

have concluded that these long-standing procedures adequately provide for the resolution of issues concerning the overpayment determination.

Finally, our procedures for implementing AWG would not preclude an individual from interactive discussions and exchange of information with SSA representatives about the overpayment, the garnishment process, or the options available to the individual to obtain an explanation or review of the debt, waiver of collection, etc. Like other notices that we issue regarding overpayments, the notice described in § 422.405 will contain standard language inviting the individual to contact SSA in writing, by telephone, or by visiting a local SSA office to ask questions or obtain further explanation of the debt. The notice will include telephone numbers and the address of the SSA field office located closest to the individual's address. Thus, the individual will have an opportunity for interactive discussion with SSA representatives. During that discussion, he or she may provide and receive explanations and information concerning the case. In conducting the review described in § 422.425, we will consider our records on the case and any information, explanations (oral or written) or documents furnished by the individual.

*Comment:* Three organizations said that our AWG notice to individuals should fully explain the right to request a reduction of the withholding based on financial hardship, and should clearly state that the request can be made at any time.

*Response:* We are committed to providing a full and clear written explanation of an individual's rights regarding AWG. The explanation recommended by the three organizations will appear in the notice to the debtors. Specifically, our notice informing individuals about garnishment will include an explanation of the right to request a reduction of the amount to be withheld from disposable pay based on financial hardship. Our notice will also explain that the individual can make this request at any time. If the individual shows us that the withholding schedule in question would cause financial hardship, we will lower the amount we would collect from that person's pay. We will find hardship if the withholding schedule would keep the individual from meeting the ordinary and necessary living expenses of the individual and his family.

*Comment:* Two organizations said that we should remain consistent with Treasury's regulations by providing a

time limit for issuing our decision on the person's requests for review.

*Response:* Treasury's regulation, 31 CFR 285.11(f)(10), provides that an agency shall issue a written decision as soon as practicable, but no later than 60 days after the date on which a request for hearing was received by the agency. Further, the regulation provides that if the agency cannot issue the decision in that 60-day timeframe, then the agency may not issue a garnishment order (and must suspend an order that it issued) until the agency holds the hearing and renders its decision. We have revised § 422.410(a) to ensure that our policy is consistent with the Treasury regulation.

We will strive to issue a written decision on a person's request for review as soon as possible. In a case where a person requests review within the 60-day period from the date of the notice of our intent to garnish, we will not take further action to initiate garnishment until we send that person a written notice of our decision. If the person has good cause for requesting review after that 60-day period, we will not take further action, and we will suspend any AWG action already taken, until we send the decision notice. We revised § 422.410(a)(3) to provide that, if an individual requests review late without "good cause" and we do not make our decision on the request within 60 calendar days from the date that we received the request, we will suspend any AWG order already issued. AWG will not resume before we conduct the review and issue the notice of our decision.

*Comment:* One organization said we should make the following two changes to § 422.405 of the proposed regulations: (1) Provide that our written notice to individuals proposing garnishment will inform people they can request waiver; and (2) explain the differences between waiver and review. In addition, one organization said we should not initiate garnishment proceedings while the request for waiver is pending.

*Response:* We are not adopting the recommended changes to § 422.405. Our regulations on administrative wage garnishment implement 31 U.S.C. 3720D under the guidance of Treasury's regulation at 31 CFR 285.11. Neither of these provisions cover waiver of collection. We will, however, follow our usual practice and include detailed language describing the right to request waiver in our notice to the debtor about garnishment. We will also explain the difference between waiver and review of the debt in that same notice. While a waiver request is pending, we will not initiate garnishment. Effective on the date we receive a request, we will

suspend any garnishment action that began before we received the request.

*Comment:* One organization stated that our decision to use AWG should be an initial determination subject to our administrative appeal process and further judicial appeal.

*Response:* Consistent with our regulations regarding the decision to use other practices (such as, reporting debts to consumer reporting agencies and collection through administrative offset against Federal payments) authorized by 31 U.S.C. chapter 37, we will not include the decision to use AWG among the actions listed as initial determinations in 20 CFR 404.902 and 416.1402. Those sections of our regulations contain lists of SSA determinations that affect the rights of individuals under the Social Security and Supplemental Security Income programs (among other things, entitlement to, eligibility for and amount of benefit payments). Initial determinations are subject to the administrative appeal process described in 20 CFR part 404, subpart J, and part 416, subpart N. When an individual exhausts the administrative remedies provided in those regulations, the individual may obtain further review in Federal court under sections 205(g) and 1631(c) of the Act. Because our decision to use AWG does not affect rights under these programs, it is not the type of determination described in 20 CFR 404.902 and 416.1402. Thus, in these final rules, we include the decision to use AWG among those decisions listed in 20 CFR 404.903 and 416.1403 that are not initial determinations.

We note that waiver of collection of an overpayment is a right granted by sections 204(b) and 1631(b)(1)(B) of the Act to individuals who meet the conditions prescribed in those laws. An individual notified under § 422.405 regarding AWG will have the opportunity to request waiver of collection of the overpayment before we will issue a garnishment order. An individual may request waiver of collection of the overpayment at any time. Our determination on a request for waiver is an initial determination subject to the appeal process described in subpart J of part 404 or subpart N of part 416. See 20 CFR 404.902(k) and 416.1402(c).

*Comment:* One organization stated that the 60-day period to submit documentary evidence will not be adequate for individuals to obtain necessary records in many cases. The organization recommended that SSA provide in § 422.425 for extension of time to obtain such evidence where the individual shows good cause.