

## § 418.3675

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 af-

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fects 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 wholly 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.

## PART 422—ORGANIZATION AND PROCEDURES

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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

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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.

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### Subpart B—General Procedures

**AUTHORITY:** Secs. 205, 232, 702(a)(5), 1131, 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.

**EFFECTIVE DATE NOTE:** At 71 FR 16461, Mar. 31, 2006, the authority citation for subpart B of part 422 was revised, effective Aug. 1, 2006. For the convenience of the user, the revised text is set forth as follows:

**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) Form SS-5.* An individual needing a social security number may apply for one by filing a signed form SS-5, "Application for A Social Security Number Card," at any social security office and submitting the required evidence. Upon request, the social security office may distribute a quantity of form SS-5 applications to labor unions, employers, or other representative organizations. An individual outside the United States 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 non-resident 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. Form SS-5 may be obtained at:

- (i) Any local social security office;
- (ii) The Social Security Administration, 300 N. Greene Street, Baltimore, MD 21201;
- (iii) Offices of District Directors of Internal Revenue;
- (iv) U.S. Postal Service offices (except the main office in cities having a social security office);
- (v) U.S. Employment Service offices in cities which do not have a social security office;
- (vi) The Department of Veterans Affairs Regional Office, Manila, Philippines;
- (vii) Any U.S. foreign service post; and
- (viii) U.S. military posts outside the U.S.

(2) *Birth registration document.* SSA 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 SSA 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 form SS-5 and may request that SSA assign a social security number to the newborn child.

(3) *Immigration form.* SSA may enter into an agreement with the Department of State (DOS) and the Department of Homeland Security to assist SSA by collecting enumeration data as part of the immigration process. Where an agreement is in effect, an alien need not complete a Form SS-5 with SSA and may request, through DOS or De-

partment of Homeland Security, as part of the immigration process, that SSA assign a social security number and issue a social security number card to him/her. Requests for SSNs to be assigned via this process will be made on forms provided by DOS and Department of Homeland Security.

(c) *How numbers are assigned*—(1) *Request on form SS-5.* If the applicant has completed a form SS-5, the social security office, the Department of Veterans Affairs Regional Office, Manila, Philippines, the U.S. foreign service post, or the U.S. military post outside the United States that receives the completed form SS-5 will require the applicant to furnish documentary evidence, as necessary, to assist SSA in establishing the age, U.S. citizenship or alien status, true identity, and previously assigned social security number(s), if any, of the applicant. A personal interview may be required of the applicant. (See § 422.107 for evidence requirements.) After review of the documentary evidence, the completed form SS-5 is forwarded or data from the SS-5 is transmitted to SSA's central office in Baltimore, Md., where the data is electronically screened against SSA's files. If the applicant requests evidence to show that he or she has filed an application for a social security number card, a receipt or equivalent document may be furnished. If the electronic screening or other investigation does not disclose a previously assigned number, SSA's central office assigns a number and issues a social security number card. If investigation discloses a previously assigned number for the applicant, a duplicate social security number card is issued.

(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. In all cases, you must complete a Form SS-5 to receive a replacement social security number card. You may obtain a Form SS-5 from any Social Security office or from one of the sources noted in paragraph (b) of this section. For evidence requirements, see § 422.107.

(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 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

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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]

### § 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

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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.* An applicant for an original social security number card must submit documentary evidence that the Commissioner of Social Security regards as convincing evidence of age, U.S. citizenship or alien status, and true identity. An applicant for a replacement social security number card must submit convincing documentary evidence of identity and may also be required to submit convincing documentary evidence of age and U.S. citizenship or alien status. An applicant for an original or replacement social security number card is also required to submit evidence to assist us in determining the existence and identity of any previously assigned number(s). A social security number will not be assigned, or an original or replacement card issued, unless all the evidence requirements are met. An in-person interview is required of an applicant who is age 12 or older applying for an original social security number except for an alien who requests a social security number as part of the immigration process as described in § 422.103(b)(3). An in-person interview may also be required of other applicants. All 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.

(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.* An applicant for an original social security number or a replacement social security number card is required to submit convincing documentary evidence of identity. Documentary evidence of identity may consist of a driver's license, identity card, school record, medical record, marriage record, passport, Department of Homeland Security document, or other similar document serving to identify the individual. The document must contain sufficient information to identify the applicant, including the applicant's name and (1) the applicant's age, date of birth, or parents' names; and/or (2) a photograph or physical description of the individual. 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 Immigration and Naturalization Service 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 Immigration and Naturalization Service 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 Immigration and Naturalization Service, 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 Immigration and Naturalization Service will be notified of the report. SSA may also no-

tify 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 Immigration and Naturalization Service. 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) *Invalid or expired documents*. SSA will not issue an original or replacement social security number card when an applicant presents invalid or expired documents. 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

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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]

### § 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) *Form SS-5.* 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 and sign a Form SS-5 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 obtain a Form SS-5 from any local Social Security office or from one of the sources noted in § 422.103(b). You may submit a completed request for change in records to 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, we may issue you a replacement card bearing the same number and the new name. We will grant an exception from 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 im-

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migration 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 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.)

[70 FR 74652, Dec. 16, 2005]

### § 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

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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 em-

ployers 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.

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(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 to-

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.

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(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 individ-

ual'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

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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 affect-

ing 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,

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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, the Social Security Administration, after obtaining the necessary evidence, will make a determination 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 a reconsideration if he is dissatisfied with the determination (see § 422.140). Also see § 404.1520 of this chapter for a discussion of the respective roles of State

agencies and the Administration in the making of disability determinations and § 404.1521 of this chapter for information regarding initial determinations as to entitlement or termination of entitlement in disability cases. 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]

EFFECTIVE DATE NOTE: At 71 FR 16461, Mar. 31, 2006, § 422.130 was amended by revising the first sentence of paragraph (b) and the first and second sentences of paragraph (c), effective Aug. 1, 2006. For the convenience of the user, the revised text is set forth as follows:

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\* \* \* \* \*

(b) \* \* \* 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 and part 405 of this chapter for evidence requirements in disability cases). \* \* \*

(c) \* \* \* 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, the Social Security Administration, after obtaining the necessary evidence, will make a determination 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 404.1520 and subpart I of part 405 of this chapter have discussions of the respective roles of State agencies and the Administration in the making of disability determinations and § 404.1521 and subparts B and I of part 405 of this chapter have information regarding initial determinations as

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to entitlement or termination of entitlement in disability claims. \* \* \*

\* \* \* \* \*

**§ 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.**

Any part who is 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, or the amount of hospital insurance benefits, may request that the Social Security Administration reconsider such determination. The information in § 404.1503 of this chapter as to the re-

spective roles of State agencies and the Social Security Administration in the making of 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 is available, the reconsidered determination may be issued by a disability hearing officer or by the Director of the Office of Disability Hearings or his or her delegate. After such initial determination has been reconsidered, the Social Security Administration will mail to each of the parties written notice and inform him or her of his right to a hearing before an administrative law judge (see § 422.201). Regulations relating to the details of reconsideration of initial determinations with respect to rights under title II of the Act or with respect to entitlement to hospital insurance benefits or supplementary medical insurance benefits may be found in part 404, subpart J of this chapter.

[51 FR 308, Jan. 3, 1986]

EFFECTIVE DATE NOTE: At 71 FR 16462, Mar. 31, 2006, the heading and text of § 422.140 was revised, effective Aug. 1, 2006. For the convenience of the user, the revised text is set forth as follows:

**§ 422.140 Reconsideration or review of initial determination.**

Subject to the provisions of subpart C of part 405, 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. In claims adjudicated under the procedures in part 405 of this chapter, if you are dissatisfied with an initial determination, you may request review by a Federal reviewing official. The information in § 404.1503 and part 405 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 (or review by Federal reviewing officials) 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 (or reviewed by a Federal reviewing official in claims adjudicated under the procedures in part 405 of this chapter), we will mail you written notice and inform you of your right to a hearing before an administrative law judge (see § 422.201 and subpart D of part 405, and 42 CFR 405.904(a)).

**Subpart C—Procedures of the Office of Hearings and Appeals**

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 Hearings and Appeals, review by the Appeals Council of the hearing decision or dismissal, and court review. It also describes the procedures for requesting such hearing or Appeals Council review, and for instituting a civil action for court review. 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 XVI of the Act, §§ 416.1429 through 416.1483 of this chapter;
- (c) Title XVIII of the Act, 42 CFR 405.720 through 405.750, 498.17, 498.40 through 498.95, 417.260 through 417.263, 473.40 through 473.46, and 1001.128. For regulations relating to hearings under title XVIII for a provider of services dissatisfied with the intermediary's determination as to the amount of program reimbursement due to or from the provider, see 42 CFR 405.1809 through 405.1890. Such hearings are conducted by a hearing officer designated by the intermediary or by the Provider Reimbursement Review Board, as appropriate.

(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]

EFFECTIVE DATE NOTE: At 71 FR 16462, Mar. 31, 2006, § 422.201 was amended by revising the first and second sentences in the introductory text and by adding a new third sentence to the introductory text and by revising paragraphs (b) and (c), effective Aug. 1, 2006. For the convenience of the user, the revised and added text is set forth as follows:

**§ 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 Hearings and Appeals, review by the Appeals Council of the hearing decision or dismissal, and court review in cases decided under the procedures in parts 404, 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 Decision Review Board, 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. \* \* \*

\* \* \* \* \*

(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;

\* \* \* \* \*

**§ 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. Hearing decisions must be based on the evidence of record, under applicable provisions of the law and

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regulations and appropriate precedents.

[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]

### § 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 con-

stitute 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

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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 judicial 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)); 31 U.S.C. 3711(e); 31 U.S.C. 3716.

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

#### § 422.301 Material included in this subpart.

This subpart describes the procedures relating to collection of:

- (a) Overdue administrative debts, and
- (b) Overdue program overpayments described in §§ 404.527 and 416.590 of this chapter.

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

#### § 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: overpayments of pay and allowances paid to employees, 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.

**§ 422.310 Collection of overdue debts by administrative offset.**

(a) *Referral to the Department of the Treasury for offset.* We will recover overdue debts by offsetting Federal payments due the debtor through the Treasury Offset Program (TOP). TOP is a Governmentwide 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 payments owed the debtor.

(b) *Debts we will refer.* We will refer for administrative offset all overdue debts over \$25.

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

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

(2) We will refer the debt for administrative 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 pays the full amount of the debt or takes either of the actions described in paragraphs (c)(4) or (c)(5) of this section;

(3) The debtor may inspect or copy our records relating to the debt;

(4) 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; and

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

**§ 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 us review the debt. To exercise this right, within 60 calendar days from the date of our notice, 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. If the debtor does not notify us and give us this evidence within the 60 calendar-day period, we may take the action described in our notice.

(b) *Review of the evidence.* If the debtor notifies us and presents evidence within the 60 calendar-day period described in paragraph (a) of this section, we will not take the action described in our notice unless and until we consider all of the evidence and send the debtor our findings that all or part of the debt is overdue and legally enforceable.

(c) *Findings by SSA.* Following our review of all of the evidence presented, we will issue written findings, including the supporting rationale for the findings. Issuance of these findings will be the final Agency action on the debtor's request for review. If we find that 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.

### 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.

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(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 garnish-

ment 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)

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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 em-

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ployer 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

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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 min-

imum 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

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withholding on the first or second pay-day 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.

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(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:** Secs. 205 and 702(a)(5) of the Social Security Act (42 U.S.C. 405 and 902(a)(5)). Section 422.512 is also issued under 30 U.S.C. 901 *et seq.*

### **§ 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

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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 com-

pleted 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

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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.)

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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

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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 and other forms.

Any person, institution, or organization wishing to reproduce, duplicate, or privately print any application or other form prescribed by the Administration should obtain the prior approval of the Administration. Requests for approval to so reproduce any prescribed form must be in writing and include the reason or need for such reproduction, the intended user of the form, the proposed modifications, if any, the proposed format, with printing or other specifications, the type of automatic data processing machinery (e.g., printer, burster, mail handling), if any, for which the form is being designed, estimated printing quantity, estimated

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cost per thousand, estimated annual usage, and such other pertinent information as may be required by the Administration. All requests are to be forwarded to: Social Security Administration, Printing and Records Management Branch, Baltimore, MD 21235.

[33 FR 11281, Aug. 8, 1968]

### 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]

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### § 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 infor-

mation, 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.

## PART 423—SERVICE OF PROCESS

Sec.

423.1 Suits against the Social Security Administration and its employees in their official capacities.

423.3 Other process directed to the Social Security Administration or the Commissioner.

423.5 Process against Social Security Administration officials in their individual capacities.

423.7 Acknowledgment of mailed process.

423.9 Effect of regulations in this part.

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.