

**PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED**

**Subpart C—[Amended]**

3. The authority citation for subpart C of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1611, and 1631(a), (d), and (e) of the Social Security Act (42 U.S.C. 902(a)(5), 1382, and 1383(a), (d), and (e)).

4. Add new § 416.327 under the existing heading, APPLICATIONS, to read as follows:

**§ 416.327 Pilot program for photographic identification of disability benefit applicants in designated geographic areas.**

(a) To be eligible for SSI disability benefits in the designated pilot geographic areas during the time period of the pilot, you or a person acting on your behalf must give SSA permission to take your photograph and make this photograph a part of the claims folder. You must give us this permission when you apply for benefits and/or when we ask for it at a later time. Failure to cooperate will result in denial of benefits. We will permit an exception to the photograph requirement when an individual has a sincere religious objection. This pilot will be in effect for a six-month period after the final rules become effective.

(b) *Designated pilot geographic areas means:*

(1) All SSA field offices in the State of South Carolina.

(2) The Augusta, Georgia SSA field office.

(3) All SSA field offices in the State of Kansas.

(4) Selected SSA field offices located in New York City.

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**SOCIAL SECURITY ADMINISTRATION**

**20 CFR Parts 404, 416 and 422**

RIN 0960-AE92

**Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income; Collection of Overdue Program and Administrative Debts Using Administrative Wage Garnishment**

**AGENCY:** Social Security Administration.

**ACTION:** Proposed rules.

**SUMMARY:** We propose to modify our regulations dealing with the collection of program overpayment debts that arise under titles II and XVI of the Social

Security Act (the Act) and administrative debts owed to us. Specifically, we propose to make some changes and establish new regulations that will establish our rules on the use of administrative wage garnishment (AWG) to collect such debts when they are past due. AWG is a process whereby we order the debtor's employer to withhold and pay to us up to 15 percent of the debtor's disposable pay every payday until the debt is repaid. The employer is required by law to comply with our AWG order.

**DATES:** To be sure your comments are considered, we must receive them no later than January 14, 2003.

**ADDRESSES:** You may give us your comments by using: our Internet site facility (*i.e.*, Social Security Online) at <http://www.ssa.gov/regulations/>, e-mail to [regulations@ssa.gov](mailto:regulations@ssa.gov), by telefax to (410) 966-2830 or by letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235-7703. You may also deliver them to the Office of Process and Innovation Management, Social Security Administration, 2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted to our Internet site for your review, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

**Electronic version:** The electronic file of this document is available on the date of publication in the **Federal Register** at [http://www.access.gpo.gov/su\\_docs/aces/aces140.html](http://www.access.gpo.gov/su_docs/aces/aces140.html). It is also available on the Internet site for SSA (*i.e.*, Social Security Online): <http://www.ssa.gov/regulations>.

**FOR FURTHER INFORMATION CONTACT:**

Patricia Hora, Social Insurance Specialist, Office of Process and Innovation Management, Social Security Administration, 2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, (410) 965-7183 or TTY (410) 966-5609. For information on eligibility or filing for benefits: Call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778 or visit our Internet web site, Social Security Online, at <http://www.ssa.gov/>.

**SUPPLEMENTARY INFORMATION:** Section 31001(o)(1) of Public Law 104-134 amended Chapter 37, subchapter II, of title 31, United States Code, by adding section 3720D to permit Federal agencies to use AWG to recover past due debts. We propose to pursue AWG to collect past due program overpayment debts incurred under title II and title

XVI of the Act and past due administrative debts (*see* 20 CFR 422.306(a) for examples of administrative debts). The proposed regulations discussed below would implement 31 U.S.C. 3720D under the guidance provided by the Department of the Treasury at 31 CFR 285.11.

**Explanation of Changes to Regulations**

We propose to create a new subpart E in part 422 of our regulations containing the rules we will use to collect both title II and title XVI program overpayments and administrative debts by AWG. Proposed subpart E would include sections that would explain the conditions for our use of AWG, the rights of the debtor and the responsibilities of the employer.

In proposed § 422.401, we describe the scope of this subpart—our use of AWG under 31 U.S.C. 3720D to recover past due debts that you owe.

Proposed § 422.402 contains definitions of several terms used in the new subpart, including:

- Paragraph (a), defining “administrative wage garnishment” as the process whereby we order your employer to withhold from your disposable pay and send the amount withheld to us;
- Paragraph (b), defining the term “debt” to mean any amount of money or property that we determine is owed to the United States government and that arises from a program that we administer or an activity that we perform;
- Paragraph (c), defining the term “disposable pay” to mean the amount equal to your total compensation from an employer (including, among other things, wages or salary, bonuses, commissions and vacation pay) after deduction of health insurance premiums and amounts withheld as required by law other than amounts withheld under court order.

Proposed § 422.403 would provide that, subject to certain exceptions and conditions, we would use AWG to collect any debt that is past due. We may use AWG concurrently with other practices, such as, tax refund offset and other administrative offset conducted by the Department of the Treasury and referral of information about the debt to consumer reporting agencies. *See* paragraph (a). We would not use AWG to collect a debt from salary or wages paid by the United States Government. If you have been separated involuntarily from employment, we will not use AWG against you until you have been re-employed continuously for at least 12 months. *See* paragraph (b).

In paragraphs (c) and (d) of proposed § 422.403, we describe the conditions under which we could apply AWG to recover title II and title XVI program overpayment debts, respectively. We could apply AWG if all of the following conditions are met.

- You are not receiving benefits under the program under which the overpayment occurred.
- For an overpayment under title XVI, we are not collecting the debt by reducing your title II benefits.
- We have completed our billing sequence (*i.e.*, we have sent an overpayment notice, reminder notice and past-due notice) or we have terminated or suspended collection activity.
- We have no installment payment arrangement with you, or you failed to make payment under such an arrangement for two consecutive months.
- You have not requested that we waive collection of the overpayment, or you requested waiver but we determined that we would not waive collection.
- You have not requested reconsideration of the initial overpayment determination, or you requested reconsideration but we affirmed the initial determination in whole or in part.
- We cannot recover the overpayment by adjustment of benefits payable to someone other than you.

According to 31 U.S.C. 3720D(b), we must send you written notice at least 30 days prior to taking AWG action. We propose to send the notice at least 60 days before we would take AWG action. Proposed § 422.405 describes the information we would include in that notice:

- The payment of your debt is past due;
- The nature and amount of your debt;
- Our intention to collect the debt by AWG;
- The amount that could be withheld from your disposable pay (the payment schedule) under AWG;
- You may inspect and copy our records about the debt;
- You may ask us to review the debt (*i.e.*, whether you owe the amount stated in the notice) or the payment schedule stated in the notice;
- You may request an installment payment plan.

The notice would also explain that at the expiration of 60 calendar days from the date of the notice we would order your employer to begin withholding from your disposable pay, unless within that 60-day period you pay us the full

amount of the debt, request review of the debt or the payment schedule or request to establish a written agreement to pay us by installments. We would keep an electronic record of the notice, showing the date we mailed it and the amount of the debt.

Proposed § 422.410 explains the actions we would take after we send the notice. We would not send an AWG order to your employer before the expiration of 60 calendar days from the date of the notice. If within that 60-day period you would request that we review the debt (see proposed § 422.425) or the payment schedule (see proposed § 422.415) stated in the notice or request an installment payment arrangement, we would not take further action until we send you a written notice of our decision. If within that 60-day period you do not pay the full balance of the debt, request review, or request an installment payment arrangement, we may send the AWG order to your employer without further delay. If your request for review is late, we would still perform the review even though we would send the AWG order to your employer. However, if you had good cause for failing to request review of the debt or the payment schedule on time, we would treat your request as if we received it within the 60-day period and delay further action until we send you our decision. Paragraph (b) of proposed § 422.410 describes the circumstances that show good cause for your failure and gives examples. If we arrange an installment payment plan with you after we send you the AWG notice and you fail to make the installment payments for two consecutive months, we may send your employer an AWG order without further delay.

Under 31 U.S.C. 3720D(b)(3) and (5) and (c), we must give you the opportunity to inspect and copy our records relating to the debt and the opportunity for a hearing on the existence and amount of the debt and the terms of the repayment schedule. We address these requirements in proposed §§ 422.415, 422.420 and 422.425.

Proposed § 422.415 provides that, upon your request, we would review the amount that your employer would withhold from your disposable pay (the payment schedule) and, when we find that withholding a particular amount would cause financial hardship, we would reduce that amount. We would not reduce the amount to be withheld every payday below \$ 10.00. We would find financial hardship when evidence submitted by you shows that withholding a particular amount from your disposable pay would deprive you

of income necessary to meet ordinary and necessary living expenses. Such expenses would include, among other things, the cost of food, clothing, housing, medical care, insurance, and support of others for whom you are legally responsible. We would not reduce the amount the employer would withhold for financial hardship if the debt was caused by your intentional false statement or willful concealment of or failure to furnish material information.

Proposed § 422.420 explains that we would arrange to make our records relating to the debt available for your inspection and copying if you notify us of your intention to inspect and copy them.

Proposed § 422.425 describes the hearing process, the process by which we would review the debt at your request. Essentially, this would be the same process that we employ to review the debt upon your request before we would refer information to the Department of the Treasury for collection by administrative offset or refer information about the debt to consumer reporting agencies. See 20 CFR 422.317. To exercise your right to this review, you must request review and give us evidence that you do not owe all or part of the debt described in the notice or that we do not have the right to collect it. If you do not request review and give us the evidence before the expiration of 60 calendar days from the date of the notice, we may issue the AWG order without further delay. If you would request review and give us the evidence within that 60-day period, or if you had good cause for failing to request review and give us the evidence on time, we would not take further AWG action unless and until we consider all of the evidence (including our own records) and send you our written findings that all or part of the debt is past due and we have the right to collect it. Our findings would include supporting rationale and would be our final decision on your request. If we would 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 would not send your employer an AWG order.

Proposed § 422.430 states that, if we would determine that you do not owe the debt or we do not have the right to collect it, we would cancel any AWG order that we issued and refund promptly any amount withheld from your pay under that order. Refunds will not bear interest unless Federal law or contract requires interest.

In proposed § 422.435, we describe the AWG order, the factors that

determine the amount your employer must withhold and the information that your employer must send us. Paragraph (a) describes the information that would appear in the AWG order (your name, address and social security number; the amount of the debt; information about the amount that the employer must withhold; and where to send the withheld amount). We would maintain an electronic record of the order showing the date that we mailed the order. See paragraph (b). We would require the employer to certify within 20 days of receipt of the AWG order your employment status and the amount of disposable pay available for withholding. See paragraph (c).

Paragraph (d) of proposed § 422.435 explains how the employer would calculate the actual amount to withhold from your disposable pay on each payday and remit to us. This section would implement 31 U.S.C. 3720D(b)(1) and 31 CFR 285.11(i). Usually, the amount to be withheld under the AWG order would be the lesser of the amount indicated in the order (up to 15% of disposable pay) or the amount by which disposable pay exceeds thirty times the minimum wage.

Paragraph (e) of proposed § 422.435 discusses our rules that would apply if your disposable pay is subject to more than one garnishment order. A withholding order for family support always would have priority over our AWG order. Our AWG order would have priority over other types of orders served after our AWG order unless Federal law provides otherwise. When your disposable pay is already subject to one or more withholding orders with higher or equal priority with our AWG order, the amount that your employer must withhold and remit to us would not be more than an amount calculated by subtracting the amount(s) withheld under the other withholding order(s) from 25% of your disposable pay. Under proposed paragraph (f), we would have your employer withhold more than the amount calculated under these rules if you would request in writing the higher rate of withholding. Moreover, as noted above, we would reduce the amount that your employer would withhold if we find under proposed § 422.415(b) that withholding at that amount would cause you financial hardship.

In paragraphs (a)–(e) of proposed § 422.440, we discuss the responsibilities of your employer under the AWG order. The proposed rules would require your employer to begin withholding the appropriate amount on the first payday following receipt of the AWG order, or on the first or second payday after such receipt if the

employer received the AWG order within 10 days before the first payday. The proposed rules would require your employer to continue to withhold and promptly pay the withheld amount to us every payday until we have recovered the debt and any interest, penalties and administrative costs that we may charge you under applicable law. Your employer need not alter its normal pay and disbursement cycles. However, your employer cannot honor any allotment or assignment of pay by you (other than arrangements made to satisfy a family support judgement or order) to the extent that such assignment or allotment would interfere with or prevent withholding under the AWG order.

In paragraph (f) of proposed § 422.440, we explain that Federal law prohibits your employer from using an AWG order as the basis for firing, refusing to employ or disciplining you. You may file a civil action in Federal or State court against an employer who violates the prohibition. See 31 U.S.C. 3720D(e).

In proposed § 422.445, we explain that we may file a civil action in Federal court against the employer for any amounts that it fails to withhold in compliance with our AWG order issued under proposed § 422.435, and the employer may also be liable for our attorney fees and other associated costs and damages. See 31 U.S.C. 3720D(f). We would not bring a civil action against your employer until we terminate collection action against you in accordance with applicable Federal standards, unless earlier filing is necessary to avoid the expiration of any applicable statute of limitations. We would deem collection to be terminated if we receive no payment on the debt for one year.

#### *Other Changes*

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

We propose to add to 20 CFR 404.903 a new paragraph (v) to include in the list of administrative actions that are not initial determinations our determination to use AWG to collect an overpayment made under title II of the Act. We propose to add to 20 CFR 416.1403(a) a new paragraph (20) to include in the list of administrative actions that are not initial determinations our determination to use AWG to collect an overpayment made under title XVI of the Act. As a result of these two revisions, the administrative review procedures in 20 CFR part 404, subpart J, and part 416, subpart N, would not apply to the

determination to use AWG. Moreover, that determination would not be subject to judicial review under 42 U.S.C. 405(g) or 1383(c)(3).

#### *Clarity of This Regulation*

Executive Order (E.O.) 12866, as amended by E.O. 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these proposed rules easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is unclear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

#### **Regulatory Procedures**

##### *Executive Order 12866*

The Office of Management and Budget (OMB) has reviewed these proposed rules in accordance with E.O. 12866, as amended by Executive Order 13258.

##### *Regulatory Flexibility Act*

We certify that these proposed regulations would not have a significant impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis, as provided in the Regulatory Flexibility Act, as amended, is not required.

Some entities, as employers of some individuals who owe debts to us, would be subjected to these proposed regulations and to the certification requirement in proposed § 422.435(c). However, any particular small employer is not likely to receive wage garnishment orders from us concerning a significant number of employees. Under proposed § 422.435(c), employers of delinquent debtors must certify certain information about the debtor's status such as the debtor's employment status and earnings. This information is contained in the employer's payroll records. Therefore, it would not take a significant amount of time or result in a significant cost for an employer to complete the certification form. Even if an employer receives withholding orders from us on several employees

over the course of a year, the cost imposed on the employer to complete the certifications, withhold from disposable pay, and remit those amounts to us would not have a significant economic impact on that entity. Employers would not be required to vary their normal pay cycles to comply with a withholding order that would be issued under the proposed rules.

#### *Federalism*

We have reviewed these proposed rules under the threshold criteria of E.O. 13132, "Federalism," and determined that they would not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Although States and local governments, as employers of some individuals who owe debts to us, would be subjected to these proposed regulations and to the certification requirement in § 422.435(c), there will be a relatively small number of debtors who would meet the criteria for selection who are employed by the States and local governments. Any particular State or local government is not likely to receive AWG orders from us concerning a significant number of employees. Under proposed § 422.435(c), States and local governments that employ delinquent debtors must certify certain information about the debtors' status such as the debtors' employment status and earnings. This information is contained in the States' or local governments' payroll records. Therefore, it would not take a significant amount of time or result in a significant cost for a State or local government to complete the certification form. Even if a State or local government receives AWG orders from us on several employees over the course of a year, the cost imposed on the State or local government to complete the certifications, withhold from disposable pay, and remit those amounts to us would not have a significant economic impact on that entity. States or local governments would not be required to vary their normal pay cycles to comply with AWG orders that would be issued under the proposed rules.

#### *Paperwork Reduction Act*

The proposed rules in new subpart E of part 422 contain information collection activities at §§ 422.415, 422.425 and 422.435. The activities are exempt as administrative actions under

44 U.S.C. 3518(c)(1)(B)(ii) from the clearance requirements of 44 U.S.C. 3507 as amended by section 2 of Public Law 104-13 (May 22, 1995), the Paperwork Reduction Act of 1995.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.003 Social Security—Special Benefits for Persons Aged 72 and Over; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

#### **List of Subjects**

##### *20 CFR Part 404*

Administrative practice and procedure; Death benefits; Blind, Disability benefits; Old-Age, Survivors and Disability Insurance; Reporting and recordkeeping requirements, Social Security.

##### *20 CFR Part 416*

Administrative practice and procedure; Aged, Blind, Disability benefits; Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

##### *20 CFR Part 422*

Administrative practice and procedure, Organization and functions (Government agencies), Social Security.

Dated: August 12, 2002.

**Jo Anne B. Barnhart,**

*Commissioner of Social Security.*

For the reasons set out in the preamble, we propose to amend parts 404, 416 and 422 of Title 20 of the Code of Federal Regulations as follows:

#### **PART 404—[AMENDED]**

1. The authority citation for subpart F of part 404 continues to read as follows:

**Authority:** Secs. 204, 205(a), and 702(a)(5) of the Social Security Act (42 U.S.C. 404, 405(a) and 902(a)); 31 U.S.C. 3720A.

2. Paragraph (a), introductory text, of § 404.527 is revised to read as follows:

#### **§ 404.527 Additional methods for recovery of title II benefit overpayments.**

(a) *General.* In addition to the methods specified in §§ 404.502 and 404.520, an overpayment under title II of the Act is also subject to recovery under the rules in subparts D and E of part 422 of this chapter. Subpart D of part 422 of this chapter applies only under the following conditions:

\* \* \* \* \*

3. The authority citation for subpart J of part 404 is revised to read as follows:

**Authority:** Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 225, and 702(a)(5) of the

Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 425, and 902(a)(5)); sec. 5, Pub. L. 97-455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98-460, 98 Stat. 1802 (42 U.S.C. 421 note).

4. Section 404.903 is amended by removing the word "and" at the end of paragraph (t), replacing the period at the end of paragraph (u) with "; and", and adding paragraph (v) to read as follows:

#### **§ 404.903 Administrative actions that are not initial determinations.**

\* \* \* \* \*

(v) Determining whether we will order your employer to withhold from your disposable pay to collect an overpayment you received under title II of the Social Security Act (see part 422, subpart E, of this chapter).

#### **PART 416—[AMENDED]**

5. The authority citation for subpart E of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1601, 1602, 1611(c) and (e), and 1631(a)–(d) and (g) of the Social Security Act (42 U.S.C. 902(a)(5), 1381, 1381a, 1382(c) and (e), and 1383(a)–(d) and (g)); 31 U.S.C. 3720A.

6. Paragraph (a), introductory text, of § 416.590 is revised to read as follows:

#### **§ 416.590 Are there additional methods for recovery of title XVI benefit overpayments?**

(a) *General.* In addition to the methods specified in §§ 416.560, 416.570, 416.572 and 404.580, we may recover an overpayment under title XVI of the Act from you under the rules in subparts D and E of part 422 of this chapter. Subpart D of part 422 of this chapter applies only under the following conditions:

\* \* \* \* \*

7. The authority citation for subpart N of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b).

8. Section 416.1403 is amended by removing the word "and" at the end of paragraph (a)(18), replacing the period at the end of paragraph (a)(19) with "; and", and adding paragraph (a)(20) to read as follows:

#### **§ 416.1403 Administrative actions that are not initial determinations.**

(a) \* \* \*

(20) Determining whether we will order your employer to withhold from your disposable pay to collect an overpayment you received under title XVI of the Social Security Act (see part 422, subpart E, of this chapter).

**PART 422—[AMENDED]**

9. Subpart E is added to read as follows:

**Subpart E—Collection of Debts by Administrative Wage Garnishment**

- 422.401 What is the scope of this subpart?  
 422.402 What special definitions apply to this subpart?  
 422.403 When may we use administrative wage garnishment?  
 422.405 What notice will we send you about administrative wage garnishment?  
 422.410 What actions will we take after we send you the notice?  
 422.415 Will we reduce the amount that your employer must withhold from your pay when withholding that amount causes financial hardship?  
 422.420 May you inspect and copy our records related to the debt?  
 422.425 How will we conduct our review of the debt?  
 422.430 When will we refund amounts of your pay withheld by administrative wage garnishment?  
 422.435 What happens when we decide to send an administrative wage garnishment order to your employer?  
 422.440 What are your employer's responsibilities under an administrative wage garnishment order?  
 422.445 May we bring a civil action against your employer for failure to comply with our administrative wage garnishment order?

**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), 905(a)(5) and 1383(d)(1)) and 31 U.S.C. 3720D.

**§ 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) 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 re-employed continuously for at least 12 months. You have the burden of informing us about an involuntary separation from employment.

(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, in whole or in part, the initial overpayment determination.

(6) The overpayment cannot be recovered 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 paragraphs (b)(6) or (7) of § 422.405 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 60 calendar day period ends 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.

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

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

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

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

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

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

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

(ii) Whether our action misled you;

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

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

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

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

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

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

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

(3) *If we issued the administrative wage garnishment order.* If we determine that you had good cause under paragraph (b) of this section and we already had sent an administrative wage garnishment order to your employer, we will tell your employer to stop withholding from your disposable pay until we make our decision.

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

(a) *General.* Unless paragraph (d) of this section applies, we will reduce the amount that your employer must withhold from your pay when you

request the reduction and we find financial hardship. In any event, we will not reduce the amount your employer must withhold each payday below \$10. When we decide to reduce the amount that your employer withholds, we will give you and your employer written notice.

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

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

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

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

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

(2) Medical, hospitalization and similar expenses;

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

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

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

(i) Your intentional false statement, or

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

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

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

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

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

(a) *You must request review and present evidence.* If you receive a notice

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

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

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

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

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

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

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

- (1) Your name, address, and social security number,
- (2) The amount of the debt,
- (3) Information about the amount to be withheld, and
- (4) Information about where to send the withheld amount.

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

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

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

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

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

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

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

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

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

- (i) The amount calculated under paragraph (d) of this section; or
- (ii) The amount calculated by subtracting the amount(s) withheld under the withholding order(s) with priority from 25% of your disposable pay.

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

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

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

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

(b) *Payment of amounts withheld.* Your employer must promptly pay to the Social Security Administration 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 judgment 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 paragraphs (d), (e) and (f) of § 422.435. Your employer may also be liable for

attorney fees, costs of the lawsuit and (in the court's discretion) punitive damages.

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

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 101

[Docket No. 94P-0036]

RIN 0910-AB66

#### Food Labeling: Trans Fatty Acids in Nutrition Labeling, Nutrient Content Claims, and Health Claims; Reopening of the Comment Period

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule; reopening of the comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is reopening to December 16, 2002, the comment period for a proposed rule published in the *Federal Register* of November 17, 1999 (64 FR 62746), in which FDA proposed to amend its regulations on nutrition labeling to include the amount of *trans* fatty acids present in a food in the amount and percent Daily Value declared for saturated fatty acids. Since publication of the proposed rule, the National Academy of Sciences issued a report entitled "Dietary Reference Intakes for Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein and Amino Acids" that did not provide a dietary reference intake value for *trans* fat. In response to this report, FDA intends to take a more incremental approach and provide for mandatory declaration of *trans* fat content on a separate line within the Nutrition Facts panel. FDA is reopening the comment period to receive comment on a footnote statement that it is proposing be

required on the label when *trans* fat is listed. Lastly, FDA is outlining conditions for when it would consider exercising enforcement discretion for manufacturers who wish to begin labeling the *trans* fat content of food products prior to publication of a final rule.

**DATES:** Submit written or electronic comments on the proposed footnote by December 16, 2002.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>.

**FOR FURTHER INFORMATION CONTACT:** Joyce Saltsman, Center for Food Safety and Applied Nutrition (HFS-306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301-436-1641.

#### SUPPLEMENTARY INFORMATION:

##### I. Reopening of Comment Period

In the *Federal Register* of November 17, 1999 (64 FR 62746) (the November 1999 proposal), FDA (we) proposed to amend our regulations on nutrition labeling to require that the amount of *trans* fatty acids (*trans* fats) present in a food, including dietary supplements, be included in the amount and percent of Daily Value (% DV) declared for saturated fatty acids. We also proposed that, wherever saturated fat limits are placed on nutrient content claims, health claims, or disclosure or disqualifying levels, the amount of *trans* fatty acids be limited as well. Finally, we proposed to define the nutrient content claim "*trans* fat free." In that document, we requested comments on the proposal by February 15, 2000. In the *Federal Register* of February 16, 2000 (65 FR 7806), we reopened the comment period to April 17, 2000, in response to requests for more time to submit comments. In the *Federal Register* of December 5, 2000 (65 FR 75887), we again reopened the comment period to January 19, 2001, in response to comments regarding nutrient content claims.

Subsequent to FDA's November 1999 proposal, the Institute of Medicine of the National Academy of Sciences (IOM/NAS) issued a report entitled "Dietary Reference Intakes for Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein and Amino Acids" (the IOM/NAS macronutrient report) and found "a positive linear trend" between *trans* fatty acid intake and total and low density lipoprotein-cholesterol (LDL-C) concentration, and therefore

increased risk of coronary heart disease (Ref. 1).

The report summarized that the scientific evidence would suggest a tolerable upper intake level (UL) of zero, but because *trans* fats are unavoidable in ordinary diets and achieving such a UL would require extraordinary changes in dietary intake patterns that might introduce other undesirable effects and unknown health risks, a UL was not proposed. Instead, the report recommended "that *trans* fat consumption be as low as possible while consuming a nutritionally adequate diet." Likewise, the conclusions in the Dietary Guidelines for Americans, 2000 (Ref. 2) and recent guidelines from the National Cholesterol Education Program (NCEP) (Ref. 3) are similar with recommendations to limit *trans* fat intake in the diet.

The IOM/NAS report (Ref. 1) underscores the relationship between the intake of *trans* fat and the increased risk for heart disease and emphasizes that consumers need to limit *trans* fat in their diets. FDA recognizes that, to accomplish this, information on the *trans* fat content of foods needs to be available on food labels. But the IOM/NAS report did not provide a dietary reference intake (DRI) value for *trans* fat or information that the agency believes is sufficient to support its establishing a daily reference value (DRV) to assist the agency in providing other information on the label, such as a % DV for *trans* fat.

Comments to the November 1999 proposal stressed the importance of helping consumers understand the relevance of the quantitative amount of *trans* fat in relation to recommended dietary intake patterns. In addition, Section 2(b) of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Public Law 101-535) states that the Secretary of Health and Human Services, and by delegation FDA, shall require the declaration of nutrients "be conveyed to the public in a manner which enables the public to readily observe and comprehend such information and to understand its relative significance in the context of a total daily diet." The % DV has been added to nutrition labeling for most nutrients to achieve this purpose. However, we do not have a basis on which to establish a DV for *trans* fat at this time. Therefore, in light of the public health recommendations to reduce *trans* fat intake in the American diet, FDA is proposing to require an asterisk (or other symbol) in the % DV column for *trans* fat when it is listed, that is tied to a similar symbol at the bottom of the Nutrition Facts box and