

§ 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 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 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) 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 involun-

tarily 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 subchapter, 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.

(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.

(Pub. L. 89-329, title IV, §488A, as added Pub. L. 102-164, title VI, §605(a), Nov. 15, 1991, 105 Stat. 1066; amended Pub. L. 105-244, title IV, §490A,

Oct. 7, 1998, 112 Stat. 1753; Pub. L. 109-171, title VIII, § 8024, Feb. 8, 2006, 120 Stat. 180.)

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109-171 substituted “15 percent” for “10 percent”.

1998—Subsecs. (d), (e). Pub. L. 105-244 added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-171 effective July 1, 2006, except as otherwise provided, see section 8001(c) of Pub. L. 109-171, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

§ 1096. Administrative expenses

(a) Amount of payments

From the sums appropriated for any fiscal year for the purpose of the program authorized under subpart 1 of part A of this subchapter, the Secretary shall reserve such sums as may be necessary to pay to each institution with which he has an agreement under section 1094 of this title, an amount equal to \$5 for each student at that institution who receives assistance under subpart 1 of part A. In addition, an institution which has entered into an agreement with the Secretary under subpart 3 of part A or part C,¹ of this subchapter or under part E of this subchapter shall be entitled for each fiscal year which such institution disburses funds to eligible students under any such part to a payment for the purpose set forth in subsection (b). The payment for a fiscal year shall be payable from each such allotment by payment in accordance with regulations of the Secretary and shall be equal to 5 percent of the institution's first \$2,750,000 of expenditures plus 4 percent of the institution's expenditures greater than \$2,750,000 and less than \$5,500,000, plus 3 percent of the institution's expenditures in excess of \$5,500,000 during the fiscal year from the sum of its grants to students under subpart 3 of part A, its expenditures during such fiscal year under part C for compensation of students, and the principal amount of loans made during such fiscal year from its student loan fund established under part E, excluding the principal amount of any such loans which the institution has referred under section 1087cc(a)(4)(B) of this title. In addition, the Secretary shall provide for payment to each institution of higher education an amount equal to 100 percent of the costs incurred by the institution in implementing and operating the immigration status verification system under section 1091(g) of this title.

(b) Purpose of payments

(1) The sums paid to institutions under this part are for the sole purpose of administering the programs described in subsection (a).

(2) If the institution enrolls a significant number of students who are (A) attending the institution less than full time, or (B) independent

students, the institution shall use a reasonable proportion of the funds available under this section for financial aid services during times and in places that will most effectively accommodate the needs of such students.

(Pub. L. 89-329, title IV, § 489, as added Pub. L. 99-498, title IV, § 407(a), Oct. 17, 1986, 100 Stat. 1491; amended Pub. L. 99-603, title I, § 121(b)(7), Nov. 6, 1986, 100 Stat. 3391; Pub. L. 100-50, § 15(15), June 3, 1987, 101 Stat. 357; Pub. L. 102-325, title IV, §§ 446(c), 493, July 23, 1992, 106 Stat. 567, 630; Pub. L. 103-208, § 2(h)(44), (k)(6), Dec. 20, 1993, 107 Stat. 2478, 2486; Pub. L. 110-315, title IV, § 494B, Aug. 14, 2008, 122 Stat. 3319; Pub. L. 111-39, title IV, § 407(b)(10), July 1, 2009, 123 Stat. 1953.)

PRIOR PROVISIONS

A prior section 1096, Pub. L. 89-329, title IV, § 489, as added Pub. L. 96-374, title IV, § 451(a), Oct. 3, 1980, 94 Stat. 1453; amended Pub. L. 97-35, title V, § 537(a)(2), Aug. 13, 1981, 95 Stat. 456, related to administrative expenses, prior to the general revision of this part by Pub. L. 99-498.

AMENDMENTS

2009—Subsec. (a). Pub. L. 111-39 substituted “has referred under section 1087cc(a)(4)(B)” for “has agreed to assign under section 1087cc(a)(6)(B)” and “1091(g)” for “1091(h)”.

2008—Subsec. (b)(1). Pub. L. 110-315 substituted “administering” for “offsetting the administrative costs of”.

1993—Subsec. (a). Pub. L. 103-208, § 2(k)(6), repealed Pub. L. 102-325, § 446(c). See 1992 Amendment note below.

Pub. L. 103-208, § 2(h)(44), substituted “1091(h) of this title” for “1091(c) of this title”.

1992—Subsec. (a). Pub. L. 102-325, § 493(a)(3), substituted “subpart 3” for “subpart 2” in two places.

Pub. L. 102-325, § 493(a)(1), (2), struck out “(other than section 1087-57 of this title)” after “or part C” in second sentence and struck out fourth sentence which read as follows: “The payment for a fiscal year for the purpose of subsection (b) with respect to section 1087-57 of this title shall be payable from each allotment under part C in accordance with regulations of the Secretary, and shall be 10 percent of the institution's expenditures during such fiscal year under such section.”

Pub. L. 102-325, § 446(c), which directed amendment identical to amendment by Pub. L. 102-325, § 493(a)(1), (2), above, was repealed by Pub. L. 103-208, § 2(k)(6).

Subsec. (b). Pub. L. 102-325, § 493(b), designated existing provisions as par. (1) and added par. (2).

1987—Subsec. (a). Pub. L. 100-50 made technical amendment to reference to section 1087-57 of this title to correct reference to corresponding section of original Act, requiring no change in text.

1986—Subsec. (a). Pub. L. 99-603 inserted provision directing the Secretary to pay the costs incurred by institutions of higher education in implementing and operating the immigration status verification system under section 1091(c) of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-39 effective as if enacted on the date of enactment of Pub. L. 110-315 (Aug. 14, 2008), see section 3 of Pub. L. 111-39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102-325, except as otherwise provided, see section 5(a) of Pub. L. 103-208, set out as a note under section 1051 of this title.

¹ So in original.