

# ADMINISTRATIVE WAGE GARNISHMENT EMPLOYER HANDBOOK

To Employer:

**This page provides a brief summary of the Administrative Wage Garnishment (AWG) process. The following pages provide details and instructions that will help you comply with the AWG rules and regulations. Your compliance is mandatory, and your liability for withholding begins when you receive the Order of Withholding of Earnings, not when you submit the Employer Acknowledgement of Wage Withholding. Please read all materials carefully.**

The Federal Family Education Loan Program (FFELP) is administered by guaranty agencies such as Ascendium Education Solutions, Inc., (Ascendium) on behalf of the Federal government. One of the methods Ascendium uses to collect payment on defaulted FFELP loans is AWG, which permits garnishment without a court order. Federal statute (20 USC 1095a et. seq.) overrides state law and authorizes this process. A copy of the Federal statute, the implementing regulations [34 CFR 682.410(b)(9)], and a letter from the Department of Education addressing AWG authorization are attached.

You have received the following documents:

(1) Order of Withholding from Earnings

The Order was sent to you with respect to one or more persons who our records indicate works for you. Before it was sent, the employee(s) was sent a notice providing the opportunity to review Ascendium's records relating to the debt, to resolve the debt voluntarily, and to have a hearing concerning the debt.

(2) Employer Acknowledgement of Wage Withholding

Promptly complete and return the Acknowledgment, **even if the person no longer works for you.**

Federal law makes you liable for amounts you fail to withhold from your employee's wages after receiving the Order. However, you are not required to vary your normal pay/disbursement cycles.

Also, the law prohibits you from discharging, refusing to employ, or taking disciplinary action against the employee because his or her wages are subject to the AWG process.

Unless a lesser amount has been ordered after an AWG hearing or the borrower has agreed to a greater amount, the law permits garnishment of up to 15% of disposable pay for the pay period, subject to an aggregate maximum of 25% and a protected "floor" of 30 times the Federal minimum hourly wage per work week (15 USC 1673). This Handbook contains a worksheet and instructions to help you calculate the proper amount. Any lesser amount ordered after an AWG hearing would be reflected in a Modification of the Order that F.H. Cann & Associates, Inc. would send you, if applicable.

Thank you for your prompt cooperation. If you have questions, please contact Harmony Gensch directly at 877-750-9813, or by fax 877-677-9125 or email at [docs@fhcann.com](mailto:docs@fhcann.com).

## Employer Withholding Instructions

Before the Order of Withholdings from Earnings (Order) was sent to you, the debtor was sent a Notice Prior to Wage Withholding. As required under Federal law (20 USC 1095a et. seq.), the notice explained F.H. Cann & Associates, Inc.'s intent to send the Order to you and gave the debtor an opportunity to (a) inspect and copy Ascendium's records regarding the debt; (b) have a hearing concerning the existence or the amount of the debt and, except in certain instances, the terms of the repayment schedule; and (c) avoid withholding by entering into a voluntary repayment agreement.

In general, you received the Order because either (a) the debtor did not request such a hearing within the time required under the law; or (b) a hearing was held and the Hearing Officer determined that the debtor did not have sufficient grounds to prevent garnishment. In some cases, the hearing may have resulted in a modification of the garnishment, in which case a Modification of the Order will be sent providing a specific amount or percent to be withheld and whatever other conditions or limitations may apply.

### Steps you must take:

1. **Check** the debtor's name, address, and the last four digits of the Social Security number contained in the Order against your records, and **complete and return** the Employer Acknowledgement of Wage Withholding (Acknowledgement) immediately.

**NOTE:** Your liability for withholding begins when you receive the Order, not when you submit the Acknowledgement.

- If, when you receive the Order, you no longer are obligated to pay the debtor (for example, because the debtor's employment was involuntarily terminated or the debtor left for another job), promptly complete and submit the Acknowledgement.
- If your obligation to pay the debtor ends after you have received the Order, promptly complete and submit a Notice of Change of Employment form (Attachment A) to provide us with the basis for issuing you a Release of Order of Withholding. Remember that income earned up to the termination date and any other compensation, such as severance pay, are subject to withholding.

2. **Calculate and deduct** the amount to be withheld for each pay period, beginning with the first pay period that occurs after you received the Order, using the AWG Withholding Worksheet (Attachment B).

If you have more than one Order, refer to the "Multiple Withholdings\*" section below.

3. **Submit the amount withheld** payable to:

**F.H. Cann & Associates, Inc.**

**PO Box 128**

**North Andover, MA 01845**

Be sure each check includes (a) the debtor name and Social Security number; (b) employer name and Federal Employer Identification Number; and (c) notation indicating that it is a wage withholding payment. If you are making payments for two or more debtors, you may combine payments as long as the check stub or transmittal sheet properly identifies the amount remitted for each employee.

4. **Repeat steps 2 and 3** for each pay period until (a) F. H. Cann & Associates, Inc. provides you with a Release of Order of Withholding or (b) your obligation to pay the debtor otherwise ends. Although deductions are to be made at each pay period, remittance need only be made once each month. You are not required to change normal pay and disbursement cycles to comply with the Order.

## **Multiple Withholdings\*:**

### **Limitations:**

If the debtor is subject to multiple garnishments during a pay period, Federal law (see 15 USC Section 1673 and F.A.Q. #1, below) may limit your ability to withhold the full amount called for under the Order for that pay period. If so, you must inform us, in writing, immediately.

### **Priorities:**

Generally, garnishments must be satisfied in the order in which they are issued to the employer, up to the maximum amount subject to that kind of garnishment order.

- Be sure to check the effective duration of any state law garnishments. Many of them remain in effect only for a limited time; when they lapse, the next-in-line garnishment would take over.
- Federal student loan garnishments (such as this Order) do not have duration limitations; they do not end until (a) the debt is paid in full (NOTE: the total amount the debtor owes is more than the amount indicated in the Order under “Total Amount Currently Due” because, among other things, interest continues to accrue); (b) your obligation to pay the debtor otherwise has ended; (c) a bankruptcy “stay” suspends the garnishment; or (d) the debt is discharged or otherwise resolved.
- Garnishments for family support or IRS levy take precedence over withholding for student loan debts, regardless of when they begin. If you receive a garnishment order for family support or IRS levy after you have received our AWG Order, contact us at (877) 750-9813.

\* This information reflects F. H. Cann & Associates, Inc.’s understanding concerning the general aspects of multiple withholding under AWG but is not intended as legal advice.

## **Your compliance is mandatory:**

Federal law [(20 USC 1095a(a)(6))] makes you liable for any amount that you should, but do not, withhold following receipt of the Order. Ascendium must sue you in State or Federal court to recover those sums, together with attorney's fees, costs and, in the court's discretion, punitive damages. Under that same law [(20 USC 1095a(a)(8)], you may not discharge, refuse to employ, or take disciplinary action against an individual because that individual is subject to AWG. That individual may sue you if you take such action and, if he or she prevails, the court will award attorney's fees and, in its discretion, may order, among other things, reinstatement, punitive damages and back pay.

Termination of the debtor's employment after you receive the Order does not terminate your liability for amounts you were supposed to have withheld previously.

## F.A.Q (Frequently Asked Questions) and Inquiries:

1. If someone else is already garnishing my employee's disposable pay, do I still have to comply with the AWG Order?

**Yes, but the amount you must withhold may be reduced.** The law (15 USC 1673) imposes a maximum on how much can be garnished at any one time; currently, that maximum is 25% of the employee's disposable pay. If that current garnishment is taking, for example, 20%, the AWG Order (assuming it is next-in-line) is still operable to the extent of the remaining 5% of the employee's disposable pay. On the other hand, if the prior garnishment(s) accounts for 25%, then nothing would have to be withheld on the AWG Order, at least until the prior garnishment(s) is satisfied or has expired.

**Remember:** Federal law also protects a "floor" level of income equal to 30 times the minimum wage per week from garnishment.

**Remember:** Some garnishments expire (AWG Orders do not) even before the full amount has been paid, and once a prior garnishment expires (or is satisfied) the next-in-line garnishment usually takes over.

2. The AWG Order is not signed. Do I have to honor it?

**Yes.** The law (20 USC 1095a) does not require that the Order must be signed to be valid and legally binding. However, if you have any question about the Order's authenticity, please contact F. H. Cann & Associates, Inc. at (877) 750-9813.

3. I am told that my state law forbids wage garnishment, so can I ignore the AWG Order?

**No.** AWG is authorized by a Federal law (20 USC 1095a) which specifically preempts State law.

4. What are the consequences if I fail to comply?

**A non-compliant employer will be liable** for and subject to, suit by Ascendium to recover any amount that the employer fails to withhold after receipt of notice of the AWG Order, plus attorney's fees, costs, and, in the court's discretion, punitive damages.

5. Can I impose a fee for administering this? If I can, who pays?

**That depends on the state;** some states permit the imposition of a fee or charge on the employee. Federal law does not address the issue. You should check your state's law.

Employers who have additional questions about wage withholding for defaulted student loans should contact F. H. Cann & Associates, Inc.:

Phone: (877) 750-9813

Fax: (877) 677-9125

Email: [docs@fhcann.com](mailto:docs@fhcann.com)

**ATTACHMENT A**

**EMPLOYER NOTICE of CHANGE IN EMPLOYMENT**

IN RE: STUDENT LOAN DEBT OF **JUCO RNF'F GDVQT\_**

I, \_\_\_\_\_ on behalf of \_\_\_\_\_ notify  
(Name) (Employer)

**F.H. Cann & Associates, Inc.** that \_\_\_\_\_ is no longer  
(Debtor) employed by this company.

Date of Termination: \_\_\_\_\_

Debtor's Last Known Address \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Debtor's Subsequent Employer \_\_\_\_\_  
and Phone Number (if known) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Telephone Number)

\*\*\*

**RETURN THIS FORM  
WITHIN 10 BUSINESS DAYS TO:**

**F.H. Cann & Associates,  
Inc. Attention: Ascendium  
P.O. Box 328  
North Andover, MA 01845  
Fax: (877) 677-9125**

# ATTACHMENT B: AWG WITHHOLDING WORKSHEET

(See the AWG WORKSHEET INSTRUCTIONS on the next page)

Employee Name \_\_\_\_\_

Last four digits of Employee's Social Security Number:

XXX-XX-\_\_\_\_\_  
(Last four of employee's SS#)

For the \_\_\_\_\_ pay period ending  
\_\_\_\_\_  
(type) (date)

- |     |  |     |           |
|-----|--|-----|-----------|
| 1.  | Enter employee's disposable pay  | 1.  | \$ _____  |
| 2.  | Multiply the amount in Line 1 by 15% (.15)<br><b>Please note:</b> The above percentage maybe lower if there are multiple withholding orders for the employee or if Ascendium sent you a Modification of the Order. | 2.  | \$ _____  |
| 3.  | Multiply the amount in Line 1 by 25% (.25)   | 3.  | \$ _____  |
| 4.  | Enter the applicable Federal minimum hourly wage   | 4.  | \$ _____  |
| 5.  | Multiply the amount in Line 4 by 30 for each work week in the pay period   | 5.  | \$ _____  |
| 6.  | Subtract Line 5 from Line 1  | 6.  | \$ _____* |
| 7.  | Enter the sum of all other garnishments being withheld from disposable pay   | 7.  | \$ _____  |
| 8.  | Subtract Line 7 from Line 3  | 8.  | \$ _____* |
| 9.  | Subtract Line 7 from Line 6  | 9.  | \$ _____  |
| 10. | Enter the lesser of Lines 2, 8 or 9  | 10. | \$ _____  |
| 11. | Remit the amount entered on Line 10  |     |           |

\* If this amount is zero or less, no remittance is required for this pay period.

**Please make checks payable to:**

**H0J 0Ecpp'( 'Cunqekvgu'Kpe0**

**PO Box 34:**

**North Andover, MA 01845**

**Do not send this form to F.H. Cann & Associates, Inc.. It is for your assistance/records only.**

## AWG WORKSHEET INSTRUCTIONS

Use the AWG WORKSHEET to calculate the amount of withholding for each pay period. At the top of each sheet, identify the **type of pay period** (e.g., weekly, bi-weekly, monthly, etc) and, the **end date of that period** in the spaces indicated.

**LINE 1:** “Disposable pay” means that part of a borrower’s compensation for personal services, whether or not denominated as wages from an employer, that remains after the deduction of health insurance premiums and any amounts required by law to be withheld, and includes, but is not limited to, salary, bonuses, commissions, or vacation pay. “Amounts required by law to be withheld” include amounts for deductions such as Social Security taxes and withholding taxes, but do not include any amount withheld under a court order or other withholding order. All references to an amount of disposable pay refer to disposable pay calculated for a single week.

**Be sure you do not subtract garnishments;** these are considered instead in LINE 7.

**LINE 2:** Under 20 USC 1095a(a)(1), the amount deducted for any pay period may not exceed 15% of disposable pay, unless the individual consents, in writing, to a greater percentage.

**LINE 3:** The Consumer Credit Protection Act (15 USC 1673 et. seq) provides that, except in certain limited circumstances, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment may not exceed 25%.

**LINE 4:** Be sure to enter the correct Federal minimum hourly wage. As of July 2009, the Federal minimum wage is \$7.25 per hour.

**LINE 5:** The Consumer Credit Protection Act excludes a “floor” level of disposable pay per workweek in an amount equal to 30 times the Federal minimum hourly wage from garnishment. Assuming a minimum wage of \$7.25 per hour (as of July 2009) LINE 5 is, for example:

\$217.50 if the employee is paid weekly;  
\$435.00 if the employee is paid every other week;  
\$471.25 if the employee is paid twice per month; and  
\$942.50 if the employee is paid monthly.

**LINE 7:** If the employee is subject to multiple garnishments during a pay period, Federal law may limit your ability to withhold, for that pay period, the full amount called for under the Order. For further information, please refer to the section in this Handbook on “Multiple Withholdings.”

**LINE 10:** Of the amounts calculated in Lines 2, 8, and 9, insert here whichever amount is lowest.

**LINE 11:** You may round off the figure to a flat dollar amount, so long as the resulting figure does not exceed Line 9.

**Please make checks payable to:**

**F. H. Cann & Associates, Inc.**

**PO Box 128**

**North Andover, MA 01845**

## **§488A [20 U.S.C. 1095a] Wage garnishment requirement**

### **(a) Garnishment requirements**

Notwithstanding any provision of State law, a guaranty agency, or the Secretary in the case of loans made, insured or guaranteed under this subchapter and part C of subchapter I of chapter 34 of title 42 that are held by the Secretary, may garnish the disposable pay of an individual to collect the amount owed by the individual, if he or she is not currently making required repayment under a repayment agreement with the Secretary, or, in the case of a loan guaranteed under part B of this subchapter on which the guaranty agency received reimbursement from the Secretary under section 1078(c) of this title, with the guaranty agency holding the loan, as appropriate, provided that—

- (1)** the amount deducted for any pay period may not exceed 15 percent of disposable pay, except that a greater percentage may be deducted with the written consent of the individual involved;
- (2)** the individual shall be provided written notice, sent by mail to the individual's last known address, a minimum of 30 days prior to the initiation of proceedings, from the guaranty agency or the Secretary, as appropriate, informing such individual of the nature and amount of the loan obligation to be collected, the intention of the guaranty agency or the Secretary, as appropriate, to initiate proceedings to collect the debt through deductions from pay, and an explanation of the rights of the individual under this section;
- (3)** the individual shall be provided an opportunity to inspect and copy records relating to the debt;
- (4)** the individual shall be provided an opportunity to enter into a written agreement with the guaranty agency or the Secretary, under terms agreeable to the Secretary, or the head of the guaranty agency or his designee, as appropriate, to establish a schedule for the repayment of the debt;
- (5)** the individual shall be provided an opportunity for a hearing in accordance with subsection (b) of this section on the determination of the Secretary or the guaranty agency, as appropriate, concerning the existence or the amount of the debt, and, in the case of an individual whose repayment schedule is established other than by a written agreement pursuant to paragraph (4), concerning the terms of the repayment schedule;
- (6)** the employer shall pay to the Secretary or the guaranty agency as directed in the withholding order issued in this action, and shall be liable for, and the Secretary or the guaranty agency, as appropriate, may sue the employer in a State or Federal court of competent jurisdiction to recover, any amount that such employer fails to withhold from wages due an employee following receipt of such employer of notice of the withholding order, plus attorneys' fees, costs, and, in the court's discretion, punitive damages, but such employer shall not be required to vary the normal pay and disbursement cycles in order to comply with this paragraph;
- (7)** if an individual has been reemployed within 12 months after having been involuntarily separated from employment, no amount may be deducted from the disposable pay of such individual until such individual has been reemployed continuously for at least 12 months; and
- (8)** an employer may not discharge from employment, refuse to employ, or take disciplinary action against an individual subject to wage withholding in accordance with this section by reason of the fact that the individual's wages have been subject to garnishment under this section, and such individual may sue in a State or Federal court of competent jurisdiction any employer who takes such action. The court shall award attorneys' fees to a prevailing employee and, in its discretion, may order reinstatement of the individual, award punitive damages and back pay to the employee, or order such other remedy as may be reasonably necessary.

### **(b) Hearing requirements**

A hearing described in subsection (a)(5) of this section shall be provided prior to issuance of a garnishment order if the individual, on or before the 15th day following the mailing of the notice described in subsection (a)(2) of this section, and in accordance with such procedures as the Secretary or the head of the guaranty agency, as appropriate, may prescribe, files a petition requesting such a hearing. If the individual does not file a petition requesting a hearing prior to such date, the Secretary or the guaranty agency, as appropriate, shall provide the individual a hearing under subsection (a)(5) of this section upon request, but such hearing need not be provided prior to issuance of a garnishment order. A hearing under subsection (a)(5) of this section may not be conducted by an individual under the supervision or control of the head of the guaranty agency, except that nothing in this sentence shall be construed to prohibit the appointment of an administrative law judge. The hearing official shall issue a final decision at the earliest practicable date, but not later than 60 days after the filing of the petition requesting the hearing.

### **(c) Notice requirements**

The notice to the employer of the withholding order shall contain only such information as may be necessary for the employer to comply with the withholding order.

### **(d) No attachment of student assistance**

Except as authorized in this section, notwithstanding any other provision of Federal or State law, no grant, loan, or work assistance awarded under this subchapter and part C of subchapter I of chapter 34 of title 42, or property traceable to such assistance, shall be subject to garnishment or attachment in order to satisfy any debt owed by the student awarded such assistance, other than a debt owed to the Secretary and arising under this subchapter and part C of subchapter I of chapter 34 of title 42.

### **(e) "Disposable pay" defined**

For the purpose of this section, the term "disposable pay" means that part of the compensation of any individual from an employer remaining after the deduction of any amounts required by law to be withheld.

## **§682.410 Fiscal, administrative, and enforcement requirements.**

**(b) Administrative requirements—**

**(9) Administrative garnishment. (i)** If a guaranty agency decides to garnish the disposable pay of a borrower who is not making payments on a loan held by the agency, on which the Secretary has paid a reinsurance claim, it must do so in accordance with the following procedures:

**(A)** At least 30 days before the initiation of garnishment proceedings, the guaranty agency must mail to the borrower's last known address, a written notice described in paragraph (b)(9)(i)(B) of this section.

**(B)** The notice must describe—

**(1)** The nature and amount of the debt;

**(2)** The intention of the agency to collect the debt through deductions from disposable pay;

**(3)** An explanation of the borrower's rights;

**(4)** The deadlines by which a borrower must exercise those rights; and

**(5)** The consequences of failure to exercise those rights in a timely manner.

**(C)** The guaranty agency must offer the borrower an opportunity to inspect and copy agency records related to the debt.

**(D)** The guaranty agency must offer the borrower an opportunity to enter into a written repayment agreement with the agency under terms agreeable to the agency.

**(E)(1)** The guaranty agency must offer the borrower an opportunity for a hearing in accordance with paragraphs (b)(9)(i)(F) through (J) of this section and other guidance provided by the Secretary, for any objection regarding the existence, amount, or enforceability of the debt, and any objection that withholding from the borrower's disposable pay in the amount or at the rate proposed in the notice would cause financial hardship to the borrower.

**(2)** The borrower must request a hearing in writing. At the borrower's option, the hearing may be oral or written. The time and location of the hearing is established by the guaranty agency. An oral hearing may, at the borrower's option, be conducted either in-person or by telephone conference. The agency notifies the borrower of the process for arranging the time and location of an oral hearing. All telephonic charges are the responsibility of the agency. All travel expenses incurred by the borrower in connection with an in-person oral hearing are the responsibility of the borrower.

**(F)(1)** If the borrower submits a written request for a hearing on the existence, amount, or enforceability of the debt—

**(i)** The guaranty agency must provide evidence of the existence of the debt. If the agency provides evidence of the existence of the debt, the borrower must prove by the preponderance of the evidence that no debt exists, the debt is not enforceable under applicable law, the amount the guaranty agency claims the borrower owes is incorrect, including that any amount of collection costs assessed to the borrower exceeds the limits established under §682.410(b)(2), or the debt is not delinquent; and

**(ii)** The borrower may raise any of the objections described in paragraph (b)(9)(i)(F)(1)(i) of this section not raised in the written request, but must do so before a hearing is completed. For purposes of this paragraph, a hearing is completed when the record is closed and the hearing official notifies the parties that no additional evidence or objections will be accepted.

**(2)** If the borrower submits a written request for a hearing on an objection that withholding in the amount or at the rate that the agency proposed in its notice would cause financial hardship to the borrower and the borrower's spouse and dependents—

**(i)** The borrower bears the burden of proving the claim of financial hardship by a preponderance of the credible evidence by providing credible documentation that the amount of wages proposed in the notice would leave the borrower unable to meet basic living expenses of the borrower, the borrower's spouse, and the borrower's dependents. The documentation must show the amount of the costs incurred for basic living expenses and the income available from any source to meet those expenses;

**(ii)** The borrower's claim of financial hardship must be evaluated by comparing the amounts that the borrower proves are being incurred for basic living expenses against the amounts spent for basic living expenses by families of the same size as the borrower's. For the purposes of this section, the standards published by the Internal Revenue Service under 26 U.S.C. 7122(d)(2) (the "Collection Financial Standards") establish the average amounts spent for basic living expenses for families of the same size as the borrower's family;

**(iii)** The amount that the borrower proves is incurred for a type of basic living expense is considered to be reasonable to the extent that the amount does not exceed the amount spent for that expense by families of the same size according to the Collection Financial Standards. If the borrower claims an amount for any basic living expense that exceeds the amount in the Collection Financial Standards, the borrower must prove that the amount claimed is reasonable and necessary;

**(iv)** If the borrower's objection to the rate or amount proposed in the notice is upheld in part, the garnishment must be ordered at a lesser rate or amount, that is determined will allow the borrower to meet basic living expenses proven to be reasonable and necessary. If this financial hardship determination is made after a garnishment order is already in effect, the guaranty agency must notify the borrower's employer of any change required by the determination in the amount to be withheld or the rate of withholding under that order; and

**(v)** A determination by a hearing official that financial hardship would result from garnishment is effective for a period not longer than six months after the date of the finding. After this period, the guaranty agency may require the borrower to submit current information regarding the borrower's family income and living expenses. If the borrower fails to submit current information within 30 days of this request, or the guaranty agency concludes from a review of the available evidence that garnishment should now begin or the rate or the amount of an outstanding

withholding should be increased, the guaranty agency must notify the borrower and provide the borrower with an opportunity to contest the determination and obtain a hearing on the objection under the procedures in paragraph (b)(9)(i) of this section.

**(G)** If the borrower's written request for a hearing is received by the guaranty agency on or before the 30<sup>th</sup> day following the date of the notice described in paragraph (b)(9)(i)(B) of this section, the guaranty agency may not issue a withholding order until the borrower has been provided the requested hearing and a decision has been rendered. The guaranty agency must provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures that the agency may prescribe, to be rendered within 60 days.

**(H)** If the borrower's written request for a hearing is received by the guaranty agency after the 30<sup>th</sup> day following the date of the notice described in paragraph (b)(9)(i)(B) of this section, the guaranty agency must provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures that the agency may prescribe, may be rendered within 60 days, but may not delay issuance of a withholding order unless the agency determines that the delay in filing the request was caused by factors over which the borrower had no control, or the agency receives information that the agency believes justifies a delay or cancellation of the withholding order. If a decision is not rendered within 60 days following receipt of a borrower's written request for a hearing, the guaranty agency must suspend the order beginning on the 61<sup>st</sup> day after the hearing request was received until a hearing is provided and a decision is rendered.

**(I)** The hearing official appointed by the agency to conduct the hearing may be any qualified individual, including an administrative law judge. Under no circumstance may the hearing official be under the supervision or control of the head of the guaranty agency or of a third-party servicer or collection contractor employed by the agency. Payment of compensation by the guaranty agency, third-party servicer, or collection contractor employed by the agency to the hearing official for service as a hearing official does not constitute impermissible supervision or control under this paragraph. The guaranty agency must ensure that, except as needed to arrange for administrative matters pertaining to the hearing, including the type of hearing requested by the borrower, the time, place, and manner of conducting an oral hearing, and post-hearing matters such as issuance of a hearing decision, all oral communications between the hearing official and any representative of the guaranty agency or with the borrower are made within the hearing of the other party, and that copies of any written communication with either party are promptly provided to the other party. This paragraph does not preclude a hearing in the absence of one of the parties if the borrower is given proper notice of the hearing, both parties have agreed on the time, place, and manner of the hearing, and one of the parties fails to attend.

**(J)** The hearing official must conduct any hearing as an informal proceeding, require witnesses in an oral hearing to testify under oath or affirmation, and maintain a summary record of any hearing. The hearing official must issue a final written decision at the earliest practicable date, but not later than 60 days after the guaranty agency's receipt of the borrower's hearing request. However—

**(1)** The borrower may request an extension of that deadline for a reasonable period, as determined by the hearing official, for the purpose of submitting additional evidence or raising a new objection described in paragraph (b)(9)(i)(F)(1)(iii) of this section; and

**(2)** The agency may request, and the hearing official must grant, a reasonable extension of time sufficient to enable the guaranty agency to evaluate and respond to any such additional evidence or any objections raised pursuant to paragraph (b)(9)(i)(F)(1)(iii) of this section.

**(K)** An employer served with a garnishment order from the guaranty agency with respect to a borrower whose wages are not then subject to a withholding order of any kind must deduct and pay to the agency from a borrower's disposable pay an amount that does not exceed the smallest of—

**(1)** The amount specified in the guaranty agency order;

**(2)** The amount permitted by section 488A(a)(1) of the Act, which is 15 percent of the borrower's disposable pay; or

**(3)** The amount permitted by 15 U.S.C. 1673(a)(2), which is the amount by which the borrower's disposable pay exceeds 30 times the minimum wage.

**(L)** If a borrower's pay is subject to more than one garnishment order—

**(1)** Unless other Federal law requires a different priority, the employer must pay the agency the amount calculated under paragraph (b)(9)(i)(K) of this section before the employer complies with any later garnishment orders, except a family support withholding order;

**(2)** If an employer is withholding from a borrower's pay based on a garnishment order served on the employer before the guaranty agency's order, or if a withholding order for family support is served on an employer at any time, the employer must comply with the agency's garnishment order by withholding an amount that is the lesser of—

**(i)** The amount specified in the guaranty agency order; or

**(ii)** The amount calculated under paragraph (b)(9)(i)(L)(3) of this section less the amount or amounts withheld under the garnishment order or orders that have priority over the agency's order; and

**(3)** The cumulative withholding for all garnishment orders issued by guaranty agencies may not exceed, for an individual borrower, the amount permitted by 15 U.S.C. 1673, which is the lesser of 25 percent of the borrower's disposable pay or the amount by which the borrower's disposable pay exceeds 30 times the minimum wage. If a borrower owes debts to one or more guaranty agencies, each agency may issue a garnishment order to enforce each of those debts, but no single agency may order a total amount exceeding 15 percent of the disposable pay of a borrower to be withheld. The employer must honor these orders as provided in paragraphs (b)(9)(i)(L)(1) and (2) of this section.

**(M)** Notwithstanding paragraphs (b)(9)(i)(K) and (L) of this section, an employer may withhold and pay a greater amount than required under the order if the borrower gives the employer written consent.

**(N)** A borrower may, at any time, raise an objection to the amount or the rate of withholding specified in the guaranty agency's order to the borrower's employer on the ground of financial hardship. However, the guaranty agency is not required to consider such an objection and provide the borrower with a hearing until at least six months after the agency issued the most recent garnishment order, either one for which the borrower

did not request a hearing or one that was issued after a hardship-related hearing determination. The agency may provide a hearing in extraordinary circumstances earlier than six months if the borrower's request for review shows that the borrower's financial circumstances have substantially changed after the garnishment notice because of an event such as injury, divorce, or catastrophic illness.

**(O)** A garnishment order is effective until the guaranty agency rescinds the order or the agency has fully recovered the amounts owed by the borrower, including interest, late fees, and collections costs. If an employer is unable to honor a garnishment order because the amount available for garnishment is insufficient to pay any portion of the amount stated in the order, the employer must notify the agency and comply with the order when sufficient disposable pay is available. Upon full recovery of the debt, the agency must send the borrower's employer notification to stop wage withholding.

**(P)** The guaranty agency must sue any employer for any amount that the employer, after receipt of the withholding order provided by the agency under paragraph (b)(9)(i)(R) of this section, fails to withhold from wages owed and payable to an employee under the employer's normal pay and disbursement cycle.

**(Q)** The guaranty agency may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been reemployed continuously for at least 12 months. The borrower has the burden of informing the guaranty agency of the circumstances surrounding the borrower's involuntary separation from employment.

**(R)** Unless the guaranty agency receives information that the agency believes justifies a delay or cancellation of the withholding order, it must send a withholding order to the employer within 20 days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within 20 days after a final decision is made by the agency to proceed with garnishment.

**(S)** The notice given to the employer under paragraph (b)(9)(i)(R) of this section must contain only the information as may be necessary for the employer to comply with the withholding order and to ensure proper credit for payments received. At a minimum, the notice given to the employer includes the borrower's name, address, and Social Security Number, as well as instructions for withholding and information as to where the employer must send payments.

**(T)(1)** A guaranty agency may use a third-party servicer or collection contractor to perform administrative activities associated with administrative wage garnishment, but may not allow such a party to conduct required hearings or to determine that a withholding order is to be issued. Subject to the limitations of paragraphs (b)(9)(i)(T)(2) and (3) of this section, administrative activities associated with administrative wage garnishment may include but are not limited to—

**(i)** Identifying to the agency suitable candidates for wage garnishment pursuant to agency standards;

**(ii)** Obtaining employment information for the purposes of garnishment;

**(iii)** Sending candidates selected for garnishment by the agency notices prescribed by the agency;

**(iv)** Negotiating alternative repayment arrangements with borrowers;

**(v)** Responding to inquiries from notified borrowers;

**(vi)** Receiving garnishment payments on behalf of the agency;

**(vii)** Arranging for the retention of hearing officials and for the conduct of hearings on behalf of the agency;

**(viii)** Providing information to borrowers or hearing officials on the process or conduct of hearings; and

**(ix)** Sending garnishment orders and other communications to employers on behalf of the agency.

**(2)** Only an authorized official of the agency may determine that an individual withholding order is to be issued. The guarantor must record the official's determination for each order it issues, including any order which it causes to be prepared or mailed by a third-party servicer or collection contractor. The guarantor must evidence the official's approval, either by including the official's signature on the order or, if the agency uses a form of withholding order that does not provide for execution by signature, by retaining in the agency's records the identity of the approving official, the date of the approval, the amount or rate of the order, the name and address of the employer to whom the order was issued, and the debt for which the order was issued.

**(3)** The withholding order must identify the guaranty agency as the holder of the debt, as the issuer of the order, and as the sole party legally authorized to issue the withholding order. If a guaranty agency uses a third-party servicer or collection contractor to prepare and mail a withholding order that includes the name of the servicer or contractor that prepared or mailed the order, the guaranty agency must also ensure that the order contains no captions or representations that the servicer or contractor is the party that issued, or was empowered by Federal law or by the agency to issue, the withholding order.

**(U)** As specified in section 488A(a)(8) of the Act, the borrower may seek judicial relief, including punitive damages, if the employer discharges, refuses to employ, or takes disciplinary action against the borrower due to the issuance of a withholding order.

**(V)** A guaranty agency is required to suspend a garnishment order when the agency receives a borrower's fifth qualifying payment under a loan rehabilitation agreement with the agency, unless otherwise directed by the borrower, in accordance with §682.405(a)(3).

**(ii)** For purposes of paragraph (b)(9) of this section—

**(A)** "Borrower" includes all endorsers on a loan;

**(B)** "Day" means calendar day;

**(C)** "Disposable pay" means that part of a borrower's compensation for personal services, whether or not denominated as wages from an employer, that remains after the deduction of health insurance premiums and any amounts required by law to be withheld, and includes, but is not limited to, salary, bonuses, commissions, or vacation pay. "Amounts required by law to be withheld" include amounts for deductions such as Social

Security taxes and withholding taxes, but do not include any amount withheld under a court order or other withholding order. All references to an amount of disposable pay refer to disposable pay calculated for a single week;

(D) "Employer" means a person or entity that employs the services of another and that pays the latter's wages or salary and includes, but is not limited to, State and local governments, but does not include an agency of the Federal Government;

(E) "Financial hardship" means an inability to meet basic living expenses for goods and services necessary for the survival of the borrower and the borrower's spouse and dependents;

(F) "Garnishment" means the process of withholding amounts from an employee's disposable pay and paying those amounts to a creditor in satisfaction of a withholding order; and

(G) "Withholding order" means any order for withholding or garnishment of pay issued by the guaranty agency and may also be referred to as "wage garnishment order" or "garnishment order."



## UNITED STATES DEPARTMENT OF EDUCATION

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The following organizations have agreements with the U.S. Department of Education to participate in the Federal Family Education Loan (FFEL) Program as guaranty agencies under Section 428(b) of the Higher Education Act of 1965, as amended (HEA). The guaranty agencies on this list are authorized by section 488A of the HEA, to issue administrative wage garnishment withholding orders at a rate of 15% to employers, to recover FFEL debts owed by individuals who have defaulted on their student loan repayment obligations. This authority does not apply to Federal agencies or their employees.

AMERICAN STUDENT ASSISTANCE (MASSACHUSETTS)  
ASCENDIUM EDUCATION SOLUTIONS, INC. (WI)  
STUDENT LOAN GUARANTEE FOUNDATION OF ARKANSAS  
CALIFORNIA STUDENT AID COMMISSION  
COLORADO STUDENT LOAN PROGRAM  
CONNECTICUT STUDENT LOAN FOUNDATION  
EDUCATION ASSISTANCE CORPORATION (SOUTH DAKOTA)  
EDUCATIONAL CREDIT MANAGEMENT CORPORATION  
FLORIDA DEPARTMENT OF EDUCATION/OFFICE OF STUDENT FINANCIAL ASSISTANCE  
GEORGIA HIGHER EDUCATION ASSISTANCE FOUNDATION  
ILLINOIS STUDENT ASSISTANCE COMMISSION  
IOWA COLLEGE STUDENT AID COMMISSION  
KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY  
LOUISIANA OFFICE OF STUDENT FINANCIAL ASSISTANCE  
FINANCE AUTHORITY OF MAINE  
MICHIGAN HIGHER EDUCATION ASSISTANCE AUTHORITY  
MISSOURI DEPARTMENT OF HIGHER EDUCATION  
MONTANA GUARANTEED STUDENT LOAN PROGRAM  
NATIONAL STUDENT LOAN PROGRAM (NEBRASKA)  
NEW HAMPSHIRE HIGHER EDUCATION ASSISTANCE FOUNDATION  
NEW JERSEY HIGHER EDUCATION ASSISTANCE AUTHORITY  
NEW MEXICO STUDENT LOAN GUARANTEE CORPORATION  
NEW YORK STATE HIGHER EDUCATION SERVICES CORPORATION  
NORTH CAROLINA STATE EDUCATION ASSISTANCE AUTHORITY  
STUDENT LOANS OF NORTH DAKOTA  
OKLAHOMA GUARANTEED STUDENT LOAN PROGRAM  
OREGON STUDENT ASSISTANCE COMMISSION  
AMERICAN EDUCATION SERVICES/PHEEA  
RHODE ISLAND HIGHER EDUCATION ASSISTANCE AUTHORITY  
SOUTH CAROLINA STUDENT LOAN CORPORATION  
TENNESSEE STUDENT ASSISTANCE CORPORATION  
TEXAS GUARANTEED STUDENT LOAN CORPORATION  
USA FUNDS  
UTAH HIGHER EDUCATION ASSISTANCE AUTHORITY  
VERMONT STUDENT ASSISTANCE CORPORATION  
NORTHWEST EDUCATION LOAN ASSOCIATION (NELA)