

bring a civil action against your employer until we terminate collection action against you in accordance with applicable Federal standards, unless earlier filing is necessary to avoid the expiration of any applicable statute of limitations period. We will deem collection to be terminated if we receive no payment on the debt for one year.

Other Changes

We are amending 20 CFR 404.527 and 416.590 to mention that we may recover title II and title XVI overpayments, respectively, under the rules in subpart E of part 422.

We are adding to 20 CFR 404.903 a new paragraph (v) to include in the list of administrative actions that are not initial determinations our determination to use AWG to collect an overpayment made under title II of the Act. We are adding to 20 CFR 416.1403(a) a new paragraph (20) to include in the list of administrative actions that are not initial determinations our determination to use AWG to collect an overpayment made under title XVI of the Act. As a result of these two revisions, the administrative review procedures in 20 CFR part 404, subpart J, and part 416, subpart N, will not apply to the determination to use AWG. Moreover, that determination is not subject to judicial review under 42 U.S.C. 405(g) or 1383(c)(3).

In addition, we corrected an obsolete reference in 20 CFR 404.527(b)(1) to the provisions of the Federal Claims Collection Standards on termination and suspension of collection activity.

Public Comments

On November 15, 2002, we published proposed rules in the **Federal Register** at 67 FR 69164 and provided a 60-day period for interested parties to comment. We received comments from 5 organizations and 3 individuals. Because some of the comments received were quite detailed, we have condensed, summarized or paraphrased them in the discussion below. We address all of the issues raised by the commenters that are within the scope of the proposed rules.

Comment: Four organizations recommended that we provide an opportunity for an oral hearing when the individual requests review of the debt or the repayment schedule. These organizations claimed that § 422.425 is not consistent with the AWG statute and the implementing regulation of the Department of the Treasury at 31 CFR 285.11. One organization stated that our regulation overlooks the need for interactive discussion between SSA and the debtor when paper review is inadequate. Another mentioned that the

oral hearing should be conducted by an administrative law judge.

Response: The statute on AWG requires that, before an agency issues a garnishment order to an individual's employer, the agency must provide the individual with an opportunity for a "hearing" on the existence and amount of the debt and the terms of the repayment schedule stated in the agency's notice of proposed garnishment. See 31 U.S.C. 3720D(b)(5) and (c). The statute does not describe the type of hearing that the agency must provide. This matter is addressed in the regulation of the Department of the Treasury established under the authority of 31 U.S.C. 3720D(h). The Treasury regulation on AWG states at 31 CFR 285.11(f)(2) that, when requested by the debtor, the agency "shall provide a hearing, which at the agency's option may be oral or written * * *". The agency must provide the debtor with "a reasonable opportunity for an oral hearing when the agency determines that the issues in dispute cannot be resolved by review of the documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity." 31 CFR 285.11(f)(3)(i). When an oral hearing is not required, the agency must afford the debtor a "paper hearing" and "decide the issues in dispute based upon a review of the written record." 31 CFR 285.11(f)(3)(iii). Moreover, the Treasury regulation provides that "[n]othing in this section requires agencies to duplicate notices or administrative proceedings required by contract or other laws or regulations." 31 CFR 285.11(b)(6).

Thus, the Treasury regulation leaves to the agency's judgement the decision whether the circumstances warrant providing the opportunity for an oral hearing before taking garnishment action. Also, that regulation does not require the agency to afford the debtor an oral hearing in connection with the AWG process regarding matters on which the opportunity for an oral hearing has previously been provided under other applicable laws and regulations. We believe that the process for review provided under § 422.425 of our AWG regulation combined with the process established in other SSA regulations for review of SSA's overpayment and waiver determinations fully complies with the requirements of the statute and Treasury regulations at 31 CFR 285.11.

Well before we would send the notice to a debtor of our intention to collect a program overpayment debt by AWG, we would have sent the debtor notice of the overpayment determination that

explained the overpayment and offered the debtor the opportunity to appeal that determination, to request waiver of recovery of the overpayment, and to make arrangements to repay the debt. The administrative processes provided in 20 CFR part 404, subparts F and J, and 20 CFR part 416, subparts E and N, including the informal conference with an adjudicator and the oral hearing before an administrative law judge, are available at that time.

By the time that we would send the notice of intent to garnish, the issues on which the debtor has not had the opportunity to challenge the agency can be adequately resolved by documentary evidence. Examples of these issues are whether the overpayment balance stated in the notice is accurate (reflects all payments made by the debtor), whether collection of the overpayment was waived previously by SSA, and whether the debt was discharged by (or SSA must suspend collection efforts) an order of a bankruptcy court. Under § 422.425, we will conduct the review (hearing) by examining SSA records related to the debt and any evidence submitted by the individual. When the debtor requests review on time or has good cause for a late request, we will not order the debtor's employer to withhold from the debtor's disposable pay until we issue our decision.

Some of the commenters indicated that they had concerns about the underlying overpayment determinations and overpayment notices, and had concerns that the procedures provided in § 422.425 would not be adequate to ensure a meaningful opportunity for a hearing on these matters before we would send a garnishment order. We believe that the procedures provided in current regulations at 20 CFR parts 404 and 416 are adequate to resolve these matters. If the debtor indicates in responding to the notice of intent to garnish that he or she wants us to review the overpayment determination, we would invoke those procedures when consistent with those regulations (e.g., when the debtor shows good cause for extending the time to request reconsideration, a hearing before an administrative law judge, or review by the Appeals Council on the overpayment determination). See 20 CFR 404.909, 404.911, 404.933(c), 404.968(b), 416.1409, 416.1411, 416.1433(c) and 416.1468(b). Moreover, if the debtor cannot show good cause for an extension of time to review the overpayment determination, other regulations allow us to reopen and revise that determination under certain conditions. See 20 CFR 404.987–404.996 and 416.1487–416.1494. We