

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Adopted and Filed

Pursuant to the authority of Iowa Code section 8A.104(5), the Department of Administrative Services (DAS) amends Chapter 40, "Offset of Debts Owed State Agencies," Iowa Administrative Code.

The Department of Administrative Services is continuing its effort to review its administrative rules in accordance with Executive Order 71 by amending certain State Accounting Enterprise rules to eliminate conflict with statute and ensure proper due process in the offset procedure.

These amendments were published under Notice of Intended Action in the November 26, 2014, Iowa Administrative Bulletin as **ARC 1742C**. No public comment was received. The Department made minor changes to subrule 40.4(1) and rule 11—40.8(8A) to improve the clarity of the adopted amendments.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 8A, subchapter V, as amended by 2014 Iowa Acts, House File 2288 and Senate File 2257.

These amendments will become effective February 25, 2015.

The following amendments are adopted.

ITEM 1. Amend rule 11—40.1(8A) as follows:

11—40.1(8A) Definitions. For the purposes of this chapter, the following definitions shall govern:

"Claim" means a liquidated sum due, owing, and payable to a debtor from a public agency.

"Collection entity" means the department of administrative services and any other state public agency that maintains a separate accounting system, and elects to establish a debt collection setoff procedure for collection of debts owed to the state or its agencies public agency, and participates in the department of administrative services' offset program.

"Debtor" means any person owing a debt to the state of Iowa or any state a public agency.

"Department" means the Iowa department of administrative services.

"Director" means the director of the Iowa department of administrative services or the director's designee.

"Judicial branch" means the same as that set forth in Iowa Code section 602.1102.

"Liability" or "debt" means a "qualifying debt" as defined in Iowa Code section 8A.504(1) "c" or any liquidated sum due and owing to the state of Iowa or any state agency which has accrued through contract, subrogation, tort, operation of law, or any legal theory regardless of whether there is an outstanding judgment for that sum. Before setoff, the amount of a person's liability to a state agency shall be at least \$50, owing, and payable by a debtor to a public agency. Such liquidated sum may be accrued through contract, subrogation, tort, operation of law, or any legal theory regardless of whether there is an outstanding judgment for that sum.

"Liability owed to a court" or "debt owed to a court" means any liquidated sum due, owing, and payable to any clerk of the Iowa district court including, but not limited to, "court debt" as defined in Iowa Code section 602.8107(1) which remains unpaid 30 or more days after the date the court debt was due.

"Liquidated" means that the amount of the claim or debt is definite, determined, and fixed by agreement of the parties, by operation of law, or through court or administrative proceedings.

"Offset" means to set off or compensate a state agency which has a legal claim against a person or entity where there exists a person's valid claim on a state agency that is in the form of a liquidated sum due, owing and payable. Before setoff, the amount of a person's claim on a state agency shall be at least \$50 liabilities owed by persons to public agencies against claims owed to persons by public agencies.

"Offset program" means the department program for debt collection under the provisions of Iowa Code section 8A.504 through the daily processing and income tax refund programs.

"Person" or "entity" means an individual, corporation, business trust, estate, trust, partnership or association, or any other legal entity, but does not include a state agency.

“Public agency” or “agency” means a board, commission, department, including the department of administrative services, or other administrative office or unit of the state of Iowa or any other state entity reported in the Iowa comprehensive annual financial report, or a political subdivision of the state, or an office or unit of a political subdivision, or a clerk of district court. However, “public agency” or “agency” does not mean any of the following:

1. The office of the governor;
2. The general assembly, or any office or unit under its administrative authority; or
3. The judicial branch, as provided in Iowa Code section 602.1102 other than the clerk of the district court. Offset procedures uniquely applicable to debts owed to clerks of the district court are set forth in rules 11—40.10(8A) to 11—40.15(8A).

~~“State agency” or “agency” means a unit of state government, which is an authority, board, commission, committee, council, department, examining board, or independent agency as defined in Iowa Code section 7E.4, including but not limited to each principal central department enumerated in Iowa Code Supplement section 7E.5. However, “state agency” or “agency” does not mean any of the following:~~

- ~~1. The office of the governor or the office of an elective constitutional or statutory officer.~~
- ~~2. The general assembly, or any office or unit under its administrative authority.~~
- ~~3. The judicial branch, as provided in Iowa Code section 602.1102.~~
- ~~4. A political subdivision of the state or its offices or units, including but not limited to a county, city, or community college.~~

ITEM 2. Amend rule 11—40.2(8A) as follows:

11—40.2(8A) Scope and purpose.

40.2(1) Purpose. ~~The purpose of these rules is to establish a procedure by which state agencies can cooperate in identifying debtors who owe liabilities to those state agencies and to establish a procedure for offsetting debtors’ claims against state agencies with liabilities or debts which those debtors owe the state agencies~~ public agencies can participate in the department’s offset program by identifying debtors who owe liabilities to those public agencies and to establish a procedure for offsetting those liabilities against claims owed to debtors by public agencies.

40.2(2) Collection. ~~Agencies may collect debts under the provisions of Iowa Code Supplement section 8A.504 through the daily processing offset system and income tax refund offset programs. Agencies utilizing the income tax refund offset system under the provisions of Iowa Code Supplement section 8A.504, which allows for the recovery of child support, foster care, and public assistance payments; the recovery of guaranteed student or parental loans; or recovery of any liquidated sum due, owing, and payable to the clerk of the district court may also utilize this offset system to collect debts due. Any state agency exempt from the provisions of Iowa Code Supplement section 8A.513 and that is making payments shall be subject to these rules.~~

40.2(3) Inclusions in and exclusions from setoff. ~~The offset system may be used to collect any debt described in rule 40.1(8A). However, some claims against the state or state agencies on behalf of certain persons are made from funds exempt from collection and are thus unavailable for offset. A consolidated listing of payment sources unavailable for offset is available from the department’s state accounting enterprise~~ Iowa Code section 8A.504 as long as the conditions of rule 11—40.3(8A) are satisfied. However, some claims against public agencies on behalf of certain debtors are made from funds exempt from collection and are thus unavailable for offset. A consolidated listing of payment sources unavailable for offset is available from the department’s state accounting enterprise.

ITEM 3. Amend rule 11—40.3(8A) as follows:

11—40.3(8A) Participation guidelines.

40.3(1) Participation—cost effective. ~~Those state public agencies qualified under rule 11—40.2(8A) to use this chapter’s offset provisions should utilize these provisions when it is cost-effective to do so. Final determination regarding whether or not it will be cost-effective to offset any debt owed will be at~~

the discretion of the director. Generally, it will not be cost-effective to offset a debt if the total anticipated collection cost will exceed the amount of the claim ~~that could reasonably be expected to be realized as a result of the collection costs~~. The cost-effectiveness criteria that the director applies will not be the same for every agency. Circumstances differ among agencies. The following nonexclusive examples are intended to provide guidance in determining cost-effectiveness. These examples represent instances in which it might not be cost-effective to offset debts.

EXAMPLE A: A debtor has ceased operations for an extended period of time.

EXAMPLE B: A business has changed its ~~form~~ organizational structure (e.g., from a sole proprietorship to a partnership or corporation).

EXAMPLE C: A debt has been placed with a private collection firm and it appears likely that the firm will collect the debt.

EXAMPLE D: The age or health of a debtor is such that it is unlikely that the debtor will be receiving any payments from ~~the state or a state~~ a public agency.

EXAMPLE E: The debtor is a foreign student who has left the country.

EXAMPLE F: The debtor is ~~a person~~ in bankruptcy.

EXAMPLE G: ~~By Pursuant to~~ statute or federal regulations, certain agencies cannot write off debts. If the debt of one of these agencies has been owed for a substantial amount of time, it may be reasonable to assume that referral would not be cost-effective (e.g., the debtor has changed its name or address or for some other reason would be impossible to locate).

40.3(2) Minimal debt amounts accepted. Before a debt may be placed in the offset program, the amount of a debtor's original liability must be at least \$50, except when the source of the claim is a tax refund or tax rebate, in which case the debt may be, at a minimum, \$25.

40.3(3) Debts legally enforceable. Public agencies may only place debts in the offset program if the debts are legally enforceable and all of the following conditions are satisfied:

a. The debt shall have been established (liquidated) by one of the following means:

(1) Mutual written agreement between the debtor and the public agency;

(2) Alternative procedures authorized by applicable state or federal law with respect to a "qualifying debt" as defined in Iowa Code section 8A.504(1); or

(3) Court proceeding or administrative process which included notice to the debtor and an opportunity for the debtor to contest the amount of the debt through a contested case procedure under Iowa Code chapter 17A or a substantially equivalent process.

b. The debt shall have been reduced to a final judgment or final agency determination that is no longer subject to appeal, certiorari, or judicial review or shall have been affirmed through appeal, certiorari, or judicial review.

c. The debt shall be in an amount certain that is past due and not subject to any legal prohibition to collection.

40.3(4) Debtor's opportunity to challenge placement of debt in offset program. Unless otherwise provided by applicable state or federal law for a "qualifying debt" as defined in Iowa Code section 8A.504(1) "c," debts shall not be placed in the offset program until after the public agency has:

a. Made a good-faith effort to collect the debt through other means;

b. Provided the debtor advance notice that the debt will be placed in the offset program if not paid when due; and

c. Provided a formal or informal opportunity for the debtor to challenge placement of the debt in the offset program. Such opportunity may be separate from or combined with the debtor's opportunity to contest the amount of the debt. The public agency has the burden to determine whether due process will be satisfied under the circumstances by the form of the opportunity provided for the debtor to challenge placement of the debt in the offset program.

ITEM 4. Amend rule 11—40.4(8A) as follows:

11—40.4(8A) Duties of the agency. ~~An agency seeking offset shall have the following duties regarding the department and debtors.~~ Public agencies that seek to place debts in the offset program shall have the following duties regarding the department and debtors.

40.4(1) Notification to the department.

a. ~~An agency must provide a list of debtors to the department of administrative services. A public agency seeking to place debts in the offset program must provide a list of debtors to the department. This list must be in a format and type prescribed by the department and include only information relevant to the identification of the person owing debtors owing debts to the public agency.~~

b. ~~The director shall not process a claim under the provisions of Iowa Code Supplement section 8A.504 until notification is received from the state public agency that the debt has been established through notice and opportunity to be heard satisfies the requirements of rule 11—40.3(8A) or, in the case of a debt owed to a district court clerk, is a “court debt” as defined in Iowa Code section 602.8107(1) which has been due for 30 or more days. The agency shall provide, along with each liability file, a written statement to the director declaring that the debt has occurred provisions of this paragraph are satisfied.~~

40.4(2) Change Notification of change in status of debt. ~~A state agency that has provided a liability file to the department of administrative services must notify the department immediately of any change in the status of a debt to the state. Each public agency that has chosen to submit a debt for participation in the offset program must notify the department immediately of any change in the status of the public agency’s individual debts submitted under the offset program. This notification shall be made no later than 30 calendar days from the occurrence of the change. A change in status may come from payment of the debt, invalidation of the liability, alternate payment arrangements with the debtor, bankruptcy, or other factors.~~

40.4(3) Semiannual certification of file. ~~Each agency that maintains a liability file shall be required to certify Each public agency that has provided a liability file to the department shall be required to recertify the file to the department semiannually. This certification recertification shall be made in a manner prescribed by the director. Debtors not certified recertified in the manner prescribed will be removed from the liability file.~~

40.4(4) Notification to debtor. ~~An Each public agency shall send notification to the debtor within ten 10 calendar days from the date the agency was notified by the department of a potential offset. This notification shall include:~~

- a. ~~The public agency’s right to the payment in question.~~
- b. ~~The public agency’s right to recover the payment through the offset procedure.~~
- c. ~~The basis of the public agency’s case in regard to the debt.~~
- d. ~~The right of the debtor to request the split of the payment between parties when the payment in question is jointly owned or otherwise owned by two or more persons.~~
- e. ~~The debtor’s right to appeal the offset and the required appeal procedure to follow in that appeal.~~
- f. ~~The name of the public agency or division and a telephone number for the person owing to contact in the case of questions to which the debt is owed, with a telephone number for the debtor to contact the public agency regarding questions about the offset.~~

~~The department may require that a copy of this notice be sent to the department, but an agency is not required to routinely send such notices to the department. Once the offset has been completed, the agency shall notify the debtor of the action taken along with the balance, if any, still due to the agency. It is the responsibility of the agency to make payment to the person owing the state any payment offset by the department to which the state is not entitled, in accordance with established procedures.~~

40.4(5) Payment of residual funds to debtor. ~~It is the responsibility of the public agency to reimburse the debtor for the difference between the amount of liability payable and the amount of the claim payable to the debtor.~~

40.4(6) Appeal. ~~Debtors shall have the right to appeal the application of an offset upon notice of the potential offset. An agency subject to Iowa Code chapter 17A shall give notice, conduct hearings, and allow appeals in conformity with Iowa Code chapter 17A. Other public agencies shall give notice, conduct hearings, and allow appeals in a manner substantially equivalent to that provided under Iowa Code chapter 17A.~~

ITEM 5. Amend rule 11—40.5(8A) as follows:

11—40.5(8A) Duties of the department—performance of the offset. The department will develop procedures for administering each offset program request ~~by a public agency on an individual debtor~~ basis. Procedures will vary in order to achieve the greatest efficiency in administering each offset.

Before issuing an authorized payment to a person or entity, the department will match the payment against a debt listing provided by the state public agencies participating in the offset program. The department will notify the state public agency of the ~~person's debtor's~~ or entity's name, address, identifying number, and amount of the entitled payment.

The department shall hold the payment which offsets the liquidated sum due and payable for a period not to exceed 45 days while awaiting notification from the agency as to the amount required to satisfy the ~~person's debtor's~~ or entity's debt to the state. If notification is not made to the department by the state public agency within 45 days, the amount of the payment shall be released to the ~~person debtor~~ or entity.

The department will make the offset only after the state public agency has notified the debtor or entity as prescribed in subrule 40.4(4). The department shall then refund any balance amount due from the state public agency to the ~~person debtor~~ or entity.

ITEM 6. Amend rule 11—40.6(8A) as follows:

11—40.6(8A) Multiple claims—priority of payment. In the case of multiple claims to payments filed under Iowa Code Supplement section 8A.504, after satisfaction of the provisions of Iowa Code section 422.73, priority shall be given to claims filed by the ~~child support recovery unit or the foster care recovery unit~~. Next priority shall be given to claims filed by the ~~college student aid commission~~. Next priority shall be given to claims filed by the ~~office of investigations~~. Next priority shall be given to claims filed by a clerk of the district court. Last priority shall be given to claims filed under Iowa Code Supplement section 8A.504. in the following order:

1. Claims filed by the child support recovery unit or the foster care recovery unit;
2. Claims filed by a clerk of the district court;
3. Claims filed by the college student aid commission;
4. Claims filed by the investigation division of the department of inspections and appeals; and
5. All other claims filed by public agencies under Iowa Code section 8A.504.

The order of priority for offset against multiple claims by more than one state public agency shall be determined by the date the liability was listed with the department. Subsequent entries of claims by state public agencies shall be offset in order of the date the listing was made with the department.

ITEM 7. Amend rule 11—40.7(8A) as follows:

11—40.7(8A) Payments of offset amounts. Payments to the public agency requesting ~~the offset shall be made by the department on the twenty-fifth day of each month~~ participation in the offset program shall be made by the department by the last day of the month in which the request is made.

ITEM 8. Amend rule 11—40.8(8A) as follows:

11—40.8(8A) Reimbursement for offsetting liabilities. Costs incurred by the department in administering the offset program will be charged to the ~~state department requesting offset~~ public agency requesting placement of the debt into the offset program. ~~The~~ These costs will be deducted from the gross proceeds collected through offset and may include direct expenses such as salaries, supplies, equipment, and system modification and development costs; or indirect costs such as space, security, or utility costs. If the above-described procedure is prohibited by ~~paramount~~ higher state or federal law, the director shall allow reimbursement in a manner which conforms to the ~~paramount~~ higher law. Prior to placing a debt in the offset program, the public agency will enter into a memorandum of understanding with the department of administrative services which will outline the costs, responsibilities of the parties, and methods for remuneration of the offset funds.

ITEM 9. Amend rule 11—40.9(8A) as follows:

11—40.9(8A) Confidentiality of information. Information shared between ~~state~~ the department and the public agencies wishing to participate in the offset program shall be deemed confidential pursuant to Iowa Code section 8A.504(2) “b” and shall be disclosed only to the extent ~~that sufficient information is given that is relevant to the identification of persons liable to or claimants of state agencies. The information is to be used for the purpose of offset only necessary to sufficiently identify the debtor(s) liable to the public agency.~~ Identifying information shall be used only for the purpose of participation in the offset program.

ITEM 10. Amend the title preceding rule **11—40.10(8A)** as follows:

JUDICIAL OFFSET PROCEDURES OFFSET OF DEBTS OWED TO CLERKS OF THE DISTRICT COURT

ITEM 11. Amend rule 11—40.10(8A) as follows:

11—40.10(8A) Incorporation by reference. ~~In providing judicial offset procedures, the department incorporates by reference the following rules and subrules to be applied to the substance and procedure under this heading:~~

- ~~1. 11—40.2(8A) Scope and purpose.~~
- ~~2. 11—40.3(8A) Participation guidelines.~~
- ~~3. 11—subrule 40.4(1) Duties of the agency—notification to the department.~~
- ~~4. 11—subrule 40.4(2) Duties of the agency—change in status of debt.~~
- ~~5. 11—subrule 40.4(3) Duties of the agency—semiannual certification of file.~~
- ~~6. 11—40.5(8A) Duties of the department—performance of the offset.~~
- ~~7. 11—40.7(8A) Payments of offset amounts.~~
- ~~8. 11—40.8(8A) Reimbursement for offsetting liabilities.~~
- ~~9. 11—40.9(8A) Confidentiality of information.~~

The department incorporates by reference rules 11—40.1(8A) to 11—40.9(8A). “Debtor,” for purposes of rules 11—40.10(8A) to 11—40.15(8A), shall pertain only to a debtor who owes a debt to a clerk of district court.

ITEM 12. Rescind rule **11—40.11(8A)**.

ITEM 13. Renumber rules **11—40.12(8A)** to **11—40.16(8A)** as **11—40.11(8A)** to **11—40.15(8A)**.

ITEM 14. Amend renumbered rule 11—40.11(8A) as follows:

11—40.11(8A) Applicability and procedure. For liabilities accrued and owing to any and all clerks of the Iowa district court, the department shall issue a written notice informing any ~~person~~ debtor having a valid claim against a ~~state~~ public agency that an offset will be ~~performed against the claim applied to the debt.~~ The department will ~~perform~~ apply the offsets for ~~such~~ district clerks as provided in Iowa Code Supplement section 8A.504, and the department will send a written notice to the ~~person liable for such a liability prior to and after the offset has been performed~~ debtor. Subsequently, the department will also provide administrative procedures and available remedies for contesting the validity of such an offset. The Iowa district court will provide the procedures and remedies for challenging the underlying liability at issue. This rule applies only to liabilities and debts owed to the clerks of the Iowa district court.

ITEM 15. Amend renumbered rule 11—40.12(8A) as follows:

11—40.12(8A) Notice of offset. The department shall send written notification of the offset to the ~~person that has a valid claim against any state agency that is a liquidated sum, due and payable and in which such a person is liable for a liability owed to any and all clerks of the Iowa district court within ten calendar days from the date the department is notified by the judicial branch of the uncollected liability~~ debtor

within 10 calendar days from the date the department is notified of such debt by the judicial branch. This notification must include:

- ~~1. The judicial branch's right to the payment in question~~ The clerk of court claiming the liability;
- ~~2. The judicial branch's right to recover the payment through the offset procedure~~ The clerk of court's right to the payment in question;
- ~~3. The basis of the judicial branch's case in regard to the debt~~ The clerk of court's right to recover the payment through the offset program;
- ~~4. The basis of the clerk of court's case in regard to the debt;~~
- ~~4. 5.~~ The right of the person who owes the liability debtor to request, within 15 days of the mailing of the notice, that the payment between parties be split when the payment in question is jointly owned or otherwise owned by two or more persons debtors;
- ~~5. 6.~~ The right of the person liable debtor to contest the right of offset and the validity of such offset with the department by mailing, to the department's legal counsel, a protest within 15 days of the mailing of such notice, and that the procedure to follow in that appeal will conform, according to the context, to the rules of the department involving protests and contested case proceedings in 11—Chapter 7;
- ~~6. 7.~~ The name of the agency or division and the telephone number for the person liable for the liability to contact concerning questions regarding the validity of the offset and the procedures for the offset The telephone number of the representative the debtor may contact concerning questions regarding the validity of the offset and the procedures for the offset;
- ~~7. 8.~~ That the person liable for the liability debtor has the opportunity to contest the validity and amount of the liability by mailing, within 15 days of mailing of the notice of offset, a written application to contest the liability to the appropriate clerk of the Iowa district court; and
- ~~8. 9.~~ The name of the clerk of the district court and the telephone number for the person liable for the liability debtor to contact concerning questions relating to the validity of the underlying liability and regarding the validity of the amount owed.

ITEM 16. Amend renumbered rule 11—40.13(8A) as follows:

11—40.13(8A) Procedure for contesting. ~~A person liable for a liability under this heading~~ The debtor may contest the validity or amount of the underlying liability by mailing written notification of the person's debtor's intent to contest such a liability to the appropriate clerk of the Iowa district court. The Iowa district court will provide the person liable debtor with the procedure and remedies for contesting the validity and amount of the underlying liability.

~~A person liable for a liability payable to the judicial branch that has been deemed qualified for offset may contest the validity of the offset or the right of the offset by mailing written notification to the Department of Administrative Services, Legal Counsel, Hoover State Office Building, Third Floor, Des Moines, Iowa 50319. The debtor may contest the validity of the offset or the right of the offset by mailing written notification to:~~

Department of Administrative Services
General Counsel
Hoover State Office Building
Third Floor
Des Moines, Iowa 50319

The department will provide the procedure and remedies for contesting the validity of the offset and right of offset pursuant to the applicable contested case rules set forth in 11—Chapter 7.

If a ~~person liable to the judicial department~~ debtor gives written notice of intent to contest ~~either the offset validity or the amount of the liability or the validity of the offset or right of offset,~~ the judicial department the clerk of the district court and the department will hold a payment in abeyance until the final disposition of the contested liability or offset is determined.

ITEM 17. Amend renumbered rule 11—40.14(8A) as follows:

11—40.14(8A) Postoffset notification and procedure. Following the offset, the department will notify the ~~person liable~~ debtor that the offset was performed. It is the responsibility of the department to make payment to the ~~person~~ debtor liable to the Iowa district court clerk of any amount to which the Iowa district court clerk is not entitled to receive under the offset, in accordance with established procedures.

ITEM 18. Amend renumbered rule 11—40.15(8A) as follows:

11—40.15(8A) Report of satisfaction of obligations. At least monthly, the department will file with the ~~clerk of the district court~~ judicial branch a notice of satisfaction of each obligation to the full extent of all moneys collected in satisfaction of ~~the~~ an offset obligation. No additional or separate written notice from the department regarding the performed offsets is required.

ITEM 19. Amend **11—Chapter 40**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~Supplement~~ sections 8A.504, 422.16, 422.20, 422.72, and 422.73.

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