

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.

As explained below in the discussion of PUBLIC COMMENTS, we revised paragraph (a)(3) of § 422.410 to ensure that the regulation is consistent with the regulation of the Department of the Treasury on suspending an AWG order pending our decision on a request for review. We also clarified the language of paragraph (b)(3) of that section regarding suspension of an AWG order when you have good cause for failing to request review on time.

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 §§ 422.415, 422.420 and 422.425.

Section 422.415 provides that, upon your request, we will review the amount that your employer will withhold from your disposable pay (the payment schedule) and, when we find that withholding a particular amount would cause financial hardship, we will reduce that amount. We will not reduce the amount to be withheld every payday below \$10.00. We will find financial hardship when evidence submitted by you shows that withholding a particular amount from your disposable pay will deprive you of income necessary to meet ordinary and necessary living expenses. Such expenses include, among other things, the cost of food, clothing, housing, medical care, insurance, and support of others for whom you are legally responsible. We will not reduce the amount the employer will withhold for financial hardship if the debt was caused by your intentional false statement or willful concealment of or failure to furnish material information.

Section 422.420 explains that we will 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.

Section 422.425 describes the hearing process, the process by which we will review the debt at your request. Essentially, this is the same process that we employ to review the debt upon your request before we 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 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 will 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 will include supporting rationale and will be our final decision on your request. 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 your employer an AWG order.

Section 422.430 states that, if we determine that you do not owe the debt or we do not have the right to collect it, we will 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 § 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 will 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 will maintain an electronic record of the order showing the date that we mailed the order. See paragraph (b). We will 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 § 422.435 explains how the employer will calculate the actual amount to withhold from your disposable pay on each payday and remit to us. This section implements 31 U.S.C. 3720D(b)(1) and 31 CFR 285.11(i). Usually, the amount to be withheld under the AWG order will 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 § 422.435 discusses our rules that apply if your disposable

pay is subject to more than one garnishment order. A withholding order for family support always has priority over our AWG order. Our AWG order has 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 will 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 paragraph (f), we will have your employer withhold more than the amount calculated under these rules if you request in writing the higher rate of withholding. Moreover, as noted above, we will reduce the amount that your employer will withhold if we find under § 422.415(b) that withholding at that amount will cause you financial hardship.

In paragraphs (a) through (e) of § 422.440, we discuss the responsibilities of your employer under the AWG order. The rules 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 rules 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 interferes with or prevents withholding under the AWG order.

In paragraph (f) of § 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 § 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 will not