

Specialist, Office of Regulations, Social Security Administration, Room 100, Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–0020 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.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION: Section 31001(o)(1) of Pub. L. 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 are pursuing 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 final regulations discussed below will 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 are creating 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. Subpart E will include the following sections that explain the conditions for our use of AWG, the rights of the debtor and the responsibilities of the employer.

In § 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.

Section 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.

Section 422.403 provides that, subject to certain exceptions and conditions, we will 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 will 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. We will not use AWG to recover your debt while:

- Your title II disability benefits are stopped during the reentitlement period, under 20 CFR 404.1592a(a)(2) of this chapter.
- Your Medicare entitlement is continued because you are deemed to be entitled to title II disability benefits under section 226(b) of the Social Security Act, or
- You are participating in the Ticket to Work and Self-Sufficiency Program and your ticket is in use as described in 20 CFR 411.170 through 411.255. See paragraph (b).

In paragraphs (c) and (d) of § 422.403, we describe the conditions under which we may apply AWG to recover title II and title XVI program overpayment debts, respectively. We may 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 will send the notice at least 60 days before we will take AWG action. Section 422.405 describes the information we will 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 will also explain that at the expiration of 60 calendar days from the date of the notice we will 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 arrange to pay us by installments. We will keep an electronic record of the notice, showing the date we mailed it and the amount of the debt.

Section 422.410 explains the actions we will take after we send the notice. We will 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 request that we review the debt (see § 422.425) or the payment schedule (see § 422.415) stated in the notice or request an installment payment arrangement, we will 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 will still perform the review even though we may 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 will 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 § 422.410 describes the circumstances that show good cause for your failure and gives