1842 of the Act for the role of intermediaries, carriers, and State agencies in performing certain functions under such program, e.g., payment of claims pursuant to an agreement with the Social Security Administration.

[32 FR 13653, Sept. 29, 1967, as amended at 44 FR 34942, June 18, 1979; 65 FR 16816, Mar. 30, 2000; 71 FR 16461, Mar. 31, 2006; 73 FR 76945, Dec. 18, 2008; 76 FR 24812, May 3, 2011]

§ 422.135 Reports by beneficiaries.

(a) A recipient of monthly benefits and a person for whom a period of disability has been established are obligated to report to the Social Security Administration the occurrence of certain events which may suspend or terminate benefits or which may cause a cessation of a period of disability. (See §§ 404.415 *et seq.* and 404.1571 of this chapter.)

(b) A person who files an application for benefits receives oral and written instructions about events which may cause a suspension or termination, and also appropriate forms and instruction cards for reporting such events. Pursuant to section 203(h)(1)(A) of the Act, under certain conditions a beneficiary must, within 3 months and 15 days after the close of a taxable year, submit to the Social Security Administration and annual report of his earnings and of any substantial services in self-employment performed during such taxable year. The purpose of the annual report is to furnish the Social Security Administration with information for making final adjustments in the payment of benefits for that year. An individual may also be requested to submit other reports to the Social Security Administration from time to time.

[32 FR 13653, Sept. 29, 1967, as amended at 65 FR 16816, Mar. 30, 2000]

§ 422.140 Reconsideration of initial determination.

If you are dissatisfied with an initial determination with respect to entitlement to monthly benefits, a lump-sum death payment, a period of disability, a revision of an earnings record, with respect to any other right under title II of the Social Security Act, or with respect to entitlement to hospital insurance benefits or supplementary medical insurance benefits, you may request that we reconsider the initial determination. The information in § 404.1503 of this chapter as to the respective roles of State agencies and the Social Security Administration in making disability determinations is also generally applicable to the reconsideration of initial determinations involving disability. However, in cases in which a disability hearing as described in §§ 404.914 through 404.918 and §§ 416.1414 through 416.1418 of this chapter is available, the reconsidered determination may be issued by a disability hearing officer or the Associate Commissioner for Disability Programs or his or her delegate. After the initial determination has been reconsidered, we will mail you written notice and inform you of your right to a hearing before an administrative law judge (*see* § 422.201).

[76 FR 24812, May 3, 2011]

Subpart C—Procedures of the Office of Disability Adjudication and Review

AUTHORITY: Secs. 205, 221, and 702(a)(5) of the Social Security Act (42 U.S.C. 405, 421, and 902(a)(5)); 30 U.S.C. 923(b).

§ 422.201 Material included in this subpart.

This subpart describes in general the procedures relating to hearings before an administrative law judge of the Office of Disability Adjudication and Review, review by the Appeals Council of the hearing decision or dismissal, and court review in cases decided under the procedures in parts 404, 405, 408, 410, and 416 of this chapter. It also describes the procedures for requesting such hearing or Appeals Council review, and for instituting a civil action for court review for cases decided under these parts. Procedures related to hearings before an administrative law judge, review by the Appeals Council, or court review in claims adjudicated under the procedures in part 405 of this chapter are explained in subparts D, E, and F of part 405 of this chapter. For detailed provisions relating to hearings before an administrative law judge, review by the Appeals Council, and court review, see the following references as appropriate to the matter involved:

(a) Title II of the Act, §§ 404.929 through 404.983 of this chapter;

(b) Title VIII of the Act, §§ 408.1040 through 408.1060 of this chapter;

(c) Title XVI of the Act, §§ 416.1429 through 416.1483 of this chapter;

(d) Part B of title IV of the Federal Mine Safety and Health Act of 1977 as amended, §§ 410.630 through 410.670.

[41 FR 53791, Dec. 9, 1976, as amended at 44 FR 34942, June 18, 1979; 54 FR 4268, Jan. 30, 1989; 71 FR 16462, Mar. 31, 2006; 76 FR 24812, May 3, 2011]

§ 422.203 Hearings.

(a) *Right to request a hearing.* (1) After a reconsidered or a revised determination (i) of a claim for benefits or any other right under title II of the Social Security Act; or (ii) of eligibility or amount of benefits or any other matter under title XVI of the Act, except where an initial or reconsidered determination involving an adverse action is revised, after such revised determination has been reconsidered; or (iii) as to entitlement under part A or part B of title XVIII of the Act, or as to the amount of benefits under part A of such title XVIII (where the amount in controversy is $100 or more); or of health services to be provided by a health maintenance organization without additional costs (where the amount in controversy is $100 or more); or as to the amount of benefits under part B of title XVIII (where the amount in controversy is $500 or more); or as to a determination by a peer review organization (PRO) under title XI (where the amount in controversy is $200 or more); or as to certain determinations made under section 1154, 1842(1), 1866(f)(2), or 1879 of the Act; any party to such a determination may, pursuant to the applicable section of the Act, file a written request for a hearing on the determination. After a reconsidered determination of a claim for benefits under part B of title IV (Black Lung benefits) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 921 through 925), a party to the determination may file a written request for hearing on the determination.

(2) After (i) a reconsidered or revised determination that an institution, facility, agency, or clinic does not qualify as a provider of services, or (ii) a determination terminating an agreement with a provider of services, such institution, facility, agency, or clinic may, pursuant to section 1866 of the Act, file a written request for a hearing on the determination.

(3) After (i) a reconsidered or revised determination that an independent laboratory, supplier of portable X-ray services, or end-stage renal disease treatment facility or other person does not meet the conditions for coverage of its services or (ii) a determination that it no longer meets such conditions has been made, such laboratory, supplier, treatment facility may, under 42 CFR 498.40 of this chapter, file a written request for a hearing on the determination. (For hearing rights of independent laboratories, suppliers of portable X-ray services, and end-stage renal disease treatment facilities and other person see 42 CFR 498.5.)

(b) *Request for hearing.* (1) A request for a hearing under paragraph (a) of this section may be made on Form HA–501, ''Request for Hearing,'' or Form HA–501.1, ''Request for Hearing, part A Hospital Insurance Benefits,'' or by any other writing requesting a hearing. The request shall be filed at an office of the Social Security Administration, usually a district office or a branch office, or at the Veterans' Administration Regional Office in the Philippines (except in title XVI cases), or at a hearing office of the Office of Hearings and Appeals, or with the Appeals Council. A qualified railroad retirement beneficiary may, if he prefers, file a request for a hearing under part A of title XVIII with the Railroad Retirement Board. Form HA–501 may be obtained from any social security district office or branch office, from the Office of Hearings and Appeals, Social Security Administration, P.O. Box 3200, Arlington, VA 22203, or from any other office where a request for a hearing may be filed.

(2) Unless for good cause shown an extension of time has been granted, a request for hearing must be filed within 60 days after the receipt of the notice of the reconsidered or revised determination, or after an initial determination described in 42 CFR 498.3 (b) and (c) (see §§ 404.933, 410.631, and 416.1433 of this chapter and 42 CFR 405.722, 498.40, and 417.260.)

(c) *Hearing decision or other action.* Generally, the administrative law judge will either decide the case after hearing (unless hearing is waived) or, if appropriate, dismiss the request for

hearing. With respect to a hearing on a determination under paragraph (a)(1) of this section, the administrative law judge may certify the case with a recommended decision to the Appeals Council for decision. If the determination on which the hearing request is based relates to the amount of benefits under part A or B of title XVIII of the Act, to health services to be provided by a health maintenance organization without additional costs, or to PRO determinations, the administrative law judge shall dismiss the request for hearing if he or she finds that the amount in controversy is less than $100 for appeals arising under part A or concerning health maintenance organization benefits; less than $200 for appeals arising from PRO determinations; and less than $500 for appeals arising under part B. The administrative law judge, or an attorney advisor under §§ 404.942 or 416.1442 of this chapter, must base the hearing decision on the preponderance of the evidence offered at the hearing or otherwise included in the record.

[41 FR 53791, Dec. 9, 1976, as amended at 44 FR 34942, June 18, 1979; 51 FR 308, Jan. 3, 1986; 54 FR 4268, Jan. 30, 1989; 73 FR 76945, Dec. 18, 2008]

§ 422.205 Review by Appeals Council.

(a) Any party to a hearing decision or dismissal may request a review of such action by the Appeals Council. The Health Care Financing Administration or, as appropriate, the Office of the Inspector General is a party to a hearing on a determination under § 422.203 (a)(2) and (a)(3) and to administrative appeals involving matters under section 1128(b)(6) of the Act (see 42 CFR 498.42). This request may be made on Form HA–520, ''Request for Review of Hearing Decision/Order,'' or by any other writing specifically requesting review. Form HA–520 may be obtained from any social security district office or branch office, from the Office of Hearings and Appeals Social Security Administration, P.O. Box 3200, Arlington, VA 22203, or at any other office where a request for a hearing may be filed. (For time and place of filing, see §§ 404.968, 410.661, and 416.1468 of this chapter, and 42 CFR 405.724, 498.82 and 417.261.)

(b) Whenever the Appeals Council reviews a hearing decision under §§ 404.967 or 404.969, 410.662, 416.1467, or 416.1469 of this chapter, or 42 CFR 405.724 or 417.261 or 473.46 and the claimant does not appear personally or through representation before the Council to present oral argument, such review will be conducted by a panel of not less than two members of the Council designated in the manner prescribed by the Chairman or Deputy Chairman of the Council. In the event of disagreement between a panel composed of only two members, the Chairman or Deputy Chairman, or his delegate, who must be a member of the Council, shall participate as a third member of the panel. When the claimant appears in person or through representation before the Council in the location designated by the Council, the review will be conducted by a panel of not less than three members of the Council designated in the manner prescribed by the Chairman or Deputy Chairman. Concurrence of a majority of a panel shall constitute the decision of the Appeals Council unless the case is considered as provided under paragraph (e) of this section.

(c) The denial of a request for review of a hearing decision concerning a determination under § 422.203(a)(1) shall be by such appeals officer or appeals officers or by such member or members of the Appeals Council as may be designated in the manner prescribed by the Chair or Deputy Chair. The denial of a request for review of a hearing dismissal, the dismissal of a request for review, the denial of a request for review of a hearing decision whenever such hearing decision after such denial would not be subject to judicial review as explained in § 422.210(a), or the refusal of a request to reopen a hearing or Appeals Council decision concerning a determination under § 422.203(a)(1) shall be by such member or members of the Appeals Council as may be designated in the manner prescribed by the Chair or Deputy Chair.

(d) A review or a denial of review of a hearing decision or a dismissal of a request for review with respect to requests by parties under 42 CFR 498.82 or 1001.128 in accordance with § 498.83 will be conducted by a panel of at least two

members of the Appeals Council designated by the Chairman or Deputy Chairman and one person from the U.S. Public Health Service designated by the Surgeon General, Public Health Service, Department of Health and Human Services, or his delegate. This person shall serve on an ad hoc basis and shall be considered for this purpose as a member of the Appeals Council. Concurrence of a majority of the panel shall constitute the decision of the Appeals Council unless the case is considered as provided under paragraph (e) of this section.

(e) On call of the Chairman, the Appeals Council may meet en banc or a representative body of Appeals Council members may be convened to consider any case arising under paragraph (b), (c), or (d) of this section. Such representative body shall be comprised of a panel of not less than five members designated by the Chairman as deemed appropriate for the matter to be considered, including a person from the U.S. Public Health Service in a matter under paragraph (d) of this section. The Chairman or Deputy Chairman shall preside, or in his absence, the Chairman shall designate a member of the Appeals Council to preside. A majority vote of the designated panel, or of the members present and voting shall constitute the decision of the Appeals Council.

(f) The Chairman may designate an administrative law judge to serve as a member of the Appeals Council for temporary assignments. An administrative law judge shall not be designated to serve as a member on any panel where such panel is conducting review on a case in which such individual has been previously involved.

[41 FR 53792, Dec. 9, 1976, as amended at 44 FR 34942, June 18, 1979; 54 FR 4268, Jan. 30, 1989; 60 FR 7120, Feb. 7, 1995]

§ 422.210 Judicial review.

(a) *General.* A claimant may obtain judicial review of a decision by an administrative law judge if the Appeals Council has denied the claimant's request for review, or of a decision by the Appeals Council when that is the final decision of the Commissioner. A claimant may also obtain judicial review of a reconsidered determination, or of a decision of an administrative law judge, where, under the expedited appeals procedure, further administrative review is waived by agreement under §§ 404.926, 410.629d, or 416.1426 of this chapter or 42 CFR 405.718a–e as appropriate. For judicial review as to the amount of benefits under part A or part B of title XVIII of the Social Security Act, or of health services to be provided by a health maintenance organization without additional cost, the amount in controversy must be $1,000 or more as provided under section 1869(b) and section 1876(c)(5)(B) of the Act. For judicial review of a determination by a PRO, the amount in controversy must be $2,000 or more. An institution or agency may obtain judical review of a decision by the Appeals Council that it is not a provider of services, or of a decision by the Appeals Council terminating an agreement entered into by the institution or agency with the Commissioner (see section 1866(b)(2) of the Act). The Social Security Act does not provide for a right to judicial review of a final decision of the Commissioner regarding the status of an entity which is not a ''provider of services'', such as an independent laboratory. Providers of services or other persons may seek judicial review of a final administrative determination made pursuant to section 1128(b)(6) of the Act. There are no amount-in-controversy limitations on these rights of appeal.

(b) *Court in which to institute civil action.* Any civil action described in paragraph (a) of this section must be instituted in the district court of the United States for the judicial district in which the claimant resides or where such individual or institution or agency has his principal place of business. If the individual does not reside within any such judicial district, or if such individual or institution or agency does not have his principal place of business within any such judicial district, the civil action must be instituted in the District Court of the United States for the District of Columbia.

(c) *Time for instituting civil action.* Any civil action described in paragraph (a) of this section must be instituted within 60 days after the Appeals Council's notice of denial of request for review of

the administrative law judge's decision or notice of the decision by the Appeals Council is received by the individual, institution, or agency, except that this time may be extended by the Appeals Council upon a showing of good cause. For purposes of this section, the date of receipt of notice of denial of request for review of the presiding officer's decision or notice of the decision by the Appeals Council shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary. Where pursuant to the expedited appeals procedures an agreement has been entered into under 42 CFR 405.718c, a civil action under section 205(g) of the Act must be commenced within 60 days from the date of the signing of such agreement by, or on behalf of, the Commissioner, except where the time described in the first sentence of this paragraph (c) has been extended by the Commissioner upon a showing of good cause. Where pursuant to the expedited appeals procedures an agreement has been entered into under § 404.926, § 410.629d, or § 416.1426 of this chapter, a civil action under section 205(g) of the Act must be commenced within 60 days after the date the individual receives notice (a signed copy of the agreement will be mailed to the individual and will constitute notice) of the signing of such agreement by, or on behalf of, the Commissioner, except where the time described in this paragraph (c) has been extended by the Commissioner upon a showing of good cause.

(d) *Proper defendant.* Where any civil action described in paragraph (a) of this section is instituted, the person holding the Office of the Commissioner shall, in his official capacity, be the proper defendant. Any such civil action properly instituted shall survive notwithstanding any change of the person holding the Office of the Commissioner or any vacancy in such office. If the complaint is erroneously filed against the United States or against any agency, officer, or employee of the United States other than the Commissioner, the plaintiff will be notified that he has named an incorrect defendant and will be granted 60 days from the date of receipt of such notice in which to commence the action against the correct defendant, the Commissioner.

[41 FR 53792, Dec. 9, 1976, as amended at 44 FR 34942, June 18, 1979; 49 FR 46370, Nov. 26, 1984; 49 FR 48036, Dec. 10, 1984; 54 FR 4268, Jan. 30, 1989; 62 FR 38456, July 18, 1997]

Subpart D—Claims Collection

AUTHORITY: Secs. 204(f), 205(a), 702(a)(5), and 1631(b) of the Social Security Act (42 U.S.C. 404(f), 405(a), 902(a)(5), and 1383(b)); 5 U.S.C. 5514; 31 U.S.C. 3711(e); 31 U.S.C. 3716.

SOURCE: 62 FR 64278, Dec. 5, 1997, unless otherwise noted.

§ 422.301 Scope of this subpart.

(a) Except as provided in paragraphs (b) and (c) of this section, this subpart describes the procedures relating to collection of:

(1) Overdue administrative debts, and

(2) Overdue program overpayments described in §§ 404.527 and 416.590 of this chapter.

(b) This subpart does not apply to administrative debts owed by employees of the Social Security Administration, including, but not limited to, overpayment of pay and allowances.

(c) The following exceptions apply only to Federal salary offset as described in § 422.310(a)(1).

(1) We will not use this subpart to collect a debt while the debtor's disability benefits are stopped during the reentitlement period, under § 404.1592a(a)(2) of this chapter, because the debtor is engaging in substantial gainful activity.

(2) We will not use this subpart to collect a debt while the debtor's Medicare entitlement is continued because the debtor is deemed to be entitled to disability benefits under section 226(b) of the Social Security Act (42 U.S.C. 426(b)).

(3) We will not use this subpart to collect a debt if the debtor has decided to participate in the Ticket to Work and Self-Sufficiency Program and the debtor's ticket is in use as described in §§ 411.170 through 411.225 of this chapter.

[71 FR 38070, July 5, 2006]

§ 422.303 Interest, late payment penalties, and administrative costs of collection.

We may charge the debtor with interest, late payment penalties, and our costs of collection on delinquent debts covered by this subpart when authorized by our regulations issued in accordance with the Federal Claims Collection Standards (31 CFR 901.9).

[71 FR 38070, July 5, 2006]

§ 422.305 Report of overdue program overpayment debts to consumer reporting agencies.

(a) *Debts we will report.* We will report to consumer reporting agencies all overdue program overpayment debts over $25.

(b) *Notice to debtor.* Before we report any such debt to a consumer reporting agency, we will send the debtor written notice of the following:

(1) We have determined that payment of the debt is overdue;

(2) We will refer the debt to a consumer reporting agency at the expiration of not less than 60 calendar days after the date of the notice unless, within that 60-day period, the debtor pays the full amount of the debt or takes either of the actions described in paragraphs (b)(6) or (b)(7) of this section;

(3) The specific information we will provide to the consumer reporting agency, including information that identifies the debtor (e.g., name, address, and social security number) and the amount, status, and history of the debt;

(4) The debtor has the right to a complete explanation of the debt;

(5) The debtor may dispute the accuracy of the information to be provided to the consumer reporting agency;

(6) The debtor may request a review of the debt by giving us evidence showing that he or she does not owe all or part of the amount of the debt or that we do not have the right to collect it; and

(7) The debtor may request an installment payment plan.

(c) *Disputing the information that we would send to consumer reporting agencies.* If a debtor believes that the information we propose to send to consumer reporting agencies is incorrect, the debtor may ask us to correct such information. If, within 60 calendar days from the date of our notice described in paragraph (b) of this section, the debtor notifies us that any information to be sent to consumer reporting agencies is incorrect, we will not send the information to consumer reporting agencies until we determine the correct information.

[62 FR 64278, Dec. 5, 1997, as amended at 66 FR 67081, Dec. 28, 2001]

§ 422.306 Report of overdue administrative debts to credit reporting agencies.

(a) *Debts we will report.* We will report to credit reporting agencies all overdue administrative debts over $25. Some examples of administrative debts are as follows: debts for civil monetary penalties imposed under section 1140(b) of the Act, debts for unpaid fees for reimbursable services performed by SSA (e.g., disclosures of information), and contractor debts.

(b) *Notice to debtor.* Before we report any administrative debt to a credit reporting agency, we will send the debtor written notice of the following:

(1) We have determined that payment of the debt is overdue;

(2) We will refer the debt to a credit reporting agency at the expiration of not less than 60 calendar days after the date of the notice unless, within that 60-day period, the debtor pays the full amount of the debt or takes either of the actions described in paragraphs (b)(6) or (b)(7) of this section;

(3) The specific information we will provide to the credit reporting agency, including information that identifies the debtor (e.g., name, address, social security number, and employer identification number) and the amount, status, and history of the debt;

(4) The debtor has the right to a complete explanation of the debt;

(5) The debtor may dispute the accuracy of the information to be provided to the credit reporting agency;

(6) The debtor may request a review of the debt by giving us evidence showing that he or she does not owe all or part of the amount of the debt or that we do not have the right to collect it; and

(7) The debtor may request an installment payment plan.

[62 FR 64278, Dec. 5, 1997, as amended at 71 FR 38070, July 5, 2006]

§ 422.310 Collection of overdue debts by administrative offset.

(a) *Referral to the Department of the Treasury for offset.* (1) We recover overdue debts by offsetting Federal and State payments due the debtor through the Treasury Offset Program (TOP). TOP is a Government-wide delinquent debt matching and payment offset process operated by the Department of the Treasury, whereby debts owed to the Federal Government are collected by offsetting them against Federal and State payments owed the debtor. Federal payments owed the debtor include current ''disposable pay,'' defined in 5 CFR 550.1103, owed by the Federal Government to a debtor who is an employee of the Federal Government. Deducting from such disposable pay to collect an overdue debt owed by the employee is called ''Federal salary offset'' in this subpart.

(2) Except as provided in paragraphs (b) and (c) of § 422.301, we will use Federal salary offset to collect overdue debts from Federal employees, including employees of the Social Security Administration. A Federal employee's involuntary payment of all or part of a debt collected by Federal salary offset does not amount to a waiver of any rights which the employee may have under any statute or contract, unless a statute or contract provides for waiver of such rights.

(b) *Debts we refer.* We refer for administrative offset all qualifying debts that meet or exceed the threshold amounts used by the Department of the Treasury for collection from State and Federal payments, including Federal salaries.

(c) *Notice to debtor.* Before we refer any debt for collection by administrative offset, we will send the debtor written notice that explains all of the following:

(1) The nature and amount of the debt.

(2) We have determined that payment of the debt is overdue.

(3) We will refer the debt for administrative offset (except as provided in paragraph (c)(9) of this section) at the expiration of not less than 60 calendar days after the date of the notice unless, within that 60-day period:

(i) The debtor pays the full amount of the debt, or

(ii) The debtor takes any of the actions described in paragraphs (c)(6) or (c)(7) of this section.

(4) The frequency and amount of any Federal salary offset deduction (the payment schedule) expressed as a fixed dollar amount or percentage of disposable pay.

(5) The debtor may inspect or copy our records relating to the debt. If the debtor or his or her representative cannot personally inspect the records, the debtor may request and receive a copy of such records.

(6) The debtor may request a review of the debt by giving us evidence showing that the debtor does not owe all or part of the amount of the debt or that we do not have the right to collect it. The debtor may also request review of any payment schedule for Federal salary offset stated in the notice. If the debtor is an employee of the Federal Government and Federal salary offset is proposed, an official designated in accordance with 5 U.S.C. 5514(a)(2) will conduct the review.

(7) The debtor may request to repay the debt voluntarily through an installment payment plan.

(8) If the debtor knowingly furnishes any false or frivolous statements, representations, or evidence, the debtor may be subject to:

(i) Civil or criminal penalties under applicable statutes;

(ii) Appropriate disciplinary procedures under applicable statutes or regulations, when the debtor is a Federal employee.

(9) We will refer the debt for Federal salary offset at the expiration of not less than 30 calendar days after the date of the notice unless, within that 30 day period the debtor takes any actions described in paragraphs (c)(3)(i), (c)(6) or (c)(7) of this section.

(d) *Federal salary offset: amount, frequency and duration of deductions.* (1) We may collect the overdue debt from an employee of the Federal Government through the deduction of an

amount not to exceed 15% of the debtor's current disposable pay each payday.

(2) Federal salary offset will begin no sooner than the first payday following 30 calendar days after the date of the notice to the debtor described in paragraph (c) of this section.

(3) Once begun, Federal salary offset will continue until we recover the full amount of the debt, the debt is otherwise resolved, or the debtor's Federal employment ceases, whichever occurs first.

(4) After Federal salary offset begins, the debtor may request a reduction in the amount deducted from disposable pay each payday. When we determine that the amount deducted causes financial harm under the rules in § 422.415(b), (c), and (d) of this chapter, we will reduce that amount.

(e) *Refunds.* We will promptly refund to the debtor any amounts collected that the debtor does not owe. Refunds do not bear interest unless required or permitted by law or contract.

[71 FR 38070, July 5, 2006, as amended at 76 FR 65109, Oct. 20, 2011]

§ 422.315 Review of our records related to the debt.

(a) *Notification by the debtor.* The debtor may request to inspect or copy our records related to the debt.

(b) *Our response.* In response to a request from the debtor described in paragraph (a) of this section, we will notify the debtor of the location and time at which the debtor may inspect or copy our records related to the debt. We may also, at our discretion, mail to the debtor copies of the records relating to the debt.

§ 422.317 Review of the debt.

(a) *Notification and presentation of evidence by the debtor.* A debtor who receives a notice described in § 422.305(b), § 422.306(b), or § 422.310(c) has a right to have a review of the debt and the payment schedule for Federal salary offset stated in the notice. To exercise this right, the debtor must notify us and give us evidence that he or she does not owe all or part of the debt, or that we do not have the right to collect it, or that the payment schedule for Federal salary offset stated in the notice would cause financial hardship.

(1) If the debtor notifies us and presents evidence within 60 calendar days from the date of our notice (except as provided for Federal salary offset in paragraph (a)(3) of this section), we will not take the action described in our notice unless and until review of all of the evidence is complete and we send the debtor the findings that all or part of the debt is overdue and legally enforceable.

(2) If the debtor notifies us and presents evidence after that 60 calendar-day period expires (except as provided for Federal salary offset in paragraph (a)(4) of this section) and paragraph (b) of this section does not apply, the review will occur, but we may take the actions described in our notice without further delay.

(3) If the debtor notifies us and presents evidence within 30 calendar days from the date of our notice, we will not refer the debt for Federal salary offset unless and until review of all of the evidence is complete and we send the debtor the findings that all or part of the debt is overdue and legally enforceable and (if appropriate) the findings on the payment schedule for Federal salary offset.

(4) If the debtor notifies us and presents evidence after that 30 calendar-day period expires and paragraph (b) of this section does not apply, the review will occur, but we may refer the debt for Federal salary offset without further delay.

(b) *Good cause for failure to timely request review.* (1) If we decide that the debtor has good cause for failing to request review within the applicable period mentioned in paragraphs (a)(1) and (a)(3) of this section, we will treat the request for review as if we received it within the applicable period.

(2) We will determine good cause under the rules in § 422.410(b)(1) and (2) of this chapter.

(c) *Review of the evidence.* The review will cover our records and any evidence and statements presented by the debtor.

(d) *Special rules regarding Federal salary offset.* (1) When we use Federal salary offset to collect a debt owed by an employee of the Federal Government,

an official designated in accordance with 5 U.S.C. 5514(a)(2) will conduct the review described in this section and will issue the findings.

(2) In addition to the requirements in paragraphs (a) and (b) of this section, the Federal employee must submit the request for review in writing. The request must

(i) Be signed by the employee,

(ii) Explain with reasonable specificity the facts and evidence that support the employee's position, and

(iii) Include the names of any witnesses.

(3) In reviewing the payment schedule described in the notice to the Federal employee, the reviewing official must apply the rules in § 422.415(b), (c), and (d) of this chapter regarding financial hardship.

(4) The reviewing official will review our records and any documents, written statements, or other evidence submitted by the debtor and issue written findings.

(5) The reviewing official will complete the review within 60 calendar days from the date on which the request for review and the debtor's evidence are received. If the reviewing official does not complete the review within that 60-day period and the debt was referred to the Department of the Treasury for Federal salary offset, we will notify the Department of the Treasury to suspend Federal salary offset. Offset will not begin or resume before we send the debtor findings that all or part of the debt is overdue and legally enforceable or (if appropriate) findings on the payment schedule.

(e) *The findings.* (1) Following the review described in paragraphs (c) or (d) of this section, we will send the written findings to the debtor. The findings will state the nature and origin of the debt, the analysis, findings and conclusions regarding the amount and validity of the debt, and, when appropriate, the repayment schedule for Federal salary offset. Issuance of these findings will be the final action on the debtor's request for review.

(2) If the findings state that an individual does not owe the debt, or the debt is not overdue, or we do not have the right to collect it, we will not send information about the debt to consumer or other credit reporting agencies or refer the debt to the Department of the Treasury for administrative offset. If we had referred the debt to the Department of the Treasury for administrative offset, we will cancel that action. If we had informed consumer or credit reporting agencies about the debt, we will inform them of the findings.

(3) If the findings state that the payment schedule for Federal salary offset would cause financial hardship, we will notify the debtor and the Department of the Treasury of the new payment schedule.

[71 FR 38071, July 5, 2006]

Subpart E—Collection of Debts by Administrative Wage Garnishment

AUTHORITY: Secs. 205(a), 702(a)(5) and 1631(d)(1) of the Social Security Act (42 U.S.C. 405(a), 902(a)(5) and 1383(d)(1)) and 31 U.S.C. 3720D.

SOURCE: 68 FR 74184, Dec. 23, 2003, unless otherwise noted.

§ 422.401 What is the scope of this subpart?

This subpart describes the procedures relating to our use of administrative wage garnishment under 31 U.S.C. 3720D to recover past due debts that you owe.

§ 422.402 What special definitions apply to this subpart?

(a) *Administrative wage garnishment* is a process whereby we order your employer to withhold a certain amount from your disposable pay and send the withheld amount to us. The law requires your employer to comply with our garnishment order.

(b) *Debt* means any amount of money or property that we determine is owed to the United States and that arises from a program that we administer or an activity that we perform. These debts include program overpayments made under title II or title XVI of the Social Security Act and any other debt that meets the definition of ''claim'' or ''debt'' at 31 U.S.C. 3701(b).

(c) *Disposable pay* means that part of your total compensation (including,

but not limited to, salary or wages, bonuses, commissions, and vacation pay) from your employer after deduction of health insurance premiums and amounts withheld as required by law. Amounts withheld as required by law include such things as Federal, State and local taxes but do not include amounts withheld under court order.

(d) *We*, *our*, or *us* means the Social Security Administration.

(e) *You* means an individual who owes a debt to the United States within the scope of this subpart.

§ 422.403 When may we use administrative wage garnishment?

(a) *General.* Subject to the exceptions described in paragraph (b) of this section and the conditions described in paragraphs (c) and (d) of this section, we may use administrative wage garnishment to collect any debt that is past due. We may use administrative wage garnishment while we are taking other action regarding the debt, such as, using tax refund offset under §§ 404.520–404.526 and 416.580–416.586 of this chapter and taking action under subpart D of this part.

(b) *Exceptions.* (1) We will not use this subpart to collect a debt from salary or wages paid by the United States Government.

(2) If you have been separated involuntarily from employment, we will not order your employer to withhold amounts from your disposable pay until you have been reemployed continuously for at least 12 months. You have the burden of informing us about an involuntary separation from employment.

(3) We will not use this subpart to collect a debt while your disability benefits are stopped during the reentitlement period, under § 404.1592a(a)(2) of this chapter, because you are engaging in substantial gainful activity.

(4) We will not use this subpart to collect a debt while your Medicare entitlement is continued because you are deemed to be entitled to disability benefits under section 226(b) of the Social Security Act (42 U.S.C. 426(b)).

(5) We will not use this subpart to collect a debt if you have decided to participate in the Ticket to Work and Self-Sufficiency Program and your ticket is in use as described in §§ 411.170 through 411.225 of this chapter.

(c) *Overpayments under title II of the Social Security Act.* This subpart applies to overpayments under title II of the Social Security Act if all of the following conditions are met:

(1) You are not receiving title II benefits.

(2) We have completed our billing system sequence (*i.e.*, we have sent you an initial notice of the overpayment, a reminder notice, and a past-due notice) or we have suspended or terminated collection activity in accordance with applicable rules, such as, the Federal Claims Collection Standards in 31 CFR 903.2 or 31 CFR 903.3.

(3) We have not made an installment payment arrangement with you or, if we have made such an arrangement, you have failed to make any payment for two consecutive months.

(4) You have not requested waiver pursuant to § 404.506 or § 404.522 of this chapter or, after a review conducted pursuant to those sections, we have determined that we will not waive collection of the overpayment.

(5) You have not requested reconsideration of the initial overpayment determination pursuant to §§ 404.907 and 404.909 of this chapter or, after a review conducted pursuant to § 404.913 of this chapter, we have affirmed all or part of the initial overpayment determination.

(6) We cannot recover your overpayment pursuant to § 404.502 of this chapter by adjustment of benefits payable to any individual other than you. For purposes of this paragraph, an overpayment will be deemed to be unrecoverable from any individual who was living in a separate household from yours at the time of the overpayment and who did not receive the overpayment.

(d) *Overpayments under title XVI of the Social Security Act.* This subpart applies to overpayments under title XVI of the Social Security Act if all of the following conditions are met:

(1) You are not receiving benefits under title XVI of the Social Security Act.

(2) We are not collecting your title XVI overpayment by reducing title II benefits payable to you.

(3) We have completed our billing system sequence (*i.e.*, we have sent you

an initial notice of the overpayment, a reminder notice, and a past-due notice) or we have suspended or terminated collection activity under applicable rules, such as, the Federal Claims Collection Standards in 31 CFR 903.2 or 31 CFR 903.3.

(4) We have not made an installment payment arrangement with you or, if we have made such an arrangement, you have failed to make any payment for two consecutive months.

(5) You have not requested waiver pursuant to § 416.550 or § 416.582 of this chapter or, after a review conducted pursuant to those sections, we have determined that we will not waive collection of the overpayment.

(6) You have not requested reconsideration of the initial overpayment determination pursuant to §§ 416.1407 and 416.1409 of this chapter or, after a review conducted pursuant to § 416.1413 of this chapter, we have affirmed all or part of the initial overpayment determination.

(7) We cannot recover your overpayment pursuant to § 416.570 of this chapter by adjustment of benefits payable to any individual other than you. For purposes of this paragraph, if you are a member of an eligible couple that is legally separated and/or living apart, we will deem unrecoverable from the other person that part of your overpayment which he or she did not receive.

§ 422.405 What notice will we send you about administrative wage garnishment?

(a) *General.* Before we order your employer to collect a debt by deduction from your disposable pay, we will send you written notice of our intention to do so.

(b) *Contents of the notice.* The notice will contain the following information:

(1) We have determined that payment of the debt is past due;

(2) The nature and amount of the debt;

(3) Information about the amount that your employer could withhold from your disposable pay each payday (the payment schedule);

(4) No sooner than 60 calendar days after the date of the notice, we will order your employer to withhold the debt from your disposable pay unless, within that 60-day period, you pay the full amount of the debt or take either of the actions described in paragraphs (b)(6) or (7) of this section;

(5) You may inspect and copy our records about the debt (*see* § 422.420);

(6) You may request a review of the debt (*see* § 422.425) or the payment schedule stated in the notice (*see* § 422.415); and

(7) You may request to pay the debt by monthly installment payments to us.

(c) *Mailing address.* We will send the notice to the most current mailing address that we have for you in our records.

(d) *Electronic record of the notice.* We will keep an electronic record of the notice that shows the date we mailed the notice to you and the amount of your debt.

§ 422.410 What actions will we take after we send you the notice?

(a) *General.* (1) We will not send an administrative wage garnishment order to your employer before 60 calendar days elapse from the date of the notice described in § 422.405.

(2) If paragraph (b) of this section does not apply and you do not pay the debt in full or do not take either of the actions described in § 422.405(b)(6) or (7) within 60 calendar days from the date of the notice described in § 422.405, we may order your employer to withhold and send us part of your disposable pay each payday until your debt is paid.

(3) If you request review of the debt or the payment schedule after the end of the 60 calendar day period described in paragraph (a)(2) of this section and paragraph (b) of this section does not apply, we will conduct the review. However, we may send the administrative wage garnishment order to your employer without further delay. If we sent the administrative wage garnishment order to your employer and we do not make our decision on your request within 60 calendar days from the date that we received your request, we will tell your employer to stop withholding from your disposable pay. Withholding will not resume before we conduct the review and notify you of our decision.

(4) We may send an administrative wage garnishment order to your employer without further delay if:

(i) You request an installment payment plan after receiving the notice described in § 422.405, and

(ii) We arrange such a plan with you, and

(iii) You fail to make payments in accordance with that arrangement for two consecutive months.

(b) *Good cause for failing to request review on time.* If we decide that you had good cause for failing to request review within the 60-day period mentioned in paragraph (a)(2) of this section, we will treat your request for review as if we received it within that 60-day period.

(1) *Determining good cause.* In determining whether you had good cause, we will consider—

(i) Any circumstances that kept you from making the request on time;

(ii) Whether our action misled you;

(iii) Whether you had any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which prevented you from making a request on time or from understanding the need to make a request on time.

(2) *Examples of good cause.* Examples of facts supporting good cause include, but are not limited to, the following.

(i) Your serious illness prevented you from contacting us yourself or through another person.

(ii) There was a death or serious illness in your family.

(iii) Fire or other accidental cause destroyed important records.

(iv) You did not receive the notice described in § 422.405.

(v) In good faith, you sent the request to another government agency within the 60-day period, and we received the request after the end of that period.

(3) *If we issued the administrative wage garnishment order.* If we determine that you had good cause under paragraph (b) of this section and we already had sent an administrative wage garnishment order to your employer, we will tell your employer to stop withholding from your disposable pay. Withholding will not resume until we conduct the review and notify you of our decision.

§ 422.415 Will we reduce the amount that your employer must withhold from your pay when withholding that amount causes financial hardship?

(a) *General.* Unless paragraph (d) of this section applies, we will reduce the amount that your employer must withhold from your pay when you request the reduction and we find financial hardship. In any event, we will not reduce the amount your employer must withhold each payday below $10. When we decide to reduce the amount that your employer withholds, we will give you and your employer written notice.

(1) You may ask us at any time to reduce the amount due to financial hardship.

(2) If you request review of the payment schedule stated in the notice described in § 422.405 within the 60-day period stated in the notice, we will not issue a garnishment order to your employer until we notify you of our decision.

(b) *Financial hardship.* We will find financial hardship when you show that withholding a particular amount from your pay would deprive you of income necessary to meet your ordinary and necessary living expenses. You must give us evidence of your financial resources and expenses.

(c) *Ordinary and necessary living expenses.* Ordinary and necessary living expenses include:

(1) Fixed expenses such as food, clothing, housing, utilities, maintenance, insurance, tax payments;

(2) Medical, hospitalization and similar expenses;

(3) Expenses for the support of others for whom you are legally responsible; and

(4) Other reasonable and necessary miscellaneous expenses which are part of your standard of living.

(d) *Fraud and willful concealment or failure to furnish information.* (1) We will not reduce the amount that your employer withholds from your disposable pay if your debt was caused by:

(i) Your intentional false statement, or

(ii) Your willful concealment of, or failure to furnish, material information.

(2) ''Willful concealment'' means an intentional, knowing and purposeful delay in providing, or failure to reveal, material information.

§ 422.420 May you inspect and copy our records related to the debt?

You may inspect and copy our records related to the debt. You must notify us of your intention to review our records. After you notify us, we will arrange with you the place and time the records will be available to you. At our discretion, we may send copies of the records to you.

§ 422.425 How will we conduct our review of the debt?

(a) *You must request review and present evidence.* If you receive a notice described in § 422.405, you have the right to have us review the debt. To exercise this right, you must request review and give us evidence that you do not owe all or part of the debt or that we do not have the right to collect it. If you do not request review and give us this evidence within 60 calendar days from the date of our notice, we may issue the garnishment order to your employer without further delay. If you request review of the debt and present evidence within that 60 calendar-day period, we will not send a garnishment order to your employer unless and until we consider all of the evidence and send you our findings that all or part of the debt is overdue and we have the right to collect it.

(b) *Review of the evidence.* If you request review of the debt, we will review our records related to the debt and any evidence that you present.

(c) *Our findings.* Following our review of all of the evidence, we will send you written findings, including the supporting rationale for the findings. Issuance of these findings will be our final action on your request for review. If we find that you do not owe the debt, or the debt is not overdue, or we do not have the right to collect it, we will not send a garnishment order to your employer.

§ 422.430 When will we refund amounts of your pay withheld by administrative wage garnishment?

If we find that you do not owe the debt or that we have no right to collect it, we will promptly refund to you any amount withheld from your disposable pay under this subpart that we received and cancel any administrative wage garnishment order that we issued. Refunds under this section will not bear interest unless Federal law or contract requires interest.

§ 422.435 What happens when we decide to send an administrative wage garnishment order to your employer?

(a) *The wage garnishment order.* The wage garnishment order that we send to your employer will contain only the information necessary for the employer to comply with the order. This information includes:

(1) Your name, address, and social security number,

(2) The amount of the debt,

(3) Information about the amount to be withheld, and

(4) Information about where to send the withheld amount.

(b) *Electronic record of the garnishment order.* We will keep an electronic record of the garnishment order that shows the date we mailed the order to your employer.

(c) *Employer certification.* Along with the garnishment order, we will send your employer a certification form to complete about your employment status and the amount of your disposable pay available for withholding. Your employer must complete the certification and return it to us within 20 days of receipt.

(d) *Amounts to be withheld from your disposable pay.* After receipt of the garnishment order issued under this section, your employer must begin withholding from your disposable pay each payday the lesser of:

(1) The amount indicated on the order (up to 15% of your disposable pay); or

(2) The amount by which your disposable pay exceeds thirty times the minimum wage as provided in 15 U.S.C. 1673(a)(2).

(e) *Multiple withholding orders.* If your disposable pay is subject to more than one withholding order, we apply the following rules to determine the amount that your employer will withhold from your disposable pay:

(1) Unless otherwise provided by Federal law or paragraph (e)(2) of this section, a garnishment order issued under this section has priority over other withholding orders served later in time.

(2) Withholding orders for family support have priority over garnishment orders issued under this section.

(3) If at the time we issue a garnishment order to your employer amounts are already being withheld from your pay under another withholding order, or if a withholding order for family support is served on your employer at any time, the amounts to be withheld under this section will be the lesser of:

(i) The amount calculated under paragraph (d) of this section; or

(ii) The amount calculated by subtracting the amount(s) withheld under the withholding order(s) with priority from 25% of your disposable pay.

(4) If you owe more than one debt to us, we may issue multiple garnishment orders. If we issue more than one garnishment order, the total amount to be withheld from your disposable pay under such orders will not exceed the amount set forth in paragraph (d) or (e)(3) of this section, as appropriate.

(f) *You may request that your employer withhold more.* If you request in writing that your employer withhold more than the amount determined under paragraphs (d) or (e) of this section, we will order your employer to withhold the amount that you request.

§ 422.440 What are your employer's responsibilities under an administrative wage garnishment order?

(a) *When withholding must begin.* Your employer must withhold the appropriate amount from your disposable pay on each payday beginning on the first payday after receiving the garnishment order issued under this section. If the first payday is within 10 days after your employer receives the order, then your employer must begin withholding on the first or second payday after your employer receives the order. Withholding must continue until we notify your employer to stop withholding.

(b) *Payment of amounts withheld.* Your employer must promptly pay to us all amounts withheld under this section.

(c) *Other assignments or allotments of pay.* Your employer cannot honor an assignment or allotment of your pay to the extent that it would interfere with or prevent withholding under this section, unless the assignment or allotment is made under a family support judgement or order.

(d) *Effect of withholding on employer pay and disbursement cycles.* Your employer will not be required to vary its normal pay and disbursement cycles in order to comply with the garnishment order.

(e) *When withholding ends.* When we have fully recovered the amounts you owe, including interest, penalties, and administrative costs that we charge you as allowed by law, we will tell your employer to stop withholding from your disposable pay. As an added precaution, we will review our debtors' accounts at least annually to ensure that withholding has been terminated for accounts paid in full.

(f) *Certain actions by an employer against you are prohibited.* Federal law prohibits an employer from using a garnishment order issued under this section as the basis for discharging you from employment, refusing to employ you, or taking disciplinary action against you. If your employer violates this prohibition, you may file a civil action against your employer in a Federal or State court of competent jurisdiction.

§ 422.445 May we bring a civil action against your employer for failure to comply with our administrative wage garnishment order?

(a) We may bring a civil action against your employer for any amount that the employer fails to withhold from your disposable pay in accordance with § 422.435(d), (e) and (f). Your employer may also be liable for attorney fees, costs of the lawsuit and (in the court's discretion) punitive damages.

(b) We will not file a civil action against your employer before we terminate collection action against you, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. For purposes of this section, ''terminate collection action'' means that we have terminated collection action in accordance with the Federal Claims Collection Standards (31 CFR 903.3) or other applicable standards. In any event, we will consider that collection action has been terminated if we have not received any payments to satisfy the debt for a period of one year.

Subpart F—Applications and Related Forms

AUTHORITY: Sec. 1140(a)(2)(A) of the Social Security Act. 42 U.S.C. 1320b–10(a)(2)(A) (Pub. L. 103–296, Sec. 312(a)).

§ 422.501 Applications and other forms used in Social Security Administration programs.

This subpart lists the applications and some of the related forms prescribed by the Social Security Administration for use by the public in applying for benefits under titles II and XVIII of the Social Security Act and the black lung benefits program (Part B, title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended).

[38 FR 11450, May 8, 1973]

§ 422.505 What types of applications and related forms are used to apply for retirement, survivors, and disability insurance benefits?

(a) *Applications.* Prescribed applications include our traditional pre-printed forms, and applications our employees complete on computer screens based on information you give us. We then print a copy on paper, have you sign it and process the signed application electronically. You may also use SSA's Internet website to submit an SSA-approved application to us. You can complete an Internet application on a computer (or other suitable device, such as an electronic kiosk) and electronically transmit the form to us using an SSA-approved electronic signature. If, however, we do not have an approved electronic signature established when you file your Internet application, you must print and sign the completed application and deliver the form to us.

(b) *Related forms.* The following are some related forms:

SSA–3—Marriage Certification. (For use in connection with Application for Wife's or Husband's Insurance Benefits, (Form SSA–2))

SSA–11—Request to be Selected as Payee. (For use when an individual proposing to be substituted for the current payee files an application to receive payment of benefits on behalf of disabled child, or a child under 18, or an incapable or incompetent beneficiary or for himself/herself if he/she has a payee.)

SSA–21—Supplement to Claim of Person Outside of the United States. (To be completed by or on behalf of a person who is, was, or will be outside the United States.)

SSA–25—Certificate of Election for Reduced Spouse's Benefits. (For use by a wife or husband age 62 to full retirement age who has an entitled child in his or her care and elects to receive reduced benefits for months during which he or she will not have a child in his or her care.)

SSA–721—Statement of Death by Funeral Director. (This form may be used as evidence of death (*see* § 404.704 of this chapter).)

SSA–760—Certificate of Support (Parent's, Husband's or Widower's). (For use in collecting evidence of support.)

SSA–766—Statement of Self-Employment Income. (For use by a claimant to establish insured status based on self-employment income in the current year.)

SSA–783—Statement Regarding Contributions. (This form may be used as evidence of total contributions for a child.)

SSA–787—Physician's/Medical Officer's Statement of Patient's Capability to Manage Benefits. (This form may be used to request evidence of capability from various medical sources.)

SSA–824—Report on Individual with Mental Impairment. (For use in obtaining medical evidence from medical sources when the claimant has been treated for a mental impairment.)

SSA–827—Authorization for Source to Release Information to the Social Security Administration. (To be completed by a disability claimant to authorize release of medical or other information.)

SSA–1002—Statement of Agricultural Employer (Years Prior to 1988). (For use by employer to provide evidence of annual wage payments for agricultural work.)

SSA–1372—Student's Statement Regarding School Attendance. (For use in connection

with request for payment of child's insurance benefits for a child who is age 18 through 19 and a full-time student.

SSA–1724—Claim for Amount Due in the Case of a Deceased Beneficiary. (For use in requesting amounts payable under title II to a deceased beneficiary.)

SSA–3368—Disability Report—Adult. (For use in recording information about the claimant's condition, source of medical evidence and other information needed to process the claim to a determination or decision.)

SSA–3369—Disability Report—Work History. (For use in recording work history information.)

SSA–3826–F4—Medical Report—General. (For use in helping disability claimants in obtaining medical records from their doctors or other medical sources.)

SSA–3827—Medical Report—(Individual with Childhood Impairment). (For use in requesting information to determine if an individual's impairment meets the requirements for payment of childhood disability benefits.)

SSA–4111—Certificate of Election for Reduced Widow(er)s Benefits. (For use by applicants for certain reduced widow's or widower's benefits.)

SSA–7156—Farm Self-Employment Questionnaire. (For use in connection with claims for benefits based on farm income to determine whether the income is covered under the Social Security Act.)

SSA–7160—Employment Relationship Questionnaire. (For use by an individual and the alleged employer to determine the individual's employment status.)

SSA–7163—Questionnaire about Employment or Self-Employment Outside the United States. (To be completed by or on behalf of a beneficiary who is, was, or will be employed or self-employed outside the United States.)

[69 FR 499, Jan. 6, 2004, as amended at 70 FR 14978, Mar. 24, 2005]

§ 422.510 Applications and related forms used in the health insurance for the aged program.

(a) *Application forms.* The following forms are prescribed for use in applying for entitlement to benefits under the health insurance for the aged program:

SSA–18—Application for Hospital Insurance Entitlement. (For use by individuals who are not entitled to retirement benefits under title II of the Social Security Act or under the Railroad Retirement Act. This form may also be used for enrollment in the supplementary medical insurance benefits plan.)

SSA–40—Application for Enrollment in the Supplementary Medical Insurance Program. (This form is mailed directly to beneficiaries at the beginning of their initial enrollment period.)

SSA–40A—Application for Enrollment in Supplementary Medical Insurance. (For use by civil service employees who are not eligible for enrollment in the hospital insurance plan.)

SSA–40B—Application for Medical Insurance. (For general use in requesting medical insurance protection.)

SSA–40C—Application for Enrollment. (This form is mailed to beneficiaries as a followup on Form SSA–40 (Application for Enrollment in the Supplementary Medical Insurance Program).)

SSA–40F—Application for Medical Insurance. (For use by beneficiaries residing outside the United States.)

An individual who upon attainment of age 65 is entitled to a monthly benefit based on application OA-C1, SSA–2, OA–C7, OA–C10, SSA–10A, OA–C13, or SSA–14 is automatically entitled to hospital insurance protection. (For conditions of entitlement to hospital insurance benefits, see 42 CFR part 405, subpart A. For medical insurance protection, an applicant must request supplementary medical insurance coverage (see Forms SSA–40, SSA–40A, SSA–40B, SSA–40C, and SSA–40F under § 422.510(a)). (For conditions of entitlement to supplementary medical insurance benefits, see 42 CFR part 405, subpart B.)

(b) *Related forms.* The following are the prescribed forms for use in requesting payment for services under the hospital insurance benefits program and the supplementary medical insurance benefits program and other related forms:

SSA–1453—Inpatient Hospital and Extended Care Admission and Billing. (To be completed by hospital for payment of hospital expenses for treatment of patient confined in hospital.)

SSA–1483—Provider Billing for Medical and Other Health Services. (To be completed by hospital for payment of hospital expenses for treatment of patient who is not confined in the hospital.)

SSA–1484—Explanation of Accommodation Furnished. (To be completed by the hospital to explain accommodation of a patient in other than a semiprivate (two- to four-bed) room.)

SSA–1486—Inpatient Admission and Billing—Christian Science Sanatorium. (To be completed by a Christian Science sanatorium

for payment for treatment of patients confined in the sanatorium.)

SSA–1487—Home Health Agency Report and Billing. (For use by an organization providing home health services.)

SSA–1490—Request for Medicare Payment. (For use by patient or physician to request payment for medical expenses.)

SSA–1554—Provider Billing for Patient Services by Physicians. (For use by hospital for payment for services provided by hospital-based physicians.)

SSA–1556—Prepayment Plan for Group Medical Practices Dealing Through a Carrier. (For use by organizations (which have been determined to be group practice prepayment plans for medicare purposes) for reimbursement for medical services provided to beneficiaries.)

SSA–1660—Request for Information—Medicare Payment For Services to a Patient Now Deceased. (For use in requesting amounts payable under title XVIII to a deceased beneficiary.)

SSA–1739—Request for Enrollment Card Information by Foreign Beneficiary. (Used to notify beneficiaries approaching age 65 who reside in foreign countries that they are eligible to enroll for SMI. They return this form if they wish additional information and an application, SSA–40F.)

SSA–1966—Health Insurance Card. (This card is issued to a person entitled to benefits under the health insurance for the aged program and designates whether he is entitled to hospital insurance benefits or supplementary medical insurance benefits or both.

SSA–1980—Carrier or Intermediary Request for SSA Assistance.

SSA–2384—Third Party Premium Billing Request. (For use by a nonbeneficiary enrollee who must pay premiums by direct remittance and is having his premium notices sent to a third party to assure continuance of supplementary medical insurance.)

[32 FR 18030, Dec. 16, 1967, as amended at 38 FR 11451, May 8, 1973; 44 FR 34943, June 18, 1979]

§ 422.512 Applications and related forms used in the black lung benefits program.

(a) *Application forms.* The following forms are prescribed for use in applying for entitlement to benefits under part B of title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972:

SSA-46—Application for Benefits Under the Federal Coal Mine Health and Safety Act of 1969, as Amended (Coal Miner's Claim of Total Disability).

SSA–47—Application for Benefits Under the Federal Coal Mine Health and Safety Act of 1969, as Amended (Widow's Claim).

SSA-48—Application for Benefits Under the Federal Coal Mine Health and Safety Act of 1969, as Amended (Child's Claim).

SSA-49—Application for Benefits Under the Federal Coal Mine Health and Safety Act of 1969, as Amended (Parent's, Brother's and Sister's Claim).

(b) *Related forms.* The following are some related forms:

SSA-50—Request To Be Selected as Payee. (For use when the individual proposing to be substituted for current payee files application to receive payment of black lung benefits on behalf of himself, a disabled child or child under age 18, a student beneficiary, or an incompetent beneficiary.)

SSA-2179—Report by Person Entitled to Black Lung Benefits. (For use by person entitled to black lung benefits to report events which affect benefits.)

SAA-2210—Statement of Coal Mine Employment by United Mine Workers of America.

SSA-2325—Medical Report (Pneumoconiosis).

[38 FR 11451, May 8, 1973]

§ 422.515 Forms used for withdrawal, reconsideration and other appeals, and appointment of representative.

The following is a list of forms prescribed by the Social Security Administration for use by the public to request a withdrawal of an application, a reconsideration of an initial determination, a hearing, a review of an administrative law judge's decision, or for use where a person is authorized to represent a claimant.

SSA-521—Request for Withdrawal of Application. (For use by an individual to cancel his application.)

SSA-561—Request for Reconsideration. (For use by an individual who disagrees with an initial determination concerning (a) entitlement to benefits or any other right under title II of the Social Security Act, or (b) entitlement to hospital insurance benefits or supplementary medical insurance benefits under title XVIII of the act, or (c) entitlement to black lung benefits under title IV of the Federal Coal Mine Health and Safety Act. See § 422.140 for a discussion of the reconsideration procedure.)

SSA-1696—Appointment of Representative. (For use by person other than an attorney authorized by a claimant to act for him in a claim or related matter.)

SSA-1763—Request for Termination of Supplementary Medical Insurance. (For use by

an enrollee in requesting that his supplementary medical insurance coverage be terminated.)

SSA-1965—Request for Hearing—Part B Medicare Claim. (For use by an individual enrollee or his assignee to obtain a hearing before a hearing officer designated by the carrier concerning benefits payable under part B of title XVIII.)

HA-501—Request for Hearing. (For use by an individual or institution to obtain a hearing on a claim for title II benefits before an administrative law judge of the Social Security Administration.)

NOTE: This form is also used to request a hearing regarding entitlement to hospital insurance benefits or supplementary medical insurance benefits under title XVIII of the act. (See § 422.203 for a discussion of the hearing procedure.)

HA-501.1—Request for Hearing—Part A Health Insurance. (For use by an individual or institution to obtain a hearing before an administrative law judge of the Social Security Administration concerning the amount of hospital insurance benefits under title XVIII.)

HA-512.1—Notice by Attorney of Appointment as Representative. (For use by an attorney authorized by a claimant to act for him in a claim or related matter.)

HA-520—Request for Review of Hearing Examiner's Action. (For use by an individual or institution to obtain a review of a decision by an administrative law judge of the Social Security Administration.)

[38 FR 11452, May 8, 1973]

§ 422.520 Forms related to maintenance of earnings records.

The following forms are used by the Social Security Administration and by the public in connection with the maintenance of earnings records of wage-earners and self-employed persons:

SS-4—Application for Employer Identification Number.

SS-4A—Agricultural Employer's Application. (For use by employers of agricultural workers to request an employer identification number under the FICA.)

SS-5—Application for a Social Security Number (or Replacement of Lost Card).

SS-15—Certificate Waiving Exemption From Taxes Under the FICA. (For use by certain nonprofit organizations requesting coverage of its employees.)

SS-15a—List of Concurring Employees. (To be signed by each employee who concurs in the filing of the Certificate Waiving Exemption From Taxes Under the FICA, Form SS-15.)

SSI-21—Social Security and Your Household Employee. (For use by employers of household workers to request information from the Internal Revenue Service Center regarding filing employee tax returns.)

OA-702—Social Security Number Card.

Form 2031—Waiver Certificate To Elect Social Security Coverage for Use by Ministers, Certain Members of Religious Orders, and Christian Science Practitioners.

Form 4029—Application for Exemption from Tax on Self-Employment Income and Waiver of Benefits. (To be completed by self-employed individuals who are members of certain recognized religious sects (or division thereof) and do not wish to pay FICA taxes or participate in the programs provided under titles II and XVIII.)

Form 4361—Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders, and Christian Science Practitioners.

Form 4415—Election To Exempt From Self-Employment Coverage Fees Received by Certain Public Officers and Employees of a State or Political Subdivision Thereof.

OAAN-5028—Evidence of Application for Social Security Number Card.

OAAN-7003—Request for Change in Social Security Records. (For use by an individual to change information given on original application for a social security number.)

OAR-7004—Request for Statement of Earnings. (For use by worker to obtain a statement of earnings recorded in his earnings record.)

OAR-7008—Request for Correction of Earnings Record. (For use by an individual who wishes to have his earnings record revised.)

SSA-7011—Statement of Employer. (For use by an employer to provide evidence of wage payments in cases of a wage discrepancy in an individual's earnings record.)

[38 FR 11452, May 8, 1973]

§ 422.525 Where applications and other forms are available.

All applications and related forms prescribed for use in the programs administered by the Social Security Administration pursuant to the provisions of titles II and XVIII of the act, and part B of title IV of the Federal Coal Mine Health and Safety Act of 1969 are printed under the specifications of the Administration and distributed free of charge to the public, institutions, or organizations for the purposes described therein. All prescribed forms can be obtained upon request from any social security district office or branch office (see § 422.5). Forms appropriate for use in requesting payment for services provided

under the health insurance for the aged and disabled programs can also be obtained from the intermediaries or carriers (organizations under contract with the Social Security Administration to make payment for such services) without charge. Form 2031 (Waiver Certificate to Elect Social Security Coverage for Use by Ministers, Certain Members of Religious Orders, and Christian Science Practitioners), Form 4029 (Application for Exemption From Tax on Self-Employment Income and Waiver of Benefits), Form 4361 (Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders, and Christian Science Practitioners), Form 4415 (Election to Exempt From Self-Employment Coverage Fees Received by Certain Public Officers and Employees of a State or a Political Subdivision Thereof), Form SS-4 (Application for Employer Identification Number), Form SS-4A (Agricultural Employer's Application for Identification Number), Form SS-5 (Application for a Social Security Number (or Replacement of Lost Card)), Form SS-15 (Certificate Waiving Exemption From Taxes Under the FICA), and Form SS-15a (List of Concurring Employees) can also be obtained without charge from offices of the Internal Revenue Service. For other offices where applications and certain other forms can be obtained, see subparts B and C of this part 422.

[38 FR 11452, May 8, 1973]

§ 422.527 Private printing and modification of prescribed applications, forms, and other publications.

Any person, institution, or organization wishing to reproduce, reprint, or distribute any application, form, or publication prescribed by the Administration must obtain prior approval if he or she intends to charge a fee. Requests for approval must be in writing and include the reason or need for the reproduction, reprinting, or distribution; the intended users of the application, form, or publication; the fee to be charged; any proposed modification; the proposed format; the type of machinery (e.g., printer, burster, mail handling), if any, for which the application, form, or publication is being designed; estimated printing quantity; estimated printing cost per thousand; estimated annual usage; and any other pertinent information required by the Administration. Forward all requests for prior approval to: Office of Publications Management, 6401 Security Boulevard, Baltimore, MD 21235–6401.

[72 FR 73261, Dec. 27, 2007]

Subpart G—Administrative Review Process Under the Coal Industry Retiree Health Benefit Act of 1992

AUTHORITY: 26 U.S.C. 9701–9708.

SOURCE: 58 FR 52916, Oct. 13, 1993, unless otherwise noted.

§ 422.601 Scope and purpose.

The regulations in this subpart describe how the Social Security Administration (SSA) will conduct reviews of assignments it makes under provisions of the Coal Industry Retiree Health Benefit Act of 1992 (the Coal Act). Under the Coal Act, certain retired coal miners and their eligible family members (beneficiaries) are assigned to particular coal operators (or related persons). These operators are then responsible for paying the annual health and death benefit premiums for these beneficiaries as well as the annual premiums for certain unassigned coal miners and eligible members of their families. We will notify the assigned operators of these assignments and give each operator an opportunity to request detailed information about an assignment and to request review of an assignment. We also inform the United Mine Workers of America (UMWA) Combined Benefit Fund Trustees of each assignment made and the unassigned beneficiaries so they can assess appropriate annual premiums against the assigned operators. This subpart explains how assigned operators may request such additional information, how they may request review of an assignment, and how reviews will be conducted.

§ 422.602 Terms used in this subpart.

Assignment means our selection of the coal operator or related person to be charged with the responsibility of paying the annual health and death benefit

premiums of certain coal miners and their eligible family members.

Beneficiary means either a coal industry retiree who, on July 20, 1992, was eligible to receive, and receiving, benefits as an eligible individual under the 1950 or the 1974 UMWA Benefit Plan, or an individual who was eligible to receive, and receiving, benefits on July 20, 1992 as an eligible relative of a coal industry retiree.

Evidence of a prima facie case of error means documentary evidence, records, and written statements submitted to us by the assigned operator (or related person) that, standing alone, shows our assignment was in error. The evidence submitted must, when considered by itself without reference to other contradictory evidence that may be in our possession, be sufficient to persuade a reasonable person that the assignment was erroneous. Examples of evidence that may establish a prima facie case of error include copies of Federal, State, or local government tax records; legal documents such as business incorporation, merger, and bankruptcy papers; health and safety reports filed with Federal or State agencies that regulate mining activities; payroll and other employment business records; and information provided in trade journals and newspapers.

A related person to a signatory operator means a person or entity which as of July 20, 1992, or, if earlier, the time immediately before the coal operator ceased to be in business, was a member of a controlled group of corporations which included the signatory operator, or was a trade or business which was under common control with a signatory operator, or had a partnership interest (other than as a limited partner) or joint venture with a signatory operator in a business within the coal industry which employed eligible beneficiaries, or is a successor in interest to a person who was a related person.

We or *us* refers to the Social Security Administration.

You as used in this subpart refers to the coal operator (or related person) assigned premium responsibility for a specific beneficiary under the Coal Act.

[58 FR 52916, Oct. 13, 1993, as amended at 62 FR 38456, July 18, 1997]

§ 422.603 Overview of the review process.

Our notice of assignment will inform you as the assigned operator (or related person) which beneficiaries have been assigned to you, the reason for the assignment, and the dates of employment on which the assignment was based. The notice will explain that, if you disagree with the assignment for any beneficiary listed in the notice of assignment, you may request from us detailed information as to the work history of the miner and the basis for the assignment. Such request must be filed with us within 30 days after you receive the notice of assignment, as explained in § 422.604. The notice will also explain that if you still disagree with the assignment after you have received the detailed information, you may submit evidence that shows there is a prima facie case of error in that assignment and request review. Such request must be filed with us within 30 days after you receive the detailed information, as explained in § 422.605. Alternatively, you may request review within 30 days after you receive the notice of assignment, even if you have not first requested the detailed information. In that case, you still may request the detailed information within that 30-day period. (See § 422.606(c) for further details.)

§ 422.604 Request for detailed information.

(a) *General.* After you receive our notice of assignment listing the beneficiaries for whom you have premium responsibility, you may request detailed information as to the work histories of any of the listed miners and the basis for the assignment. Your request for detailed information must:

(1) Be in writing;

(2) Be filed with us within 30 days of receipt of that notice of assignment. Unless you submit evidence showing a later receipt of the notice, we will assume the notice was received by you within 5 days of the date appearing on the notice. We will consider the request to be filed as of the date we receive it. However, if we receive the request after the 30-day period, the postmark date on the envelope may be used as the filing date. If there is no postmark or the

postmark is illegible, the filing date will be deemed to be the fifth day prior to the day we received the request; and

(3) Identify the individual miners about whom you are requesting the detailed information.

(b) *The detailed information we will provide.* We will send you detailed information as to the work history and the basis for the assignment for each miner about whom you requested such information. This information will include the name and address of each employer for whom the miner has worked since 1978 or since 1946 (whichever period is appropriate), the amount of wages paid by each employer and the period for which the wages were reported. We will send you the detailed information with a notice informing you that you have 30 days from the date you receive the information to submit to SSA evidence of a prima facie case of error (as defined in § 422.602) and request review of the assignment if you have not already requested review. The notice will also inform you that, if you are seeking evidence to make a case of prima facie error, you may include with a timely filed request for review a written request for additional time to obtain and submit such evidence to us. Under these circumstances, you will have 90 days from the date of your request to submit the evidence before we determine whether we will review the assignment.

§ 422.605 Request for review.

We will review an assignment if you request review and show that there is a prima facie case of error regarding the assignment. This review is a review on the record and will not entail a face-to-face hearing. We will review an assignment if:

(a) You are an assigned operator (or related person);

(b) Your request is in writing and states your reasons for believing the assignment is erroneous;

(c) Your request is filed with us no later than 30 days from the date you received the detailed information described in § 422.604, or no later than 30 days from the date you received the notice of assignment if you choose not to request detailed information. Unless you submit evidence showing a later receipt of the notice, we will assume you received the detailed information or the notice of assignment within 5 days of the date shown thereon. We will consider the request to be filed as of the date we receive it. However, if we receive the request after the 30-day period, the postmark date on the envelope may be used as the filing date. If there is no postmark or the postmark is illegible, the filing date will be deemed to be the fifth day prior to the day we received the request; and

(d) Your request is accompanied by evidence establishing a prima facie case of error regarding the assignment. If your request for review includes a request for additional time to submit such evidence, we will give you an additional 90 days from the date of your request for review to submit such evidence to us.

§ 422.606 Processing the request for review.

Upon receipt of your written request for review of an assignment and where relevant, the expiration of any additional times allowed under §§ 422.605(d) and 422.606(c), we will take the following action:

(a) *Request not timely filed.* If your request is not filed within the time limits set out in § 422.605(c), we will deny your request for review on that basis and send you a notice explaining that we have taken this action;

(b) *Lack of evidence.* If your request is timely filed under § 422.605(c) but you have not provided evidence constituting a prima facie case of error, we will deny your request for review on that basis and send you a notice explaining that we have taken this action;

(c) *Request for review without requesting detailed information.* If your request is filed within 30 days after you received the notice of assignment and you have not requested detailed information, we will not process your request until at least 30 days after the date you received the notice of assignment. You may still request detailed information within that 30-day period, in which case we will not process your request for review until at least 30 days

after you received the detailed information, so that you may submit additional evidence if you wish;

(d) *Reviewing the evidence.* If your request meets the filing requirements of § 422.605 and is accompanied by evidence constituting a prima facie case of error, we will review the assignment. We will review all evidence submitted with your request for review, together with the evidence used in making the assignment. An SSA employee who was not involved in the original assignment will perform the review. The review will be a review on the record and will not involve a face-to-face hearing.

(e) *Original decision correct.* If, following this review of the evidence you have submitted and the evidence in our file, we make a determination that the assignment is correct, we will send you a notice explaining the basis for our decision. We will not review the decision again, except as provided in § 422.607.

(f) *Original decision erroneous.* If, following this review of the evidence you have submitted and the evidence in our file, we make a determination that the assignment is erroneous, we will send you a notice to this effect. We will then determine who the correct operator is and assign the affected beneficiary(s) to that coal operator (or related person). If no assigned operator can be identified, the affected beneficiary(s) will be treated as ''unassigned.'' We will notify the UMWA Combined Benefit Fund Trustees of the review decision so that any premium liability of the initial assigned operator can be adjusted.

§ 422.607 Limited reopening of assignments.

On our own initiative, we may reopen and revise an assignment, whether or not it has been reviewed as described in this subpart, under the following conditions:

(a) The assignment reflects an error on the face of our records or the assignment was based upon fraud; and

(b) We sent to the assigned operator (or related person) notice of the assignment within 12 months of the time we decided to reopen that assignment.

Subpart H—Use of SSA Telephone Lines

AUTHORITY: Secs. 205(a) and 702(a)(5) of the Social Security Act (42 U.S.C. 405 and 902(a)(5)).

SOURCE: 63 FR 57058, Oct. 26, 1998, unless otherwise noted.

§ 422.701 Scope and purpose.

The regulations in this subpart describe the limited circumstances under which SSA is authorized to listen-in to or record telephone conversations. The purpose of this subpart is to inform the public and SSA employees of those circumstances and the procedures that SSA will follow when conducting telephone service observation activities.

§ 422.705 When SSA employees may listen-in to or record telephone conversations.

SSA employees may listen-in to or record telephone conversations on SSA telephone lines under the following conditions:

(a) *Law enforcement/national security.* When performed for law enforcement, foreign intelligence, counterintelligence or communications security purposes when determined necessary by the Commissioner of Social Security or designee. Such determinations shall be in writing and shall be made in accordance with applicable laws, regulations and Executive Orders governing such activities. Communications security monitoring shall be conducted in accordance with procedures approved by the Attorney General. Line identification equipment may be installed on SSA telephone lines to assist Federal law enforcement officials in investigating threatening telephone calls, bomb threats and other criminal activities.

(b) *Public safety.* When performed by an SSA employee for public safety purposes and when documented by a written determination by the Commissioner of Social Security or designee citing the public safety needs. The determination shall identify the segment of the public needing protection and cite examples of the possible harm from which the public requires protection. Use of SSA telephone lines identified for reporting emergency and other

public safety-related situations will be deemed as consent to public safety monitoring and recording. (See § 422.710(a)(1))

(c) *Public service monitoring.* When performed by an SSA employee after the Commissioner of Social Security or designee determines in writing that monitoring of such lines is necessary for the purposes of measuring or monitoring SSA's performance in the delivery of service to the public; or monitoring and improving the integrity, quality and utility of service provided to the public. Such monitoring will occur only on telephone lines used by employees to provide SSA-related information and services to the public. Use of such telephone lines will be deemed as consent to public service monitoring. (See § 422.710(a)(2) and (c)).

(d) *All-party consent.* When performed by an SSA employee with the prior consent of all parties for a specific instance. This includes telephone conferences, secretarial recordings and other administrative practices. The failure to identify all individuals listening to a conversation by speaker phone is not prohibited by this or any other section.

§ 422.710 Procedures SSA will follow.

SSA component(s) that plan to listen-in to or record telephone conversations under § 422.705(b) or (c) shall comply with the following procedures.

(a) Prepare a written certification of need to the Commissioner of Social Security or designee at least 30 days before the planned operational date. A certification as used in this section means a written justification signed by the Deputy Commissioner of the requesting SSA component or designee, that specifies general information on the following: the operational need for listening-in to or recording telephone conversations; the telephone lines and locations where monitoring is to be performed; the position titles (or a statement about the types) of SSA employees involved in the listening-in to or recording of telephone conversations; the general operating times and an expiration date for the monitoring. This certification of need must identify the telephone lines which will be subject to monitoring, e.g., SSA 800 number voice and text telephone lines, and include current copies of any documentation, analyses, determinations, policies and procedures supporting the application, and the name and telephone number of a contact person in the SSA component which is requesting authority to listen-in to or record telephone conversations.

(1) When the request involves listening-in to or recording telephone conversations for public safety purposes, the requesting component head or designee must identify the segment of the public needing protection and cite examples of the possible harm from which the public requires protection.

(2) When the request involves listening-in to or recording telephone conversations for public service monitoring purposes, the requesting component head or designee must provide a statement in writing why such monitoring is necessary for measuring or monitoring the performance in the delivery of SSA service to the public; or monitoring and improving the integrity, quality and utility of service provided to the public.

(b) At least every 5 years, SSA will review the need for each determination authorizing listening-in or recording activities in the agency. SSA components or authorized agents involved in conducting listening-in or recording activities must submit documentation as described in § 422.710(a) to the Commissioner of Social Security or a designee to continue or terminate telephone service observation activities.

(c) SSA will comply with the following controls, policies and procedures when listening-in or recording is associated with public service monitoring.

(1) SSA will provide a message on SSA telephone lines subject to public service monitoring that will inform callers that calls on those lines may be monitored for quality assurance purposes. SSA will also continue to include information about telephone monitoring activities in SSA brochures and/or pamphlets as notification that some incoming and outgoing SSA telephone calls are monitored to ensure SSA's clients are receiving accurate and courteous service.

(2) SSA employees authorized to listen-in to or record telephone calls are permitted to annotate personal identifying information about the calls, such as a person's name, Social Security number, address and/or telephone number. When this information is obtained from public service monitoring as defined in §422.705(c), it will be used for programmatic or policy purposes; e.g., recontacting individuals to correct or supplement information relating to benefits, for assessment of current/proposed policies and procedures, or to correct SSA records. Privacy Act requirements must be followed if data are retrievable by personal identifying information.

(3) SSA will take appropriate corrective action, when possible, if information obtained from monitoring indicates SSA may have taken an incorrect action which could affect the payment of or eligibility to SSA benefits.

(4) Telephone instruments subject to public service monitoring will be conspicuously labeled.

(5) Consent from both parties is needed to tape record SSA calls for public service monitoring purposes.

(d) The recordings and records pertaining to the listening-in to or recording of any conversations covered by this subpart shall be used, safeguarded and destroyed in accordance with SSA records management program.

Subpart I—Administrative Claims Collection

AUTHORITY: Sec. 97, Pub. L. 97–365, 96 Stat. 1749; Sec. 104, Pub. L. 104–134, 110 Stat. 1321; 5 U.S.C. 552; 5 U.S.C. 553; 31 U.S.C. 3711; 31 U.S.C. 3716; 31 U.S.C. 3717; 31 U.S.C. 3720A; 31 U.S.C. 3720B; 31 U.S.C. 3720C; 31 U.S.C. 3720D; 31 U.S.C. 3720E; 31 CFR parts 901–904; 31 CFR part 285; 5 U.S.C. 5514; 5 CFR part 550; 42 U.S.C. 902(a)(5).

SOURCE: 80 FR 61734, Oct. 14, 2015, unless otherwise noted.

§ 422.801 Scope of this subpart.

(a) The regulations in this part are issued under the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of (DCIA) 1996 (31 U.S.C. 3701, *et seq.*) and the Federal Claims Collection Standards (31 CFR parts 901–904) issued pursuant to the DCIA by the Department of the Treasury (Treasury) and the Department of Justice (DOJ). These authorities prescribe government-wide standards for administrative collection, compromise, suspension, or termination of agency collection action, disclosure of debt information to credit reporting agencies, referral of claims to private collection contractors for resolution, and referral to the DOJ for litigation to collect debts owed the Government. The regulations under this part also are issued under the Commissioner's general rulemaking authority in the Social Security Act at section 702(a)(5), 42 U.S.C. 902(a)(5), the Treasury's regulations implementing the DCIA (31 CFR part 285), and related statutes and regulations governing the offset of Federal salaries (5 U.S.C. 5512, 5514; 5 CFR part 550, subpart K) and the administrative offset of tax refunds (31 U.S.C. 3720A).

(b) This subpart describes the procedures relating to the collection, compromise, and suspension of administrative debts owed to us, the Social Security Administration (SSA).

(c) Administrative debts include claims against current employees, separated employees, and non-employee debtors.

(1) Employee debts include salary overpayments; advanced sick and annual leave, advanced religious compensatory time, overpayments of health benefit premiums, leave buy back, emergency employee payments, travel, and transit subsidies.

(2) Non-employee debts include vendor overpayments, reimbursable agreements, Supplemental Security Income Medicaid determinations, and economic recovery payments.

(d) This subpart does not apply to programmatic overpayments described in subparts D and E of this part, and §§404.527 and §416.590 of this title.

(e) This subpart does not apply to civil monetary penalties arising from sections 1129 and 1140 of the Social Security Act and collected pursuant to part 498 of this title.

§ 422.803 Collection activities.

(a) We will collect all administrative debts arising out of our activities or that are referred or transferred to us, the Social Security Administration, for

collection actions. We will send an initial written demand for payment no later than 30 days after an appropriate official determines that a debt exists.

(b) In accordance with 31 CFR 285.12(c) and (g), we transfer legally enforceable administrative debts that are 120 calendar days or more delinquent to Treasury for debt collection services (*i.e.*, cross-servicing). This requirement does not apply to any debt that:

(1) Is in litigation or foreclosure;

(2) Will be disposed of under an approved asset sale program within one year of becoming eligible for sale;

(3) Has been referred to a private collection contractor for a period acceptable to the Secretary of the Treasury;

(4) Is at a debt collection center for a period of time acceptable to Treasury (see paragraph (c) of this section);

(5) Will be collected under internal offset procedures within three years after the debt first became delinquent; or

(6) Is exempt from this requirement based on a determination by Treasury that exemption for a certain class of debt is in the best interest of the United States.

(c) Pursuant to 31 CFR 285.12(h), we may refer debts less than 120 calendar days delinquent to Treasury or, with the consent of Treasury, to a Treasury-designated debt collection center to accomplish efficient, cost effective debt collection. Referrals to debt collection centers will be at the discretion of, and for a period acceptable to, the Secretary of the Treasury. Referrals may be for servicing, collection, compromise, suspension, or termination of collection action.

(d) We may refer delinquent administrative debts to Treasury for offset through the Treasury Offset Program (TOP). Administered by Treasury, TOP's centralized offset process permits Treasury to withhold funds payable by the United States to a person to collect and satisfy delinquent debts the person owes Federal agencies and States.

(e) We may collect an administrative debt by using Administrative Wage Garnishment.

(f) We may collect an administrative debt by using Federal Salary Offset.

§ 422.805 Demand for payment.

(a) *Written demand for payment.* (1) We will make a written demand, as described in paragraph (b) of this section, promptly to a debtor in terms that inform the debtor of the consequences of failing to cooperate with us to resolve the debt.

(2) We will send a demand letter no later than 30 days after the appropriate official determines that the debt exists. We will send the demand letter to the debtor's last known address.

(3) When necessary to protect the Government's interest, we may take appropriate action under this part, including immediate referral to DOJ for litigation, before sending the written demand for payment.

(b) *Demand letters.* The specific content, timing, and number of demand letters will depend upon the type and amount of the debt and the debtor's response, if any, to our letters or telephone calls.

(1) The written demand for payment will include the following information:

(i) The nature and amount of the debt, including the basis for the indebtedness;

(ii) The date by which payment should be made to avoid late charges and enforced collection, which must be no later than 30 days from the date the demand letter is mailed;

(iii) Where applicable, the standards for imposing any interest, penalties, or administrative costs as specified under § 422.807;

(iv) The rights, if any, the debtor may have to:

(A) Seek review of our determination of the debt, and for purposes of salary offset or Administrative Wage Garnishment, request a hearing. To request a hearing see §§ 422.810(h) and 422.833(f)); and

(B) Enter into a reasonable repayment agreement when necessary and authorized.

(v) An explanation of how the debtor may exercise any of the rights described in paragraph (b)(1)(iv) of this section;

(vi) The name, address, and phone number of a contact person or office to address any debt-related matters; and

(vii) Our remedies to enforce payment of the debt, which may include:

(A) Garnishing the debtor's wages through Administrative Wage Garnishment;

(B) Offsetting any Federal or State payments due the debtor, including income tax refunds, salary, certain benefit payments;

(C) Referring the debt to a private collection contractor;

(D) Reporting the debt to a credit bureau or other automated database;

(E) Referring the debt to the DOJ for litigation; and

(F) Referring the debt to the Department of the Treasury for any of the collection actions described in paragraphs (b)(1)(vii)(A) through (E) of this section.

(2) The written demand for payment should also include the following information:

(i) The debtor's right to review our records pertaining to the debt, or, if the debtor or the debtor's representative cannot personally review the records, to request and receive copies of such records;

(ii) Our willingness to discuss alternative methods of payment with the debtor;

(iii) If a Federal employee, the debtor may be subject to disciplinary action under 5 CFR part 752 or other applicable authority;

(iv) Any amounts collected and ultimately found to not be owed by the debtor will be refunded;

(v) For salary offset, up to 15 percent of the debtor's current disposable pay may be deducted every pay period until the debt is paid in full; and

(vi) Dependent upon applicable statutory authority, the debtor may be entitled to consideration for a waiver.

(c) *Evidence retention.* We will retain evidence of service indicating the date of mailing of the demand letter. The evidence of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

(d) *Pursue offset.* Prior to, during, or after the completion of the demand process, if we determine to pursue, or are required to pursue offset, the procedures applicable to offset should be followed (see § 422.821). The availability of funds for debt satisfaction by offset and our determination to pursue collection by offset will release us from the necessity of further compliance with paragraphs (a), (b), and (c) of this section.

(e) *Communications from debtors.* Where feasible, we will respond promptly to communications from debtors within 30 days, and will advise debtors who dispute debts to furnish available evidence to support their contentions.

(f) *Exception.* This section does not require duplication of any notice already contained in a written agreement, letter, or other document signed by, or provided to, the debtor.

§ 422.807 Interest, penalties, and administrative costs.

(a) Except as provided in paragraphs (g), (h), and (i) of this section, we will charge interest, penalties, and administrative costs on delinquent debts owed to the United States. These charges will continue to accrue until the debtor pays the debt in full or otherwise resolves the debt through compromise, termination, or an approved waiver.

(b) *Interest.* We will charge interest on delinquent administrative debts owed the agency as follows:

(1) Interest will accrue from the date of delinquency or as otherwise provided by law. For debts not paid by the date specified in the written demand for payment made under § 422.805, the date of delinquency is the date of mailing of the notice. The date of delinquency for an installment payment is the due date specified in the payment agreement.

(2) Unless a different rate is prescribed by statute, contract, or a repayment agreement, the rate of interest charged will be the rate established annually by the Treasury pursuant to 31 U.S.C. 3717. We may charge a higher rate if necessary to protect the rights of the United States, and the Commissioner has determined and documented a higher rate for delinquent debt is required to protect the Government's interests.

(3) Unless prescribed by statute or contract, the initial rate of interest charged will remain fixed for the duration of the indebtedness. A debtor who defaults on a repayment agreement may seek to enter into a new agreement. If we agree to a new agreement,

we may require additional financial information and payment of interest at a new rate that reflects the Treasury rate in effect at the time the new agreement is executed or at a higher rate consistent with paragraph (b)(2) of this section. Interest will not be compounded. That is, we will not charge interest on the interest, penalties, or administrative costs required by this section, except as permitted by statute or contract. If, however, the debtor defaults on a previous repayment agreement, we will add charges that accrued but were not collected under the defaulted agreement to the principal of any new repayment agreement.

(c) *Penalty*. Unless otherwise established by contract, repayment agreement, or statute, we will charge a penalty pursuant to 31 U.S.C. 3717(e)(2) and 31 CFR 901.9 on the amount due on a debt that is delinquent for more than 90 days. This charge will accrue from the date of delinquency.

(d) *Administrative costs*. We will assess administrative costs incurred for processing and handling delinquent debts. We will base the calculation of administrative costs on actual costs incurred or a valid estimate of the actual costs. Calculation of administrative costs will include all direct (personnel, supplies, etc.) and indirect collection costs, including the cost of providing a hearing or any other form of administrative review requested by a debtor and any costs charged by a collection agency under § 422.837. We will assess these charges monthly or per payment period throughout the period that the debt is overdue. Such costs may also be in addition to other administrative costs if collection is being made for another Federal agency or unit.

(e) *Cost of living adjustment*. When there is a legitimate reason to do so, such as when calculating interest and penalties on a debt would be extremely difficult because of the age of the debt, we may increase an administrative debt by the cost of living adjustment in lieu of charging interest and penalties under this section. The cost of living adjustment is the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the debt was determined or last adjusted. We will manually compute such increases to administrative debts.

(f) *Priority*. When a debt is paid in partial or installment payments, amounts received will be applied first to outstanding penalties, second to administrative charges, third to interest, and last to principal.

(g) *Waiver*. (1) We will waive the collection of interest and administrative costs imposed pursuant to this section on the portion of the debt that is paid within 30 days after the date on which interest began to accrue. Excepting debt affected by fraud or other misconduct, we may extend this 30-day period on a case-by-case basis if we determine that such action is in the best interest of the Government or is otherwise warranted by equity and good conscience.

(2) We may waive interest, penalties, and administrative charges charged under this section, in whole or in part, without regard to the amount of the debt, based on:

(i) The criteria set forth at § 422.846 (b)(1) for the compromise of debts; or

(ii) A determination by the agency that collection of these charges is:

(A) Against equity and good conscience; or

(B) Not in the best interest of the United States.

(h) *Review*. (1) Except as provided in paragraph (h)(2) of this section, administrative review of a debt will not suspend the assessment of interest, penalties, and administrative costs. While agency review of a debt is pending, the debtor may either pay the debt or be liable for interest and related charges on the uncollected debt. When agency review results in a final determination that any amount was properly a debt and the debtor failed to pay the full amount of the disputed debt, we will collect from the debtor the amount determined to be due, and interest, penalties and administrative costs on the debt amount. We will calculate and assess interest, penalties, and administrative costs under this section starting from the date the debtor was first made aware of the debt and ending when the debt is repaid.

(2) *Exception*. Interest, penalties, and administrative cost charges will not be imposed on a debt for periods during which collection activity has been suspended under § 422.848(c)(1) pending agency review or consideration of waiver, if a statute prohibits collection of the debt during this period. This exception does not apply to interest, penalties, and administrative cost charges on debts affected by fraud or other misconduct unless a statute so requires.

(i) *Common law or other statutory authority*. We may impose and waive interest and related charges on debts not subject to 31 U.S.C. 3717 in accordance with the common law or other statutory authority.

§ 422.809 Collection in installments.

Whenever feasible, we will collect the total amount of a debt in one lump sum payment. If a debtor claims a financial inability to pay a debt in one lump sum, by funds or Administrative Offset, we may accept payment in regular installments provided the debtor establishes the financial need and no evidence indicates that fraud or similar fault affected the debt. We will request financial statements from debtors who represent that they are unable to pay in one lump sum and independently verify such representations as described in § 422.846.

(a) When we agree to accept payments in regular installments, we will obtain a legally enforceable written agreement from the debtor that specifies all the terms and conditions of the agreement and includes a provision accelerating the debt in the event of a default.

(b) The size and frequency of the payments will reasonably relate to the size of the debt and the debtor's ability to pay. Whenever feasible, the installment agreement will provide for full payment of the debt, including interest and charges, in three years or less.

(c) When appropriate, the agreement will include a provision identifying security obtained from the debtor for the deferred payments, such as a surety bond or confession of judgment supporting a lien on any property of the debtor.

(d) An approved installment agreement does not prevent the use of Administrative Wage Garnishment or other collection tools in this subpart.

§ 422.810 Salary offset for current employees.

(a) *Purpose*. This part prescribes the Social Security Administration's (SSA) standards and procedures for the collection of debts owed by current SSA employees to SSA through involuntary salary offset.

(b) *Authority*. 5 U.S.C. 5514; 5 CFR part 550.

(c) *Scope*. (1) This part applies to internal collections of debt by Administrative Offset from the current pay accounts of SSA employees without his or her consent. The part does not apply to current SSA employees indebted to another Federal agency or employees who separate from SSA.

(2) The procedures contained in this part do not apply to any case where an employee consents to collection through deduction(s) from the employee's pay account, or to debts arising under the Internal Revenue Code or the tariff laws of the United States, or where another statute explicitly provides for or prohibits collection of a debt by salary offset (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(3) This part does not preclude an employee from requesting a waiver of an erroneous payment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt. Similarly, this part does not preclude an employee from requesting waiver of the collection of a debt under any other applicable statutory authority.

(4) Provided a debt is not affected by fraud and does not exceed $100,000, nothing in this part precludes the compromise of the debt or the suspension or termination of collection actions in accordance with §§ 422.846 and 422.848 of this title.

(d) *Definitions*.

Administrative Offset means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt owed by the payee.

Agency means an executive department or agency, a military department, the United States Postal Service, the Postal Rate Commission, the United States Senate, the United States House of Representatives, a court, court administrative office, or instrumentality in the judicial or legislative branches of the Government, or a Government Corporation.

Creditor agency means the agency to which the debt is owed or SSA, including a debt collection center when acting on behalf of a creditor agency in matters pertaining to the collection of a debt.

Day means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, Sunday, or a Federal holiday, in which case the next business day will be considered the last day of the period.

Debt means an amount of funds or other property determined by an appropriate official of the Federal Government to be owed to the United States from any person, organization, or entity or any other debt that meets the definition of ''claim'' or ''debt'' under 31 U.S.C. 3701(b), excluding program overpayments made under title II or title XVI of the Social Security Act.

Debt collection center means the Department of the Treasury (Treasury) or other Government agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies in accordance with 31 U.S.C. 3711(g).

Debtor means an employee currently employed by SSA who owes a delinquent non-tax debt to the United States.

Delinquent debt means a debt that the debtor does not pay or otherwise resolve by the date specified in the initial demand for payment, or in an applicable written repayment agreement or other instrument, including a post-delinquency repayment agreement.

Disposable pay means that part of the debtor's current basic, special, incentive, retired, and retainer pay, or other authorized pay remaining after deduction of amounts we are required by law to withhold. For purposes of calculating disposable pay, legally required deductions that must be applied first include: Tax levies pursuant to the Internal Revenue Code (title 26, United States Code); properly withheld taxes; Federal Insurance Contributions Act (FICA); Medicare; health, dental, vision, and life insurance premiums; and Thrift Savings Plan and retirement contributions. Amounts deducted under garnishment orders, including child support garnishment orders, are not legally permissible deductions when calculating disposable pay as specified in 5 CFR 550.1103.

Employee means any individual currently employed by SSA, as defined in this section, including seasonal and temporary employees and current members of the Armed Forces or a Reserve of the Armed Forces (Reserves).

Evidence of service means information retained by the agency indicating the nature of the document to which it pertains, the date of mailing the document, and the address and name of the debtor to whom it is being sent. A copy of the dated and signed notice provided to the debtor pursuant to this part may be considered evidence of service for purposes of this part. We may retain evidence of service electronically so long as the manner of retention is sufficient for evidentiary purposes.

Hearing means a review of the documentary evidence to confirm the existence or amount of a debt or the terms of a repayment schedule. If we determine that the issues in dispute cannot be resolved by such a review, such as when the validity of the claim turns on the issue of credibility or veracity, we may provide an oral hearing.

Hearing official means an administrative law judge or appropriate alternate.

Paying agency means the agency employing the employee and authorizing the payment of his or her current pay.

Salary offset means an Administrative Offset to collect a debt under 5 U.S.C. 5514 owed by a current SSA employee through deductions at one or more officially established pay intervals from the current pay account of the current SSA employee without his or her consent.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt owed by an employee to the agency or another agency as required or permitted by 5 U.S.C. 5584, 8346(b), 10

U.S.C. 2774, 32 U.S.C. 716, or any other law.

(e) *General rule.* (1) Whenever an employee owes us a delinquent debt, we may, subject to paragraph (e)(3) of this section, involuntarily offset the amount of the debt from the employee's disposable pay.

(2) Except as provided in paragraph (e)(3) of this section, prior to initiating collection through salary offset under this part, we will first provide the employee with the following:

(i) A notice as described in paragraph (f) of this section; and

(ii) An opportunity to petition for a hearing, and, if a hearing is provided, to receive a written decision from the hearing official within 60 days on the following issues:

(A) The determination concerning the existence or amount of the debt; and

(B) The repayment schedule, unless it was established by written agreement between the employee and us.

(3) The provisions of paragraph (e)(2) of this section do not apply to:

(i) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a federal benefits program requiring periodic deduction from pay, if the amount to be recovered was accumulated over four pay periods or less;

(ii) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within four pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided a notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(iii) Any adjustment to collect a debt amount in accordance with the amount stated in 5 U.S.C. 5514 as amended by the DCIA, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided a notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(f) *Notice requirements before offset.* (1) At least 30 days before the initiation of salary offset under this part, we will send a notice to the employee's last known address, informing the debtor of the following:

(i) We have reviewed the records relating to the debt and have determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(ii) Our intention to collect the debt by means of deduction from the employee's current disposable pay until the debt and all accumulated interest, penalties, and administrative costs are paid in full;

(iii) The amount, stated either as a fixed dollar amount or as a percentage of pay not to exceed 15 percent of disposable pay, the frequency, the commencement date, and the duration of the intended deductions;

(iv) An explanation of our policies concerning the assessment of interest, penalties, and administrative costs, stating that such assessments must be made unless waived in accordance with 31 CFR 901.9 and § 422.807 of this part;

(v) The employee's right to review and copy all of our records pertaining to the debt or, if the employee or the employee's representative cannot personally review the records, to request and receive copies of such records;

(vi) If not previously provided, the opportunity to establish a schedule for the voluntary repayment of the debt through offset or to enter into an agreement to establish a schedule for repayment of the debt in lieu of offset provided the agreement is in writing, signed by both the employee and us, and documented in our files;

(vii) The right to a hearing conducted by an impartial hearing official with respect to the existence and amount of the debt, or the repayment schedule, so long as a petition is filed by the employee as prescribed in paragraph (h) of this section;

(viii) Time limits and other procedures or conditions for reviewing our records pertaining to the debt, establishing an alternative repayment agreement, and requesting a hearing;

(ix) The name, address, and telephone number of the person or office who may be contacted concerning the procedures for reviewing our records, establishing

an alternative repayment agreement, and requesting a hearing;

(x) The name and address of the office to send the petition for a hearing;

(xi) A timely and properly filed petition for a hearing will suspend the commencement of the collection proceeding;

(xii) We will initiate action to effect salary offset not less than 30 days from the date of mailing the notice, unless the employee properly files a timely petition for a hearing,

(xiii) A final decision on a hearing, if one is requested, will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceeding;

(xiv) Notice that an employee who knowingly makes false or frivolous statements or submits false or frivolous representations or evidence may be subject to disciplinary procedures under chapter 75 of title 5, United States Code, Part 752 of title 5, CFR, or any other applicable statutes or regulations;

(xv) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(xvi) Unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt that are later waived or found not owed to the United States will be promptly refunded to the employee; and

(xvii) Proceedings with respect to such debt are governed by 5 U.S.C. 5514.

(2) We will retain evidence of service indicating the date of mailing of the notice.

(g) *Review of records relating to the debt.* (1) To review or copy our records relating to the debt, the employee must send a written request stating his or her intention. We must receive the written request within 15 days from the employee's receipt of the notice.

(2) In response to a timely request as described in paragraph (1) of this section, we will notify the employee of the location and time when the employee may review and copy such records. If the employee or employee's representative is unable to review personally such records as the result of geographical or other constraints, we will arrange to send copies of such records to the employee.

(h) *Hearings*—(1) *Petitions for hearing.* (i) To request a hearing concerning the existence or amount of the debt or the offset schedule established by us, the employee must send a written petition to the office we identified in the notice (see paragraph (f)(1)(x) of this section) within 15 days of receipt of the notice.

(ii) The petition must:

(A) Be signed by the employee;

(B) Fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, that the employee believes support his or her position; and

(C) Specify whether an oral or paper hearing is requested. If an oral hearing is requested, the request should explain why the matter cannot be resolved by a paper hearing, which is a determination of the request for reconsideration based upon a review of the written record.

(iii) The timely filing of a petition for hearing will suspend any further collection proceedings.

(2) *Failure to timely request a hearing.* (i) If the petition for hearing is filed after the 15-day period provided in paragraph (h)(1)(i) of this section, we may grant the request if the employee can establish either that the delay was the result of circumstances beyond the employee's control or that the employee failed to receive actual notice of the filing deadline.

(ii) An employee waives the right to a hearing and will have his or her disposable pay offset in accordance with the offset schedule established by us, if the employee:

(A) Fails to file a timely request for a hearing unless such failure is excused; or

(B) Fails to appear at an oral hearing of which the employee was notified unless the hearing official determines that the failure to appear was due to circumstances beyond the employee's control.

(3) *Form of hearings*—(i) *General.* After the employee requests a hearing, the hearing official must notify the employee of the type of hearing that will

occur. If an oral hearing will occur, the notice will state the date, time, and location of the hearing. If a paper hearing will occur, the employee will be notified and required to submit evidence and arguments in writing to the hearing official by the date specified in the notice, after which the record will be closed.

(ii) *Oral hearing.* An employee who requests an oral hearing will be provided an oral hearing if the hearing official determines that the matter cannot be resolved by review of documentary evidence alone because an issue of credibility or veracity is involved. Where an oral hearing is appropriate, the hearing is not an adversarial adjudication and need not take the form of an evidentiary hearing (e.g., the formal rules of evidence need not apply). Oral hearings may take the form of, but are not limited to:

(A) Informal conferences with the hearing official in which the employee and agency representative will be given full opportunities to present evidence, witnesses, and arguments;

(B) Informal meetings in which the hearing official interviews the employee by phone or videoconferencing; or

(C) Formal written submissions with an opportunity for oral presentations.

(iii) *Paper hearing.* If the hearing official determines that an oral hearing is not necessary, the hearing official will make the determination based upon a review of the available written record.

(iv) *Record.* The hearing official will maintain a summary record of any hearing conducted under this part. Witnesses who testify in oral hearings will do so under oath or affirmation.

(4) *Written decision*—(i) *Date of decision.* The hearing officer will issue a written opinion stating his or her decision. This opinion is based upon documentary evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than 60 days after the date on which the hearing petition was received by the creditor agency. This is dependent upon whether the employee requested a delay in the proceedings and the hearing official grants it, in which case the 60-day decision period will be extended by the number of days by which the hearing was postponed. The recipient of an employee's request for a hearing must forward the request expeditiously to the hearing official to avoid jeopardizing the hearing official's ability to issue a decision within this 60-day period.

(ii) *Content of decision.* The written decision will include:

(A) A statement of the facts presented to support the origin, nature, and amount of the debt;

(B) The hearing official's findings, analysis, and conclusions, including a determination whether the employee's petition for hearing was baseless and resulted from an intent to delay the creditor agency's collection activity; and

(C) The terms of any repayment schedule, if applicable.

(5) *Failure to appear.* In the absence of good cause shown, an employee who fails to appear at a hearing will be deemed, for the purpose of this part, to admit the existence and amount of the debt as described in the notice. If the representative of the creditor agency fails to appear, the hearing official will proceed with the hearing as scheduled and make a determination based upon oral testimony presented and the documentary evidence submitted by both parties. With the agreement of both parties, the hearing official will schedule a new hearing date, and both parties will be given notice of the time and place of the new hearing.

(i) *Obtaining the services of a hearing official.* The office designated in paragraph (f)(1)(x) of this section will schedule a hearing, if one is requested by an employee, before a hearing official.

(1) When we cannot provide a prompt and appropriate hearing before an administrative law judge or a hearing official furnished pursuant to another lawful arrangement, the office designated in paragraph (f)(1)(x) of this section may contact an agent of any agency designated in 5 CFR part 581, appendix A to arrange for a hearing official.

(2)(i) When another agency is the creditor agency, not SSA, it is the responsibility of that agency to arrange for a hearing if one is requested. We will provide a hearing official upon the

request of a creditor agency when the debtor is employed by us and the creditor agency cannot provide a prompt and appropriate hearing before a hearing official furnished pursuant to another lawful arrangement.

(ii) Services rendered to a creditor agency under paragraph (i)(2)(i) of this section will be provided on a fully reimbursable basis pursuant to the Economy Act of 1932, as amended by 31 U.S.C. 1535.

(3) The determination of a hearing official designated under this section is considered an official certification regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514 and this part. A creditor agency may make a certification to the Secretary of the Treasury under 5 CFR 550.1108 or a paying agency under 5 CFR 550.1109 regarding the existence and amount of the debt based on the certification of a hearing official. If a hearing official determines that a debt may not be collected via salary offset, but we find that the debt is still valid, we may still seek collection of the debt through other means, such as offset of other Federal payments or litigation.

(j) *Voluntary repayment agreement in lieu of salary offset.* (1)(i) In response to the notice, the employee may propose to establish an alternative schedule for the voluntary repayment of the debt by submitting a written request. An employee who wishes to repay the debt without salary offset will also submit a proposed written repayment agreement. The proposal will admit the existence of the debt, and the agreement must be in such form that it is legally enforceable. The agreement must:

(A) Be in writing;

(B) Be signed by both the employee and the agency;

(C) Specify all the terms of the arrangement for payment; and

(D) Contain a provision accelerating the debt in the event of default by the employee, but such an increase may not result in a deduction that exceeds 15 percent of the employee's disposable pay unless the employee has agreed in writing to a deduction of a greater amount.

(ii) Any proposal under paragraph (j)(1)(i) of this section must be received within 30 days of the date of the notice.

(2) In response to a timely request as described in paragraph (j)(1) of this section, we will notify the employee whether the proposed repayment schedule is acceptable. It is within our discretion to accept a proposed alternative repayment schedule and to set the necessary terms of a voluntary repayment agreement.

(3) No voluntary repayment agreement will be binding on us unless it is in writing and signed by the employee and us.

(k) *Special review.* (1) At any time, an employee subject to salary offset or a voluntary repayment agreement may request a special review by the agency of the amount of the salary offset or voluntary repayment installments based on materially changed circumstances, such as, but not limited to, catastrophic illness, divorce, death, or disability.

(2)(i) In determining whether an offset would prevent the employee from meeting essential subsistence expenses (e.g., food, housing, clothing, transportation, and medical care), the employee must submit a detailed statement and supporting documents for the employee, his or her spouse, and dependents indicating:

(A) Income from all sources;

(B) Assets and liabilities;

(C) Number of dependents;

(D) Food, housing, clothing, transportation, and medical expenses; and

(E) Exceptional and unusual expenses, if any.

(ii) When requesting a special review under this section, the employee must file an alternative proposed offset or payment schedule and a statement, with supporting documents as described in paragraph (k)(2)(i) of this section, stating why the current salary offset or payments result in an extreme financial hardship to the employee.

(3)(i) We will evaluate the statement and supporting documents and determine whether the original offset or repayment schedule impose extreme financial hardship on the employee.

(ii) Within 30 calendar days of the receipt of the request and supporting

documents, we will notify the employee in writing of such determination, including, if appropriate, a revised offset or repayment schedule.

(4) If the special review results in a revised offset or repayment schedule, we will do a new certification based on the result of the review.

(l) *Procedures for salary offset*—(1) *Method and source of deductions.* Unless the employee and the agency have agreed to an alternative repayment arrangement under paragraph (j) of this section, the agency will collect a debt in a lump sum or by installment deductions at officially established pay intervals from an employee's current pay account.

(2) *Limitation on amount of deduction.* Ordinarily, the size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay. However, the amount deducted for any pay period must not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount, as outlined in paragraph (j) of this seciton.

(3) *Duration of deductions*—(i) *Lump sum.* If the amount of the debt is equal to or less than 15 percent of the employee's disposable pay for an officially established pay interval, the agency will collect the debt in one lump-sum deduction including lump-sum annual leave amounts.

(ii) If the employee is deemed financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of the employee's disposable pay for an officially established pay interval, the agency will collect the debt in installments. Except as provided in paragraphs (k)(5) and (6) of this section, installment deductions must be made over a period no longer than the anticipated period of active duty or employment.

(4) *When deductions may begin.* (i) Deductions will begin on the date stated in the notice, unless the agency and individual have agreed to an alternative repayment agreement under paragraph (j) of this section or the employee has filed a timely request for a hearing.

(ii) If the employee files a timely petition for hearing as provided in paragraph (h) of this section, the agency will begin deductions after the hearing official has provided the employee with a hearing and a final written decision has been rendered in favor of the agency.

(5) *Liquidation from final check.* If an employee retires, resigns, or the period of employment ends before collection of the debt is completed, the agency will offset the remainder under 31 U.S.C. 3716 from subsequent agency payments of any nature (e.g., final salary payment or lump-sum leave) due the employee as of the date of separation.

(6) *Recovery from other payments due a separated employee.* If the debt cannot be satisfied by offset from any final payment due the employee on the date of separation, we will liquidate the debt, where appropriate, by Administrative Offset under 31 U.S.C. 3716 from later payments of any kind due the former employee (e.g., lump-sum leave payment).

(m) *Exception to internal salary offset.* SSA may follow Administrative Offset notification requirements when attempting the collection of delinquent travel advances and training expenses, not those associated with Federal employee salary offset. Once the notification procedures have been followed, SSA has the authority to withhold all or part of an employee's salary, retirement benefits, or other amount due the employee including lump-sum payments to recover the amounts owed. No statutory or regulatory limits exist on the amount that can be withheld or offset.

(n) *Salary offset when we are the paying agency but not the creditor agency.* When we are the paying agency and another agency is the creditor agency, the creditor agency must provide written certification to Treasury that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that the Office of Personnel Management has approved the creditor agency's regulations implementing 5 U.S.C. 5514. We are not required or authorized to review the merits of the determination with respect

to the amount or validity of the debt certified by the creditor agency.

(o) *Interest, penalties, and administrative costs.* Debts owed will be assessed interest, penalties, and administrative costs in accordance with § 422.807.

(p) *Non-waiver of rights.* An employee's involuntary payment of all or any portion of a debt collected under this part will not be construed as a waiver of any rights the employee may have under 5 U.S.C. 5514 or any other provision of law or contract unless there are statutory or contractual provisions to the contrary.

(q) *Refunds.* (1) We will promptly refund any amounts paid or deducted under this part when:

(i) A debt is waived or otherwise found not owed to us; or

(ii) We are directed by administrative or judicial order to refund amount deducted from the employee's current pay.

(2) Unless required or permitted by law or contract, refunds will not bear interest.

(r) *Additional administrative collection action.* Nothing contained in this part is intended to preclude the use of any other appropriate administrative remedy.

§ 422.811 Discretionary referral for cross-servicing.

We may refer legally enforceable non-tax administrative debts that are less than 120 calendar days delinquent to the Department of the Treasury (Treasury) or to Treasury-designated ''debt collection centers'' in accordance with 31 CFR 285.12 to accomplish efficient, cost effective debt collection.

§ 422.813 Mandatory referral for cross-servicing.

(a) Pursuant to the cross-servicing process, creditor agencies must transfer any eligible debt more than 120 calendar days delinquent to the Department of the Treasury (Treasury) for debt collection services. As one such agency, pursuant to 31 CFR 285.12, we are required to transfer to Treasury any legally enforceable nontax debt in excess of $25. We may transfer to Treasury any combination of legally enforceable nontax debts less than $25 that exceeds $25 (in the case of a debtor whose taxpayer identification number (TIN) is unknown, the applicable threshold is $100) that has or have been delinquent for a period of 120 calendar days. Treasury will take appropriate action on behalf of the creditor agency to collect, compromise, suspend, or terminate collection of the debt, including use of debt collection centers and private collection contractors to collect the debt or terminate collection action.

(b) Debts not eligible for mandatory referral of paragraph (a) of this section include:

(1) Debts owed by a Federal agency;

(2) Debts owed by a deceased debtor;

(3) Debts not legally enforceable: A debt is considered legally enforceable for purposes of referral to the Treasury's Bureau of the Fiscal Service if there has been a final agency determination that the debt is due and there are no legal bars to collection;

(4) Debts that are the subject of an administrative appeal until the appeal is concluded and the amount of the debt is fixed;

(5) Debts owed by a debtor who has filed for bankruptcy protection or the debt has been discharged in bankruptcy proceeding; or

(6) Debts that are less than $25 (including interest, penalties, and administrative costs).

(c) A debt is considered delinquent for purposes of this section if it is 120 calendar days past due and is legally enforceable. A debt is past due if it has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made. A debt is legally enforceable if there has been a final agency determination that the debt, in the amount stated, is due and there are no legal bars to collection action. Where, for example, a debt is the subject of a pending administrative review process required by statute or regulation and collection action during the review process is prohibited, the debt is not considered legally enforceable for purposes of mandatory transfer to the Treasury and is not to be transferred

even if the debt is more than 120 calendar days past due. When a final agency determination is made after an administrative appeal or review process, the creditor agency must transfer such debt to Treasury, if more than 120 calendar days delinquent, within 30 days after the date of the final decision.

(d) We may also refer debts owed by a foreign country upon consultation with our Office of the General Counsel.

§ 422.815 Referral of administrative debts to the Department of the Treasury.

(a) Agencies are required by law to transfer delinquent, nontax, and legally enforceable debts to Department of the Treasury (Treasury) for collection through cross-servicing and through centralized Administrative Offset. Additionally, we may transfer debts to the Treasury for collection through Administrative Wage Garnishment. Agencies need not make duplicate referrals to Treasury for all these purposes; we may refer a debt to Treasury for purposes of simultaneous collection by cross-servicing, centralized Administrative Offset, and Administrative Wage Garnishment where applicable. However, in some instances a debt exempt from cross-servicing collection may be subject to collection by centralized Administrative Offset, so simultaneous referrals are not always appropriate.

(b) When we refer or transfer administrative debts to Treasury, or Treasury-designated debt collection centers under the authority of 31 U.S.C. 3711(g), Treasury will service, collect, or compromise the debts, or Treasury will suspend or terminate the collection action, in accordance with the statutory requirements and authorities applicable to the collection of such debts.

(c) Debts that are not required for referral include:

(1) Debts delinquent for 120 calendar days or less;

(2) Debts less than $100 and we are unable to obtain the debtor's taxpayer identification number;

(3) Debts in litigation or foreclosure as defined in 31 CFR 285.12(d)(2);

(4) Debts that have been referred to a private collection contractor for a period acceptable to Treasury;

(5) Debts that will be disposed of under an approved asset sale program as defined in 31 CFR 285.12(d)(3)(i);

(6) Debts that will be collected under internal offset procedures within three years after the debt first became delinquent;

(7) Debts at a debt collection center for a period of time acceptable to Treasury; or

(8) Debts exempt from this requirement based on a determination by the Secretary of the Treasury that exemption for a certain class of debt is in the best interest of the United States. Federal agencies may request that the Secretary of the Treasury exempt specific classes of debts. Any such request by an agency must be sent to the Fiscal Assistant Secretary of the Treasury by the agency's Chief Financial Officer.

§ 422.817 Required certification.

Before referring delinquent administrative debts to the Department of the Treasury (Treasury) for collection, we will certify, in writing, that:

(a) The debts we are transferring are valid and legally enforceable;

(b) There are no legal bars to collection; and

(c) We have complied with all prerequisites to a particular collection action under the laws, regulations, or policies applicable to us, unless we agree that Treasury will do so on our behalf.

§ 422.819 Fees.

Federal agencies operating Department of the Treasury-designated debt collection centers are authorized to charge a fee for services rendered regarding referred or transferred debts. The fee may be paid out of amounts collected and may be added to the debt as an administrative cost.

§ 422.821 Administrative offset.

(a) *Scope.* (1) Administrative Offset is the withholding of funds payable by the United States to, or held by the United States for, a person to satisfy a debt. We will use Administrative Offset to recover administrative debts.

(2) This section does not apply to:

(i) Debts arising under the Social Security Act;

(ii) Payments made under the Social Security Act, except as provided for in 31 U.S.C. 3716(c), and 31 CFR 285.4;

(iii) Debts arising under, or payments made under the Internal Revenue Code or the tariff laws of the United States;

(iv) Offsets against Federal salaries to the extent these standards are inconsistent with regulations published to implement such offsets under 5 U.S.C. 5514 and 31 U.S.C. 3716 (see 5 CFR part 550, subpart K; 31 CFR 285.7; §§ 422.810 and 422.829 of this part);

(v) Offsets under 31 U.S.C. 3728 against a judgment obtained by a debtor against the United States;

(vi) Offsets or recoupments under common law, State law, or Federal statutes specifically prohibiting offsets or recoupments for particular types of debts; or

(vii) Offsets in the course of judicial proceedings, including bankruptcy.

(3) Unless otherwise provided for by contract or law, debts or payments that are not subject to Administrative Offset under 31 U.S.C. 3716 may be collected by Administrative Offset under the common law or other applicable statutory authority.

(4) In bankruptcy cases, the agency may seek legal advice from the Office of the General Counsel concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 106, 362, and 553, on pending or contemplated collections by offset.

(b) [Reserved]

§ 422.822 Notification of intent to collect by administrative offset.

(a) Prior to initiation of collection by Administrative Offset, we will:

(1) Send the debtor a notice by mail or hand-delivery. The notice will include the type and amount of the debt, the intention of the agency using internal offset or non-centralized Administrative Offset to collect the debt 30 days after the date of the notice, and the name of the Federal agency from which the creditor agency wishes to collect in the case of a non-centralized Administrative Offset. Additionally, if the debt is not satisfied by offset within the Social Security Administration or by agreement with another Federal agency, the notice will include the intent to refer the debt to the Department of the Treasury (Treasury) for collection through centralized Administrative Offset, including offset of tax refunds 60 days after the date of the notice as well as an explanation of the debtor's rights under 31 U.S.C. 3716.

(2) Give the debtor the opportunity:

(i) To make a voluntary payment;

(ii) To review and copy agency records related to the debt;

(iii) For a review within the agency of the determination of indebtedness;

(iv) To make a written agreement to repay the debt.

(b) The procedures set forth in paragraph (a) of this section are not required when:

(1) The offset is in the nature of a recoupment;

(2) The debt arises under a contract subject to the Contracts Disputes Act or Federal Acquisition Regulations;

(3) In the case of a non-centralized Administrative Offset (see § 422.824), the agency first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. When prior notice and an opportunity for review are omitted, we will give the debtor such notice and an opportunity for review as soon as practicable and will promptly refund any money ultimately found not to have been owed to the agency; or

(4) The agency previously has given a debtor any of the notice and review opportunities required under this part, with respect to a particular debt. Subsequently, any interest accrued or any installments coming due after we initiate an offset would not require a new notice and opportunity to review.

(c) The notice will be included as part of a demand letter issued under § 422.805 to advise the debtor of all debt collection possibilities that the agency will seek to employ.

§ 422.823 Debtor rights to review or copy records, submit repayment proposals, or request administrative review.

(a) A debtor who intends to review or copy our records with respect to the debt must notify us in writing within 30 days of the date of the notice as described in section § 422.822. In response,

we will notify the debtor of the location, time, and any other conditions for reviewing and copying. The debtor may be liable for reasonable copying expenses.

(b) In response to the notice as described in section § 422.822, the debtor may propose a written agreement to repay the debt as an alternative to Administrative Offset. Any debtor who wishes to do this must submit a written proposal for repayment of the debt, which we must receive within 30 days of the date of the notice as described in section § 422.822 or 15 days after the date of a decision adverse to the debtor. In response, we will notify the debtor whether we need additional information, for example, financial status information. We will obtain any necessary authorization required to approve the agreement, and we will issue a written determination whether the proposed agreement is acceptable. In exercising our discretion, we will balance the Government's interest in collecting the debt against fairness to the debtor.

(c) A debtor must request an administrative review of the debt within 30 days of the date of the notice as described in section § 422.822 for purposes of a proposed collection by non-centralized Administrative Offset pursuant to § 422.824. A debtor must request an administrative review of the debt within 60 days of the date of the notice as described in section § 422.822 for purposes of a proposed collection by centralized Administrative Offset for offset against other Federal payments that would include tax refunds pursuant to § 422.825.

(1) For purposes of this section, whenever we are required to provide a debtor a review within the agency, we will give the debtor a reasonable opportunity for an oral hearing, either by telephone or in person, when the debtor requests reconsideration of the debt and we determine that the question of the indebtedness cannot be resolved by review of the documentary evidence.

(2) Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although we will carefully document all significant matters discussed at the hearing.

(3) An oral hearing is not required with respect to debts where determinations of indebtedness rarely involve issues of credibility or veracity, and we have determined that a review of the written record is adequate to correct prior mistakes.

(4) In those cases when an oral hearing is not required by this section, we will provide the debtor a paper hearing, that is, a determination of the request for reconsideration based upon a review of the written record.

§ 422.824 Non-centralized administrative offset.

(a) Unless otherwise prohibited by law, when centralized Administrative Offset under § 422.825 is not available or appropriate, we may collect a past due, legally enforceable, nontax delinquent debt by conducting non-centralized Administrative Offset internally or in cooperation with the agency certifying or authorizing payments to the debtor. Generally, non-centralized Administrative Offsets are ad hoc case-by-case offsets that an agency conducts at its own discretion, internally or in cooperation with a second agency certifying or authorizing payments to the debtor. In these cases, we may make a request directly to a payment-authorizing agency to offset a payment due a debtor to collect a delinquent debt. We adopt the procedures in 31 CFR 901.3(c) so that we may request the Department of the Treasury or any other payment-authorizing agency to conduct a non-centralized Administrative Offset.

(b) Administrative Offset may be initiated only after:

(1) The debtor has been sent a notice of the type and amount of the debt, the intention to initiate Administrative Offset to collect the debt, and an explanation of the debtor's rights under 31 U.S.C. 3716; and

(2) The debtor has been given:

(i) The opportunity to review and copy records related to the debt;

(ii) The opportunity for a review within the department of the determination of indebtedness; and

(iii) The opportunity to make a written agreement to repay the debt.

(c) The agency may omit the requirements under paragraph (b) of this section when:

(1) Offset is in the nature of a recoupment (*i.e.*, the debt and the payment to be offset arise out of the same transaction or occurrence);

(2) The debt arises under a contract as set forth in *Cecile Industries, Inc.* v. *Cheney*, 995 F.2d 1052 (Fed. Cir. 1993) (notice and other procedural protections set forth in 31 U.S.C. 3716(a) do not supplant or restrict established procedures for contractual offsets covered by the Contracts Disputes Act); or

(3) In the case of non-centralized Administrative Offset conducted under paragraph (a) of this section, the agency first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor to allow for prior notice and an opportunity for review. When prior notice and an opportunity for review are omitted, we will give the debtor such notice and an opportunity for review as soon as practical and will promptly refund any money ultimately found not to have been owed to the Government.

(d) When the debtor previously has been given any of the required notice and review opportunities with respect to a particular debt, such as under § 422.805, we need not duplicate such notice and review opportunities before Administrative Offset may be initiated.

(e) Before requesting that a payment-authorizing agency conduct non-centralized Administrative Offset, we will:

(1) Provide the debtor with due process as set forth in paragraph (b) of this section; and

(2) Provide the payment-authorizing agency written certification that the debtor owes the past due, legally enforceable delinquent debt in the amount stated and that we have fully complied with this section.

(f) When a creditor agency requests that we, as the payment authorizing agency, conduct non-centralized Administrative Offset, we will comply with the request, unless the offset would not be in the best interest of the United States with respect to the program of the agency, or would otherwise be contrary to law. Appropriate use should be made of the cooperative efforts of other agencies in effecting collection by Administrative Offset, including salary offset.

(g) When collecting multiple debts by non-centralized Administrative Offset, we will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, particularly the applicable statute of limitations.

§ 422.825 Centralized administrative offset.

(a) *Mandatory referral.* After we provide and meet the notice and review opportunity requirements of § 422.822, we will refer debts that are over 120 calendar days delinquent to the Department of the Treasury (Treasury) for collection through centralized Administrative Offset 61 days after the date of the notice provided in accordance with § 422.822. If the debtor seeks review, referral of the debt must occur within 30 days of the final decision upholding our decision to offset the debt if the debt is more than 120 calendar days delinquent.

(b) *Discretionary referral.* After we provide and meet the notice and review opportunity requirements of § 422.822, and the debtor does not request administrative review or the result of the review is unsuccessful for the debtor, we may refer a debt that is less than 120 calendar days delinquent.

(c) *Procedures for referral.* We will refer debts to Treasury for collection in accordance with Treasury procedures set forth in 31 CFR 285.5 and 31 CFR 901.3(b).

§ 422.827 Offset against tax refunds.

We will take action to effect Administrative Offset against tax refunds due to debtors in accordance with the provisions of 31 U.S.C. 3720A through referral for centralized Administrative Offset under § 422.825.

§ 422.829 Federal salary offset.

(a) *Referral to the Department of the Treasury for offset.* (1) The Department of the Treasury (Treasury) will recover overdue administrative debts by offsetting Federal payments due the debtor through the Treasury Offset Program (TOP). TOP is a government-wide delinquent debt matching and payment

offset process operated by Treasury, whereby debts owed to the Federal Government are collected by offsetting them against Federal payments owed the debtor. Federal payments owed the debtor include current ''disposable pay,'' defined in 5 CFR 550.1103, owed by the Federal Government to a debtor who is an employee of the Federal Government. Deducting from such disposable pay to collect an overdue debt owed by the employee is called ''Federal Salary Offset'' in this subpart.

(2) Treasury will use Federal Salary Offset to collect overdue administrative debts from Federal employees, including employees of the Social Security Administration. A Federal employee's involuntary payment of all or part of a debt collected by Federal Salary Offset does not amount to a waiver of any rights that the employee may have under any statute or contract, unless a statute or contract provides for waiver of such rights.

(b) *Debts we will refer.* We will refer all qualifying administrative debts that meet or exceed the threshold amounts used by Treasury for collection from Federal payments, including Federal salaries.

(c) *Notice to debtor.* Before we refer any administrative debt for collection by Administrative Offset, we will send the debtor a notice that explains all of the following:

(1) The nature and amount of the debt;

(2) That we have determined that payment of the debt is overdue; and

(3) That we will refer the debt for Administrative Offset (except as provided in paragraph (c)(9) of this section) at the expiration of not less than 60 calendar days after the date of the notice unless, within that 60-day period:

(i) The debtor pays the full amount of the debt, or

(ii) The debtor takes any of the actions described in paragraphs (c)(6) or (c)(7) of this section.

(4) The frequency and amount of any Federal Salary Offset deduction (the payment schedule) expressed as a fixed dollar amount or percentage of disposable pay.

(5) The debtor may review or copy our records relating to the debt. If the debtor or his or her representative cannot personally review the records, the debtor may request and receive a copy of such records.

(6) The debtor may request a review of the debt by giving us evidence showing that the debtor does not owe all or part of the amount of the debt or that we do not have the right to collect it. The debtor may also request review of any payment schedule for Federal Salary Offset stated in the notice. If the debtor is an employee of the Federal Government and Federal Salary Offset is proposed, an official designated in accordance with 5 U.S.C. 5514(a)(2) will conduct the review.

(7) The debtor may request to repay the debt voluntarily through an installment payment plan.

(8) If the debtor knowingly furnishes any false or frivolous statements, representations, or evidence, the debtor may be subject to appropriate disciplinary procedures under applicable statutes or regulations when the debtor is a Federal employee.

(9) We will refer the debt for Federal Salary Offset at the expiration of not less than 60 calendar days after the date of the notice unless, within that 60 day period, the debtor takes any actions described in paragraphs (c)(3)(i), (c)(6), or (c)(7) of this section.

(d) *Federal Salary Offset: amount, frequency and duration of deductions.* (1) Treasury may collect the overdue debt from an employee of the Federal Government through the deduction of an amount not to exceed 15 percent of the debtor's current disposable pay each payday.

(2) Federal Salary Offset will begin not less than 60 calendar days after the date of the notice to the debtor described in paragraph (c) of this section.

(3) Once begun, Federal Salary Offset will continue until Treasury recovers the full amount of the debt, the debt is otherwise resolved, or the debtor's Federal employment ceases, whichever occurs first.

(4) After Federal Salary Offset begins, the debtor may request a reduction in the amount deducted from disposable pay each payday. When Treasury determines that the amount deducted causes financial harm under the rules in § 422.833(j), they will reduce that amount. Treasury will not reduce

the amount from the debtor's disposable pay if the debt was caused by:

(A) An intentional false statement by the debtor, or

(B) The debtor's willful concealment of, or failure to furnish, material information.

(2) ''Willful concealment'' means an intentional, knowing and purposeful delay in providing, or failure to reveal, material information.

(e) *Refunds.* Treasury will promptly refund to the debtor any amounts collected that the debtor does not owe. Refunds do not bear interest unless required or permitted by law or contract.

§ 422.833 Administrative wage garnishment for administrative debts.

(a) *Purpose.* This part prescribes the standards and procedures for collecting money from a debtor's disposable pay by means of Administrative Wage Garnishment to satisfy delinquent non-tax debts owed to us, the Social Security Administration.

(b) *Authority.* These standards and procedures are authorized under the wage garnishment provisions of the Debt Collection Improvement Act of 1996, codified at 31 U.S.C. 3720D, and the Department of the Treasury's (Treasury) Administrative Wage Garnishment regulation at 31 CFR 285.11.

(1) This part will apply notwithstanding any provision of State law.

(2) Nothing in this part precludes the compromise of a debt or the suspension or termination of collection action in accordance with § 422.803 of this title or other applicable law or regulation, and the Commissioner has retained the authority. The Department of Justice has exclusive authority to suspend or terminate collection action on a debt affected by fraud.

(3) The receipt of payments pursuant to this part does not preclude us from pursuing other debt collection remedies, including the offset of Federal or State payments to satisfy delinquent non-tax debt owed to the United States. We will pursue such debt collection remedies separately or in conjunction with Administrative Wage Garnishment.

(4) This section does not apply to the collection of delinquent non-tax debts owed to the United States from the wages of Federal employees from their Federal employment. Federal pay is subject to the Federal Salary Offset procedures set forth in 5 U.S.C. 5514 and other applicable laws.

(5) Nothing in this section requires us to duplicate notices or administrative proceedings required by contract or other laws or regulations.

(c) *Definitions.* In this section, the following definitions will apply:

(1) *Business day* means Monday through Friday. For purposes of computation, the last day of the period will be included unless it is a Federal legal holiday, in which case the next business day following the holiday will be considered the last day of the period.

(2) *Day* means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, Sunday, or a Federal legal holiday, in which case the next business day will be considered the last day of the period.

(3) *Debt* means an amount of funds or other property determined by an appropriate official of the Federal Government to be owed to the United States from any person, organization, or entity or any other debt that meets the definition of ''claim'' or ''debt'' under 31 U.S.C. 3701(b), excluding program overpayments made under title II or title XVI of the Social Security Act.

(4) *Debtor* means an individual who owes a delinquent non-tax debt to the United States.

(5) *Delinquent debt* means any non-tax debt that has not been paid by the date specified in the agency's initial written demand for payment, or applicable payment agreement or instrument, unless other satisfactory payment arrangements have been made. For purposes of this part, ''delinquent'' and ''overdue'' have the same meaning.

(6) *Disposable pay* means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of this part, ''amounts required by law to be withheld'' include amounts for deductions such as social security taxes and withholding taxes, but do not include any

amount withheld pursuant to a court order.

(7) *Employer* means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local Governments, but does not include an agency of the Federal Government as defined by 31 CFR 285.11(c).

(8) *Garnishment* means the process of withholding amounts from an employee's disposable pay and paying those amounts to a creditor in satisfaction of a withholding order.

(9) *Hearing* means a review of the documentary evidence concerning the existence or amount of a debt or the terms of a repayment schedule, provided such repayment schedule is established other than by a written agreement entered into pursuant to this part. If the hearing official determines that the issues in dispute cannot be resolved solely by review of the written record, such as when the validity of the debt turns on the issue of credibility or veracity, an oral hearing may be provided.

(10) *Hearing official* means an administrative law judge or appropriate alternate.

(11) *Treasury* means the Department of the Treasury.

(12) *Withholding order* for purposes of this part means ''Wage Garnishment Order (SF329B).'' Also for purposes of this part, the terms ''wage garnishment order'' and ''garnishment order'' have the same meaning as ''withholding order.''

(d) *General rule.* (1) Except as provided in paragraph (d)(2) of this section, whenever an individual owes a delinquent debt, the agency or another Federal agency collecting a debt on our behalf (see §422.803) may initiate administrative proceedings to garnish the wages of the delinquent debtor.

(2) Treasury will not garnish the wages of a debtor who we know has been involuntarily separated from employment until the debtor has been reemployed continuously for at least 12 months. The debtor has the burden to inform the agency of the circumstances surrounding an involuntary separation from employment.

(e) *Notice*—(1) *Notice requirements.* At least 30 days before the initiation of garnishment proceedings, Treasury will mail, by first class mail, to the debtor's last known address, a notice informing the debtor of:

(i) The nature and amount of the debt;

(ii) The intention to initiate proceedings to collect the debt through deductions from pay until the debt and all accumulated interest, penalties, and administrative costs are paid in full;

(iii) The debtor's right:

(A) To review and copy our records related to the debt;

(B) To enter into a written repayment which is agreeable to the agency;

(C) To a hearing, in accordance with paragraph (f) of this section, concerning the existence or the amount of the debt or the terms of the proposed repayment schedule under the garnishment order, except that the debtor is not entitled to a hearing concerning the proposed repayment schedule if the terms were established by written agreement pursuant to paragraph (1)(iii)(B) of this section; and

(iv) The periods within which the debtor may exercise his or her rights.

(2) *Treasury will keep a copy of the dated notice.* The notice may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

(f) *Hearing*—(1) *In general.* Upon timely written request of the debtor, Treasury will provide a paper or oral hearing concerning the existence or amount of the debt, or the terms of a repayment schedule established other than by written agreement under paragraph (e)(1)(iii)(B) of this section.

(2) *Request for hearing.* (i) The request for a hearing must be signed by the debtor, state each issue being disputed, and identify and explain with reasonable specificity all facts and evidence that the debtor believes support the debtor's position. Supporting documentation identified by the debtor should be attached to the request.

(ii) Effect of timely request: Subject to paragraph (e)(10) of this section, if the debtor's written request is received

on or before the 15 business days following the mailing of the notice required under this part, a withholding order will not be issued under paragraph (g) of this section until the debtor has been provided the requested hearing, and a decision in accordance with paragraphs (e)(7) and (8) of this section has been rendered.

(iii) Failure to timely request a hearing: If the debtor's written request is received after the 15th business day following the mailing of the notice required under this part, Treasury will provide a hearing to the debtor. However, Treasury may not delay the issuance of a withholding order unless they determine that the delay in submitting such request was caused by factors beyond the control of the debtor, or receive information that they determine justifies a delay or cancellation of the withholding order.

(3) *Oral hearing.* (i) For purposes of this section, a debtor will be provided a reasonable opportunity for an oral hearing when the hearing official determines that the issues in dispute cannot be resolved by review of the documentary evidence, such as when the validity of the claim turns on the issue of credibility or veracity.

(ii) If the hearing official decides to have a hearing, a debtor can specify to Treasury whether he or she wants to appear in person or by telephone. At the debtor's option, the oral hearing may be conducted in person or by telephone conference. The hearing official will notify the debtor of the date, time, and in the case of an in-person hearing, the location of the hearing. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor.

(4) *Paper hearing.* (i) If the hearing official determines an oral hearing is not required by this section, the hearing official will afford the debtor a paper hearing, that is, the issues in dispute will be decided based upon a review of the written record.

(ii) The hearing official will notify the debtor of the deadline for the submission of additional evidence if necessary for a review of the record.

(5) *Burden of proof.* (i) Treasury has the initial burden of proving the existence or amount of the debt.

(ii) Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must present Treasury preponderant evidence that no debt exists or that the amount is incorrect. Debtors challenging the terms of a repayment schedule must provide preponderant evidence to Treasury that the terms of the repayment schedule are unlawful, would cause the debtor financial hardship, or that operation of law prohibits collection of the debt.

(6) *Record.* The hearing official will maintain a summary record of any hearing provided under this part. A hearing is not required to be a formal evidentiary-type hearing, but witnesses who testify in an oral hearing must do so under oath or affirmation.

(7) *Date of decision.* (i) The hearing official will issue a written decision, as soon as practicable, but no later than 60 days after the date on which the request for the hearing was received by the agency.

(ii) If the hearing official is unable to provide the debtor with a hearing and render a decision within 60 days after the receipt of the request for such hearing:

(A) A withholding order may not be issued until the hearing is held and a decision is rendered; or

(B) A withholding order previously issued to the debtor's employer must be suspended beginning on the 61st day after the receipt of the hearing request and continuing until a hearing is held and a decision is rendered.

(8) *Content of decision.* The written decision will include:

(i) A summary of the facts presented;

(ii) The hearing official's findings, analysis, and conclusions; and

(iii) The terms of any repayment schedule, if applicable.

(9) *Final agency action.* The hearing official's decision will be the final agency action for the purposes of judicial review under the Administrative Procedure Act. 5 U.S.C. 701 *et seq.*

(10) *Failure to appear.* In the absence of good cause shown, a debtor who fails to appear at a hearing will be deemed as not having timely filed a request for a hearing.

(g) *Withholding order.* Unless Treasury receives information that determines a justified delay or cancellation

of a withholding order, Treasury will send, by first class mail, an SF–329A ''Letter to Employer & Important Notice to Employer,'' an SF–329B ''Wage Garnishment Order,'' an SF–329C ''Wage Garnishment Worksheet,'' and an SF–329D ''Employer Certification'' to the debtor's employer within 30 days after the debtor fails to make a timely request for a hearing or, if the timely request for a hearing is made by the debtor, within 30 days after a final decision is made by the agency to proceed with garnishment.

(h) *Certification by employer.* The employer must complete and return the SF–329D ''Employer Certification'' within 20 days of receipt.

(i) *Amounts withheld.* (1) After receipt of a withholding order issued under this part, the employer will deduct from all disposable pay paid to the debtor during each pay period the amount of garnishment described in paragraph (h)(2) of this section. The employer may use the SF–329C ''Wage Garnishment Worksheet'' to calculate the amount to be deducted from the debtor's disposable pay.

(2) Subject to paragraphs (h)(3)(i) and (h)(4) of this section, the amount of garnishment will be the lesser of:

(i) The amount indicated on the garnishment order up to 15 percent of the debtor's disposable pay; or

(ii) The amount set forth in 15 U.S.C. 1673(a)(2) (Maximum allowable garnishment). The amount set forth at 15 U.S.C. 1673(a)(2) is the amount by which a debtor's disposable pay exceeds an amount equivalent to thirty times the minimum wage. See 29 CFR 870.10.

(3)(i) Except as provided in paragraph (h)(3)(ii) of this section, when a debtor's pay is subject to multiple withholding orders, unless otherwise provided by Federal law, withholding orders issued pursuant to this part will have priority over other withholding orders that are served later.

(ii) Notwithstanding the foregoing, withholding orders for family support will have priority over withholding orders issued under this part.

(iii) If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an employer before a withholding order issued pursuant to this part, or if a withholding order for family support is served on an employer at any time, the amounts withheld pursuant to a withholding order issued under this part will be the lesser of:

(A) The amount calculated under paragraph (h)(3)(iii)(B) of this section; or

(B) An amount equal to 25 percent of the debtor's disposable pay less the amount(s) withheld under the withholding order(s) with priority.

(4) If the debtor owes more than one debt to the agency, Treasury will issue multiple withholding orders provided that the total amount garnished from the debtor's pay for such orders does not exceed the amount set forth in paragraph (h)(2) of this section.

(5) An amount greater than that set forth in paragraphs (h)(2) or (3) of this section may be withheld with the debtor's written consent.

(6) The employer will promptly pay all amounts withheld in accordance with the withholding order issued pursuant to this part.

(7) The employer is not required to vary its normal pay and disbursement cycles in order to comply with the withholding order.

(8) Any assignment or allotment by an employee will be void to the extent it interferes with or prohibits execution of the withholding order issued under this part, except for any assignment or allotment made pursuant to a family support judgment or order.

(9) The employer will withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from the agency to discontinue wage withholding.

(10) The withholding order, SF–329B ''Wage Garnishment Order,'' sent to the employer under paragraph (g) of this section, requires the employer to commence wage withholding on the first payday after the employer receives the order. However, if the first payday is within 10 days after receipt of the order, the employer may elect to begin deductions on the second payday.

(11) An employer may not discharge, refuse to employ, or take disciplinary action against any debtor because of the issuance of a withholding order under this part.

(j) *Financial hardship.* (1) A debtor whose wages are subject to a withholding order may, at any time, request a review by Treasury of the amount garnished, based on materially changed circumstances, such as disability, divorce, or catastrophic illness, which result in financial hardship.

(2) A debtor requesting review under paragraph (i)(1) of this section will submit the basis for the claim that the current amount of garnishment results in a financial hardship to the debtor, along with supporting documentation. Treasury will consider any information submitted in accordance with this part.

(3) If Treasury finds financial hardship, to reflect the debtor's financial condition, Treasury will downwardly adjust the amount garnished by an amount and for a period established by the agency. Treasury will notify the employer of any adjustments in the amount to be withheld.

(k) *Fraud and willful concealment or failure to furnish information.* Treasury will not reduce the amount that the employer withholds from disposable pay if the debt was caused by an intentional false statement.

(l) *Refunds.* (1) If the hearing official, pursuant to a hearing under this part, determines that a debt is not legally due and owing to the United States, Treasury will promptly refund any amount collected by means of Administrative Wage Garnishment.

(2) Unless required by Federal law or contract, refunds under this part will not bear interest.

(m) *Ending garnishment.* (1) Once Treasury has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs assessed pursuant to and in accordance with §422.803 of this title, Treasury will send the debtor's employer notification to discontinue wage withholding.

(2) At least annually, Treasury will review debtors' accounts to ensure that garnishment has ended for accounts that have been paid in full.

(n) *Employers' responsibilities and right of action.* (1) The employer of a debtor subject to wage withholding pursuant to this part will pay the agency as directed in a withholding order issued under this part.

(2) Treasury may bring suit against an employer for any amount that the employer fails to withhold from wages owed and payable to a debtor in accordance with paragraphs (g) and (i) of this section, plus attorney's fees, costs, and, if applicable, punitive damages.

(3) A suit under this section may not be filed before the end of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. For purposes of this section, ''end of collection action'' occurs when we have completed taking collection action in accordance with part 422, subpart I of this title or other applicable law or regulation.

(4) Notwithstanding any other provision or action referred to in this section, the end of the collection action will be deemed to occur one (1) year after the agency does not receive any payment of wages that were subject to a garnishment order issued under this part.

§ 422.835 Debt reporting and use of credit reporting agencies.

(a) *Reporting delinquent debts.* (1) We may report delinquent debts over $25 to credit bureaus or other automated databases.

(2) We will report administrative debts owed by individuals to consumer reporting agencies pursuant to 5 U.S.C. 552a(b)(12). We may disclose only the individual's name, address, and Social Security number and the nature, amount, status, and history of the debt.

(3) Once we refer a debt to the Department of the Treasury (Treasury) for collection, Treasury may handle any subsequent reporting to or updating of a credit bureau or other automated database.

(4) Where there is reason to believe that a debtor has filed a bankruptcy petition, prior to proceeding under this paragraph (a), we will contact the Office of the General Counsel for legal advice concerning the impact of the Bankruptcy Code, particularly with respect to the applicability of the automatic stay, 11 U.S.C. 362, and the procedures for obtaining relief from such stay.

(5) If the debtor has not received prior notice under § 422.805, before reporting a delinquent debt under this section, we will provide the debtor at least 60 days notice including:

(i) The amount and nature of the debt;

(ii) That the debt is delinquent and that we intend to report the debt to a credit bureau;

(iii) The specific information that we will disclose;

(iv) The right to dispute the accuracy and validity of the information being disclosed; and

(v) If a previous opportunity was not provided, the right to request review of the debt or rescheduling of payment.

(b) *Use of credit reporting agencies.* We may use credit-reporting agencies to determine a debtor's ability to repay a debt and to locate debtors. In the case of an individual, we may disclose, as a routine use under 5 U.S.C. 552a(b)(3), only the individual's name, address, and Social Security number, and the purpose for which the information will be used.

§ 422.837 Contracting with private collection contractors and with entities that locate and recover unclaimed assets.

(a) Subject to the provisions of paragraph (b) of this section, we may contract with private collection contractors to recover delinquent debts, if:

(1) We retain the authority to resolve disputes, compromise debts, suspend or terminate collection action, and, as appropriate, to refer debts to the Department of Justice for review and litigation;

(2) The private collection contractor is not allowed to offer the debtor, as an incentive for payment, the opportunity to pay the debt less the private collection contractor's fee, unless we have granted such authority prior to the offer;

(3) The contract provides that the private collection contractor is subject to the Privacy Act of 1974 to the extent specified in 5 U.S.C. 552a(m) and to applicable Federal and State laws and regulations pertaining to debt collection practices, including, but not limited, to the Fair Debt Collection Practices Act, 15 U.S.C. 1692; and

(4) The private collection contractor is required to account for all amounts collected.

(b) We will use government-wide debt collection contracts to obtain debt collection services provided by private collection contractors. However, we may refer debts to private collection contractors pursuant to a contract between the agency and the private collection contractor only if such debts are not subject to the requirement to transfer debts to the Treasury for debt collection under 31 U.S.C. 3711(g) and 31 CFR 285.12(e).

(c) Debts arising under the Social Security Act (which can be collected by private collection contractors only by Department of the Treasury (Treasury) after the debt has been referred to Treasury for collection) are excluded from this section.

(d) We may fund private collection contractor contracts in accordance with 31 U.S.C. 3718(d) or as otherwise permitted by law. A contract under paragraph (a) of this section may provide that the fee a private collection contractor charges the agency for collecting the debt is payable from the amounts collected.

(e) We may enter into contracts for locating and recovering assets of the United States, including unclaimed assets. However, before entering into a contract to recover assets of the United States that may be held by a State Government or financial institution, we must establish procedures that are acceptable to the Secretary of the Treasury.

(f) We enter into contracts for debtor asset and income search reports. In accordance with 31 U.S.C. 3718(d), such contracts may provide that the fee a contractor charges the agency for such services may be payable from the amounts recovered unless otherwise prohibited by statute.

§ 422.839 Offset against amounts payable from civil service retirement and disability fund and the Federal employees' retirement system.

Upon providing the Office of Personnel Management (OPM) written certification that a debtor has been afforded the procedures provided in § 422.823 of this part, we may request

OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) and the Federal Employees' Retirement System (FERS) in accordance with regulations codified at 5 CFR 831.1801 through 831.1808, and 5 CFR part 845 Subpart D. Upon receipt of such a request, OPM will identify and ''flag'' a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from the Fund or FERS.

§ 422.842 Liquidation of collateral.

(a)(1) If the debtor fails to pay the debt(s) within a reasonable time after demand and if such action is in the best interests of the United States, we will liquidate security or collateral through the exercise of a power of sale in the security instrument or a non-judicial foreclosure and apply the proceeds to the applicable debt(s).

(2) Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety, insurer, or guarantor unless such action is expressly required by statute or contract.

(3) We will give the debtor reasonable notice of the sale and an accounting of any surplus proceeds and will comply with other requirements under law or contract.

(b) Where there is reason to believe that a bankruptcy petition has been filed with respect to a debtor, we will contact the Office of the General Counsel for legal advice concerning the impact of the Bankruptcy Code, particularly with respect to the applicability of the automatic stay, 11 U.S.C. 362, and the procedures for obtaining relief from such stay prior to proceeding under paragraph (a) of this section.

§ 422.846 Bases for compromise.

(a) *Scope and application*—(1) *Scope.* The standards set forth in this subpart apply to the compromise of administrative debts pursuant to 31 U.S.C. 3711. We may exercise such compromise authority for debts arising out of activities of, or referred or transferred for collection services to, the agency when the amount of the debt then due, exclusive of interest, penalties, and administrative costs, does not exceed $100,000 or any higher amount authorized by the Attorney General.

(2) *Application.* Unless otherwise provided by law, when the principal balance of a debt, exclusive of interest, penalties, and administrative costs, exceeds $100,000 or any higher amount authorized by the Attorney General, the authority to accept a compromise rests with the Department of Justice (DOJ). We will evaluate the compromise offer using the factors set forth in this subpart. If an offer to compromise any debt in excess of $100,000 is acceptable to the agency, we will refer the debt to the Civil Division or other appropriate litigating division in the DOJ using a Claims Collection Litigation Report (CCLR). A CCLR may be obtained from the DOJ's National Central Intake Facility. The referral will include appropriate financial information and a recommendation for the acceptance of the compromise offer. DOJ approval is not required if we reject a compromise offer.

(b) *Bases for compromise*—(1) *Compromise.* We may compromise a debt if the agency cannot collect the full amount based upon the debtor's inability to pay, inability to collect the full debt, the cost of collection, or if we are doubtful that the debt can be proven in court.

(i) *Inability to pay.* We may compromise a debt if the debtor is unable to pay the full amount in a reasonable time, as verified through credit reports or other financial information. In determining a debtor's inability to pay the full amount of the debt within a reasonable time, we will obtain and verify the debtor's claim of inability to pay by using credit reports and/or a current financial statement from the debtor, executed under penalty of perjury, showing the debtor's assets, liabilities, income, and expenses. We may use a financial information form used in connection with the agency's programs or may request suitable forms from the DOJ or the local United States Attorney's Office. We also may consider other relevant factors such as:

(A) Age and health of the debtor;

(B) Present and potential income;

(C) Inheritance prospects;

(D) The possibility that assets have been concealed or improperly transferred by the debtor; and

(E) The availability of assets or income that may be realized by enforced collection proceedings.

(ii) *Inability to collect full debt.* We may compromise a debt if the Government is unable to collect the debt in full within a reasonable time by enforced collection proceedings.

(A) In determining the Government's ability to enforce collection, we will consider the applicable exemptions available to the debtor under State and Federal law, and we may also consider uncertainty as to the price any collateral or other property will bring at a forced sale.

(B) A compromise affected under this section should be for an amount that bears a reasonable relation to the amount that can be recovered by enforced collection procedures, with regard to any exemptions available to the debtor and the time that collection will take.

(iii) *Cost of collection.* We may compromise a debt if the cost of collecting the debt does not justify the enforced collection of the full amount.

(A) The amount accepted in compromise of such debts may reflect an appropriate discount for the administrative and litigation costs of collection, with consideration given to the time it will take to effect collection. Collection costs may be a substantial factor in the settlement of small debts.

(B) In determining whether the costs of collection justify enforced collection of the full amount, we will consider whether continued collection of the debt, regardless of cost, is necessary to further an enforcement principal, such as the Government's willingness to pursue aggressively defaulting and uncooperative debtors.

(iv) *Doubtful debt can be proven in court.* We may compromise a debt if there is significant doubt concerning the Government's ability to prove its case in court.

(A) If significant doubt exists concerning the Government's ability to prove its case in court for the full amount claimed, either because of the legal issues involved or because of a legitimate dispute as to the facts, then the amount accepted in compromise should fairly reflect the probabilities of successful prosecution to judgment, with due regard to the availability of witnesses and other evidentiary support for the Government's claim.

(B) In determining the litigation risks involved, we will consider the probable amount of court costs and attorney fees a court may impose pursuant to the Equal Access to Justice Act, 28 U.S.C. 2412, if the Government is unsuccessful in litigation.

(2) *Installments.* We may not accept compromises payable in installments. This is not an advantageous form of compromise in terms of time and administrative expense. If, however, payment in installments is necessary in cases of compromise based on paragraphs (b)(1)(i) through (iii) of this section, we will obtain a legally enforceable written agreement providing that, in the event of default, the full original principal balance of the debt prior to compromise, less sums paid thereon, is reinstated. In cases of compromise based on paragraph (b)(1)(iv) of this section, we will consult with the Office of the General Counsel concerning the appropriateness of including such a requirement in the legally enforceable written agreement. Whenever possible, we will obtain security for repayment in the manner set forth in § 422.809.

(c) *Enforcement policy.* Subject to the Commissioner's approval, we may compromise statutory penalties, forfeitures, or claims established as an aid to enforcement and to compel compliance if our enforcement policy, in terms of deterrence and securing compliance, present, and future, will be adequately served by the agency's acceptance of the sum to be agreed upon.

(d) *Joint and several liability.* (1) When two or more debtors are jointly and severally liable, we will pursue collection against all debtors, as appropriate. We will not attempt to allocate the burden of payment between the debtors but will proceed to liquidate the indebtedness as quickly as possible.

(2) We will ensure that a compromise agreement with one debtor does not automatically release the agency's claim against the remaining debtor(s). The amount of a compromise with one

debtor will not be considered a precedent or binding in determining the amount that will be required from other debtors jointly and severally liable on the claim.

(e) *Further review of compromise offers.* If we are uncertain whether to accept a firm, written, substantive compromise offer on a debt that is within the agency's statutory compromise authority, we may use a CCLR with supporting data and particulars concerning the debt to refer the offer to the DOJ's Civil Division or other appropriate litigating division. The DOJ may act upon such an offer or return it to the agency with instructions or advice.

(f) *Consideration of tax consequences to the Government.* In negotiating a compromise, we will consider the tax consequences to the Government. In particular, we will consider requiring a waiver of tax-loss-carry-forward and tax-loss-carry-back rights of the debtor. For information on discharge of indebtedness reporting requirements, see § 422.848(e).

(g) *Mutual release of the debtor and the Government.* In all appropriate instances, a compromise that is accepted will be implemented by means of a mutual release. The terms of such mutual release will provide that the debtor is released from further non-tax liability on the compromised debt in consideration of payment in full of the compromise amount, and the Government and its officials, past and present, are released and discharged from any and all claims and causes of action arising from the same transaction that the debtor may have. In the event a mutual release is not executed when a debt is compromised, unless prohibited by law, the debtor is still deemed to have waived any and all claims and causes of action against the Government and its officials related to the transaction giving rise to the compromised debt.

§ 422.848 Suspension and termination of collection activities.

(a) *Scope and application*—(1) *Scope.* The standards set forth in this subpart apply to the suspension or termination of collection activity pursuant to 31 U.S.C. 3711 on debts that do not appear to be fraudulent or that do not exceed $100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. Prior to referring a debt to the Department of Justice (DOJ) for litigation, we may suspend or terminate collection under this subpart with respect to such debts that arise out of the activities of, or are referred or transferred for collection services to, the agency.

(2) *Application.* (i) If the debt stems from a claim that appears to be fraudulent, false, or misrepresented by a party with an interest in the claim or after deducting the amount of partial payments or collections, the principal amount of the debt exceeds $100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with the DOJ.

(ii) If we believe that suspension or termination of any debt that relates to a claim that appears to be fraudulent, false, or misrepresented by a party with an interest in the claim or that exceeds $100,000 may be appropriate, we will use the Claims Collection Litigation Report to refer the debt to the Civil Division or other appropriate litigating division in the DOJ. The referral will specify the reasons for our recommendation. If, prior to referral to the DOJ, we determine that a debt is plainly erroneous or clearly without merit, we may terminate collection activity regardless of the suspected fraud or amount involved without obtaining the DOJ's concurrence.

(b) *Suspension of collection activity.* (1) We may suspend collection activity on a debt when:

(i) The debtor cannot be located;

(ii) The debtor's financial condition is not expected to improve; or

(iii) The debtor has requested a legally permissible waiver or review of the debt.

(2) *Financial condition.* Based on the current financial condition of a debtor, we may suspend collection activity on a debt when the debtor's future prospects justify retention of the debt for periodic review and collection activity, and:

(i) No applicable statute of limitations has expired; or

(ii) Future collection can be effected by Administrative Offset, notwithstanding the expiration of the applicable statute of limitations for litigation of claims, with due regard to any statute of limitation for Administrative Offset prescribed by 31 U.S.C. 3716(e)(1); or

(iii) The debtor agrees to pay interest on the amount of the debt on which collection will be suspended and suspension is likely to enhance the debtor's ability to pay the full amount of the principal of the debt with interest at a later date.

(3) *Waiver or review.* (i) We will suspend collection activity during the time required for consideration of the debtor's request for waiver or administrative review of the debt if the statute under which the request is sought prohibits us from collecting the debt during that time.

(ii) If the statute under which the waiver or administrative review request is sought does not prohibit collection activity pending consideration of the request, we may use discretion, on a case-by-case basis, to suspend collection. We will ordinarily suspend collection action upon a request for waiver or review if we are prohibited by statute or regulation from issuing a refund of amounts collected prior to agency consideration of the debtor's request. However, we will not suspend collection when we determine that the request for waiver or review is frivolous or was made primarily to delay collection.

(4) *Bankruptcy.* Upon learning that a bankruptcy petition has been filed with respect to a debtor, we must suspend collection activity on the debt, pursuant to the provisions of 11 U.S.C. 362, 1201, and 1301, unless we can clearly establish that the automatic stay has been lifted or is no longer in effect. In such cases, we will consult our Office of the General Counsel for advice. When appropriate, the Offices of the Regional Chief Counsel will take the necessary legal steps to ensure that no funds or money are paid by the agency to the debtor until relief from the automatic stay is obtained.

(c) *Termination of collection activity.* (1) We may terminate collection activity when:

(i) We are unable to collect any substantial amount through our own efforts or through the efforts of others;

(ii) We are unable to locate the debtor;

(iii) Costs of collection are anticipated to exceed the amount recoverable;

(iv) The debt is legally without merit or enforcement of the debt is barred by any applicable statute of limitations;

(v) The debt cannot be substantiated; or

(vi) The debt against the debtor has been discharged in bankruptcy.

(2)(i) Collection activity will not be terminated before we have pursued all appropriate means of collection and determined, based upon the results of the collection activity, that the debt is uncollectible.

(ii) Termination of collection activity ceases active collection of the debt. The termination of collection activity does not preclude us from retaining a record of the account for purposes of:

(A) Selling the debt, if the Secretary of the Department of the Treasury (Treasury) determines that such sale is in the best interest of the United States;

(B) Pursuing collection at a subsequent date in the event there is a change in the debtor's status or a new collection tool becomes available;

(C) Offsetting against future income or assets not available at the time of termination of collection activity; or

(D) Screening future applicants for prior indebtedness.

(3) We will terminate collection activity on a debt that has been discharged in bankruptcy, regardless of the amount. We may continue collection activity, however, subject to the provisions of the Bankruptcy Code, for any payments provided under a plan of reorganization. Offset and recoupment rights may survive the discharge of the debtor in bankruptcy and, under some circumstances, claims also may survive the discharge. For example, when we are a known creditor of a debtor, the claims of the agency may survive a discharge if we did not receive notice of the bankruptcy proceeding or the

debt was affected by fraud. When we believe that the agency has claims or offsets that may have survived the discharge of the debtor, we will contact the Office of the General Counsel for legal advice.

(d) *Exception to termination.* When a significant enforcement policy is involved or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, we may refer debts to the DOJ for litigation even though termination of collection activity may otherwise be appropriate.

(e) *Discharge of indebtedness; reporting requirements.* (1)(i) Before discharging a delinquent debt, also referred to as close out of the debt, we will take all appropriate steps to collect the debt in accordance with 31 U.S.C. 3711(g)(9), and §§ 422.803 and 422.810 of this part, including, as applicable, Administrative Offset; tax refund offset; Federal Salary Offset; credit bureau reporting; Administrative Wage Garnishment; litigation; foreclosure; and referral to the Treasury, Treasury-designated debt collection centers, or private collection contractors.

(ii) Discharge of indebtedness is distinct from termination or suspension of collection activity under this subpart, and is governed by the Internal Revenue Code. When collection action on a debt is suspended or terminated, the debt remains delinquent and further collection action may be pursued at a later date in accordance with the standards set forth in this part and 31 CFR parts 900 through 904.

(iii) When we discharge a debt in full or in part, further collection action is prohibited. Therefore, before discharging a debt, we must:

(A) Make the determination that collection action is no longer warranted; and

(B) Terminate debt collection action.

(2) In accordance with 31 U.S.C. 3711(i), we will use competitive procedures to sell a delinquent debt upon termination of collection action if the Secretary of the Treasury determines such a sale is in the best interests of the United States. Since the discharge of a debt precludes any further collection action, including the sale of a delinquent debt, we may not discharge a debt until the requirements of 31 U.S.C. 3711(i) have been met.

(3) Upon discharge of indebtedness, we must report the discharge to the Internal Revenue Service (IRS) in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P–1. We may request that Treasury or Treasury-designated debt collection centers file such a discharge report to the IRS on our behalf.

(4) When discharging a debt, we must request that litigation counsel release any liens of record securing the debt.

§ 422.850 Referrals to the Department of Justice.

(a) *Prompt referral.* (1)(i) We will promptly refer to the Department of Justice (DOJ) for litigation debts on which aggressive collection activity has been taken in accordance with § 422.803, and that cannot be compromised, or on which collection activity cannot be suspended or terminated, in accordance with § 422.848.

(ii) We may refer debts arising out of activities of, or referred or transferred for collection services to, the agency to DOJ for litigation.

(2)(i) Debts for which the principal amount is over $100,000 or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs will be referred to the Civil Division or other division responsible for litigating such debts at the DOJ.

(ii) Debts for which the principal amount is $1,000,000 or less, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs will be referred to the Nationwide Central Intake Facility at the DOJ as required by the Claims Collections Litigation Report (CCLR) instructions.

(3)(i) Consistent with aggressive agency collection activity and the standards contained in this part and 31 CFR parts 900 through 904, debts will be referred to the DOJ as early as possible and, in any event, well within the period for initiating timely lawsuits against the debtors.

(ii) We will make every effort to refer delinquent debts to the DOJ for litigation within one year of the date such debts last became delinquent. In the

case of guaranteed or insured loans, we will make every effort to refer these delinquent debts to the DOJ for litigation within one year from the date the debt was known to the agency.

(4) The DOJ has exclusive jurisdiction over debts referred to it pursuant to this subpart. Upon referral of a debt to the DOJ, we will:

(i) Immediately terminate the use of any administrative collection activities to collect the debt;

(ii) Advise the DOJ of the collection tools utilized and the results of activities to date; and

(iii) Refrain from having any contact with the debtor and direct all debtor inquiries concerning the debt to the DOJ.

(5) After referral of a debt under this subpart, we will immediately notify the DOJ of any payments credited by the agency to the debtor's account. Pursuant to 31 CFR 904.1(b), after referral of the debt under this subpart, the DOJ will notify the agency of any payment received from the debtor.

(b) *Claims Collection Litigation Report.* (1)(i) Unless excepted by the DOJ, we will complete a CCLR and associated signed Certificate of Indebtedness to refer all administratively uncollectible claims to the DOJ for litigation.

(ii) We will complete all sections of the CCLR appropriate to each debt as required by the CCLR instructions and furnish such other information as may be required in specific cases.

(2) We will indicate clearly on the CCLR the actions that we wish the DOJ to take with respect to the referred debt. We may indicate specifically any of a number of litigation activities the DOJ may choose to pursue, including enforced collection, judgment lien only, renew judgment lien only, renew judgment lien and enforced collection, program enforcement, foreclosure only, and foreclosure and deficiency judgment.

(3) We will also use the CCLR to refer a debt to the DOJ for the purpose of obtaining any necessary approval of a proposal to compromise a debt or to suspend or terminate administrative collection activity on a debt.

(c) *Preservation of evidence.* We will maintain and preserve all files and records that may be needed by the DOJ to prove our claim in court. When referring debts to the DOJ for litigation, certified copies of the documents that form the basis for the claim should be provided along with the CCLR. Upon its request, the original documents will be provided to the DOJ.

(d) *Minimum amount of referrals.* (1) Except as provided in paragraph (d)(2) of this section, we will not refer for litigation claims of less than $2,500 exclusive of interest, penalties, and administrative costs, or such other amount as the Attorney General may prescribe.

(2) We will not refer claims of less than the minimum amount unless:

(i) Litigation to collect such smaller amount is important to ensure compliance with the agency's policies and programs;

(ii) The agency is referring the claim solely for the purpose of securing a judgment against the debtor, which will be filed as a lien against the debtor's property pursuant to 28 U.S.C. 3201 and returned to the agency for enforcement; or

(iii) The debtor has the clear ability to pay the claim and the Government can enforce payment effectively, with due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government.

(3) We will consult with the Financial Litigation Staff of the Executive Office for United States Attorneys at DOJ prior to referring claims valued at less than the minimum amount.

Subpart J—Protecting the Public and Our Personnel To Ensure Operational Effectiveness

AUTHORITY: Sec. 702(a)(4)–(5) of the Social Security Act (42 U.S.C. 902(a)(4)–(5)).

SOURCE: 76 FR 54702, Sept. 2, 2011, unless otherwise noted.

§ 422.901 Scope and purpose.

The regulations in this subpart describe the process we will follow when we decide whether to ban you from entering our offices. Due to increasing reports of threats to our personnel and

the public, we are taking steps to increase the level of protection we provide to our personnel and to the public. The purpose of this subpart is to inform the public and our personnel of the conduct that will subject an individual to a ban and the procedures we will follow when banning an individual from entering our offices. We expect that the regulations will result in a safer environment for our personnel and the public who visit our facilities, while ensuring that our personnel can continue to serve the American people with as little disruption to our operations as possible.

§ 422.902 Definition of personnel for purposes of this subpart.

We will construe the term ''personnel'' broadly to mean persons responsible for or engaged in carrying out the responsibilities, programs, or services of or on behalf of the agency. Personnel includes, but is not limited to, our employees, contractors, consultants, and examiners and State disability determination services (DDS) employees, contractors, consultants, and examiners.

§ 422.903 Prohibited conduct.

We will ban you from entering our offices if you:

(a) Physically or verbally assault our personnel or a member of the public in our occupied space;

(b) Use force or threats of force against our personnel or offices, including but not limited to communicating threats in person or by phone, facsimile, mail, or electronic mail;

(c) Engage in disruptive conduct that impedes our personnel from performing their duties; or

(d) Engage in disruptive conduct that impedes members of the public from obtaining services from our personnel.

§ 422.904 Notice of the ban.

If an agency manager makes a decision in writing that you pose a threat to the safety of our personnel, visitors, office, or the operational effectiveness of the agency, we will send you a notice banning you from our offices. The notice will contain the following information:

(a) *Type of restriction.* If we ban you from entering our offices, the ban will apply to all of our offices, and you must obtain all future service through alternate means. We will provide you in-person service only if you establish that there are no alternate means available. You must direct your request for in-person service to the manager of the office you are requesting to visit. If we determine that an office visit is warranted, we will schedule an appointment for you and send you a certified letter notifying you of the date, time, and location of the appointment.

(b) *Prohibited conduct.* We will provide you with specific details of the prohibited conduct that served as the basis for our decision to ban you.

(c) *Alternate means of service.* If you are banned from entering our offices, you still have several means to receive services:

(1) You may use the online services available through our Web site at *http://www.socialsecurity.gov;*

(2) You may call your local office. Your notice will include the contact information for your local office. You should ask to speak with the office manager or a supervisor;

(3) You may call our national toll-free number at 1–800–772–1213 between the hours of 7 a.m. and 7 p.m., Monday through Friday. You should not attempt to schedule an in-person appointment through this number. If you are deaf or hard of hearing, you may call our toll-free TTY number at 1–800–325–0778;

(4) You may write to your local office. You should address all correspondence to the attention of the office manager;

(5) With your written consent, another person may call, write, or visit us to conduct business on your behalf.

(d) *Appeal rights.* The notice will provide you with information on how to appeal the ban.

(e) *Periodic request for review of ban decision.* The notice will provide you with information on how to request review of the ban determination every three years from the date of the ban notice, or if you appeal the ban, the date of the appeal decision.

§ 422.905 Appeal rights.

You may appeal our decision to ban you. You must submit your appeal in writing to the address identified in the notice within 60 days of the date of the notice. You should identify your name, address, Social Security number, and the office that issued the notice of the ban. The appeal should clearly state why we should reconsider our decision and provide any supporting documentation. We may allow an additional 10 days for the late filing of an appeal if you show good cause for the late filing. The ban will remain in effect while the appeal is pending. We will notify you of our decision in writing.

§ 422.906 Periodic request for review of ban decision.

You may request review of our ban decision every three years. The three-year cycle to request review will begin on the date we issued notice of the ban, or if you appealed, the date of our appeal decision. You must submit your request for review of a ban decision in writing to the address identified in the original notice of the ban. Your request for review should identify your name, address, Social Security number, and office that issued the notice of the ban. Your request should clearly state why we should lift the ban and provide relevant documentation that supports removal of the restriction, including medical documentation, applicable psychiatric evaluations, work history, and any criminal record. You must prove by a preponderance of the evidence (meaning that it is more likely than not) that you no longer pose a threat to the safety of our personnel or visitors or the operational effectiveness of the agency. We will notify you of our decision in writing.

§ 422.907 Posting requirement.

We will post the regulation in this subpart in a conspicuous place in our offices that serve the public.

PART 423—SERVICE OF PROCESS

Sec.

AUTHORITY: Sec. 701 and 702(a)(5) of the Social Security Act (42 U.S.C. 901 and 902(a)(5)).

SOURCE: 60 FR 18992, Apr. 14, 1995, unless otherwise noted.

§ 423.1 Suits against the Social Security Administration and its employees in their official capacities.

(a) *Suits involving claims arising under Titles II, VIII, and/or XVI.* In cases seeking judicial review of final Agency decisions on individual claims for benefits under titles II, VIII, and/or XVI of the Social Security Act, summonses and complaints to be served by mail on the Social Security Administration or the Commissioner of Social Security should be sent to the office in the Social Security Administration's Office of the General Counsel that is responsible for the processing and handling of litigation in the particular jurisdiction in which the complaint has been filed. The names, addresses, and jurisdictional responsibilities of these offices are published in the FEDERAL REGISTER, and are available on-line at the Social Security Administration's Internet site, *http://www.socialsecurity.gov*.

(b) *Other suits.* In cases that do not involve claims described in paragraph (a) of this section, summonses and complaints to be served by mail on the Social Security Administration or the Commissioner of Social Security should be sent to the General Counsel, Social Security Administration, Room 617, Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235.

[70 FR 73136, Dec. 9, 2005]

§ 423.3 Other process directed to the Social Security Administration or the Commissioner.

Subpoenas and other process (other than summonses and complaints) that are required to be served on the Social Security Administration or the Commissioner of Social Security in his or