

Administrative Wage Garnishment

Employer Handbook



October 2009



Building Missouri's future...by degrees

Dear Employer,

This page provides a brief summary of the Administrative Wage Garnishment (AWG) process utilized by the Missouri Department of Higher Education (MDHE). The following pages include details and instructions to help you comply with the AWG program. Please read all materials carefully.

The Federal Family Education Loan (FFEL) Program, which encourages private capital to fund low interest loans for postsecondary education, is administered by guaranty agencies, such as the MDHE, on behalf of the federal government. One of the methods by which the MDHE collects payment on those FFEL Program loans that go into default is through AWG, which permits garnishment without a court order. A federal statute (20 USC 1095a) that overrides state law authorizes this process. A copy of that federal statute, the implementing regulations [34 CFR 682.410(b)(10)], and a letter from the Department of Education addressing AWG authorization is attached.

This handbook accompanies an Order of Withholding sent to you with respect to one or more persons who our records indicate work for you. Before it was sent, the employee was notified and given an opportunity to review MDHE records relating to the debts, to resolve the debt voluntarily, and to have a hearing concerning the debt.

Federal law makes you liable for amounts you fail to withhold from your employee's wages after you received 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 just because his/her wages have been made 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 (see 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, or any greater amount agreed to by the borrower, is reflected in the Order and should be used instead of using the worksheet.

Use the Employer Acknowledgement form to confirm receipt of the Order promptly after receipt, **even if the person no longer works for you**. Remember to provide the information requested on the form if you claim that the person no longer works for you.

The collection of defaulted student loans is important to the continued success of the FFEL Program and benefits the taxpayer whose tax dollars support the FFEL Program, the employer who gains access to a more educated workforce and, perhaps most important, the next generation of students for whom the FFEL Program means the ability to pursue their educational dreams.

Thank you for your cooperation. If you have any questions, please call the MDHE Information Center at (800) 473-6757 or (573) 751-3940.

Sincerely,

A handwritten signature in black ink that reads "Leanne Cardwell". The signature is written in a cursive, flowing style.

Leanne Cardwell
Assistant Commissioner for the Missouri Student Loan Program

§ 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 [title \[20 USCS §§ 1070 et seq.\]](#) 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 [\[20 USCS §§ 1071 et seq.\]](#) on which the guaranty agency received reimbursement from the Secretary under section 428(c) [\[20 USCS § 1078\]](#), 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) 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) 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), 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) upon request, but such hearing need not be provided prior to issuance of a garnishment order. A hearing under subsection (a)(5) 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 title, 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 title.

(e) **Definition.** 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 amount required by law to be withheld.



UNITED STATES DEPARTMENT OF EDUCATION

830 First Street, NE
Union Center Plaza
Washington, D.C. 20202

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)
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
Great Lakes Higher Education Corporation (Wisconsin)
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
American Education Services/PHEAA
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)

Employer Withholding Instructions

Before the Order of Withholdings from Earnings (“Order”) which accompanies this Handbook was sent to you, the debtor was sent several notices, including a “Notice Prior to Wage Withholding.” As required under Federal law (20 USC 1095a.), the Notice Prior to Wage Withholding explained the MDHE’s intent to send the Order to you and gave the debtor an opportunity (a) to inspect and copy the MDHE’s records regarding the debt; (b) to 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) to avoid withholding by entering into a voluntary repayment agreement.

In general, you will have 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 the Order sets forth a specific amount or percent to be withheld and whatever other conditions or limitations may apply.

Steps you must take:

- Check** the debtor’s name, address, and social security number contained in the Order against your records and **complete and return** the Employer Acknowledgment of Wage Withholding form (Attachment A) (“Acknowledgement”) immediately. 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, including the debtor’s last known address and, if known, the name and address of the debtor’s new employer, if any.
 - 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 B) to provide us with the basis for issuing you a Release of Order of Withholding (Attachment C) (“Release”). Remember that income earned up to the termination date and any other compensation, such as severance pay, are subject to withholding.
- 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 D). **NOTE:** if the Order specifies the amount to be withheld, or if a Modification of Order has been issued (see “Multiple Withholdings” below), you do not need to use the ATTACHMENT D.
- Submit the amount withheld**, payable to the MDHE, to the MDHE’s servicer, American Student Assistance, at MDHE c/o ASA, P. O. Box 414533, Boston MA 02241. Be sure each check includes (a) debtor name and Social Security number; (b) employer name; 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.
- Repeat steps 2 and 3** for each pay period until (a) the MDHE provides you with a Release; or (b) your obligation to pay the debtor 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) may limit your ability to withhold, for that pay period, the full amount called for under the Order. 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 the 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 child support or IRS levy take precedence over withholding for student loan debts, regardless of when they begin. If you receive a garnishment order for child support or IRS levy after you have received our AWG Order, contact us at (800) 473-6757 or (573) 751-3940.

* This information reflects the MDHE’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. The MDHE may 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 just 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.

F.A.Q. and Inquiries:

1. If someone else already is 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. For example, if that current garnishment is taking 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) account for 25%, then nothing would have to be withheld on the AWG Order, at least until the prior garnishment(s) were satisfied or expired.

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

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 the MDHE Information Center at (800) 473-6757 or (573) 751-3940.

3. I am told that my state law forbids wage garnishment, so can't I just 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 the MDHE to recover, any amount that the employer fails to withhold after receipt of notice of the AWG Order, plus attorneys' 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.

6. The Order directs that I send the payments to someone other than the MDHE. Is that ok?

Yes. Guaranty agencies, such as the MDHE are permitted to retain others to aid in the administration of the AWG process, including the collection of payments under an Order.

Employers with additional questions about wage withholding for defaulted student loans should contact the MDHE Information Center at (800) 473-6757 or (573) 751-3940.

ATTACHMENT A

IN RE: STUDENT LOAN DEBT OF _____, DEBTOR

EMPLOYER ACKNOWLEDGEMENT
OF WAGE WITHHOLDING

I, _____, on behalf _____, acknowledge
(NAME) (EMPLOYER)
receipt of the Order of Withholding from Earnings for _____,
(debtor) (ssn)

[] The above-named debtor is an employee of this company and payments of
approximately \$ _____ (15% of disposable pay) will be forwarded to
MDHE/ASA on a _____ basis.
(weekly, biweekly, other)

[] The address this company has for this debtor is different than the address
listed on the Order of Withholding. Our records reflect the address is:

[] The above-named debtor is no longer employed by this company.
Date of Employment Termination: _____

Debtor's Last Known Address: _____

Debtor's Subsequent Employer & Phone # (if available):

(Signature)

(Date)

(Telephone number)

RETURN THIS FORM
WITHIN 10 BUSINESS DAYS TO: Missouri Department of Higher Education
c/o ASA
P. O. Box 55756
Boston, MA 02205

ATTACHMENT B

IN RE: STUDENT LOAN DEBT OF _____, DEBTOR

EMPLOYER NOTICE OF CHANGE IN EMPLOYMENT

I, _____, on behalf of _____
(Name) (Employer)

notify the Missouri Department of Higher Education of the following information:

_____, _____
(Debtor) (SSN)

Date of Termination: _____

Debtor's Last Known Address: _____

Debtor's Subsequent Employer & Phone # (if available):

(Signature)

(Date)

(Telephone Number)

RETURN THIS FORM WITHIN 10 BUSINESS DAYS TO:

Wage Withholding Department
Missouri Department of Higher Education
c/o ASA
P. O. Box 55756
Boston, MA 02205

ATTACHMENT C

ISSUED

MISSOURI DEPARTMENT OF HIGHER EDUCATION
3515 AMAZONAS DRIVE
JEFFERSON CITY, MO 65109

IN RE:
STUDENT LOAN DEBT OF

EMPLOYER:

RELEASE OF ORDER OF WITHHOLDING FROM EARNINGS

The Order of Withholding From Earnings issued by the Missouri Department of Higher Education, for the debtor below is hereby CANCELLED AND RELEASED.

Debtor:

Address:

SSN:

FROM AND AFTER THE DATE OF THIS RELEASE, THE EMPLOYER IS NO LONGER
REQUIRED TO WITHHOLD INCOME FROM THE DEBTOR'S PAY.

THIS RELEASE OF ORDER OF WITHHOLDING FROM EARNINGS IS ISSUED ON .

Cheryl Beck
Agent for Missouri Department of Higher Education: Wage Withholding Representative

ATTACHMENT D

AWG WITHHOLDING WORKSHEET

(See AWG WITHHOLDING WORKSHEET INSTRUCTIONS on reverse side)

For the _____ pay period ending _____
(type) (date)

1. Enter employee's disposable pay 1. \$ _____
2. Multiply the amount in Line 1 by 15% (.15) 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. _____

Remit the amount entered on Line 10 (Make checks payable to the MDHE)

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

AWG WITHHOLDING WORKSHEET INSTRUCTIONS

Use the AWG WITHHOLDING 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” is determined by (a) calculating the total compensation paid or payable for the employee’s services (e.g., wages, salary, commissions, bonus, severance pay, etc.); and (b) subtracting from that amount the sum of all amounts required by law to be withheld from that compensation, such as state (if any) and Federal income tax, and Federal FICA or OASI tax (social security). You should not subtract amounts withheld for savings bonds, employee contributions to retirement plans or health insurance and the like. Also, **be sure that 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 1671) 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 from garnishment a “floor” level of disposable pay per workweek in an amount equal to 30 times the Federal minimum hourly wage. Assuming a minimum wage of \$7.25 per hour (as of July 2009) LINE E 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 your Handbook on “Multiple Withholding.”

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.