

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

Proposing rule making related to economic fraud control bureau and providing an opportunity for public comment

The Department of Inspections and Appeals hereby proposes to rescind Chapter 72, “Public Assistance Front End Investigations,” and to adopt a new Chapter 72, “Economic Fraud Control Bureau,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 10A.104 and 10A.401 to 10A.403.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 10A.105 and 10A.401 to 10A.403.

Purpose and Summary

The proposed rule making is the result of a comprehensive review of the Department’s Investigations Division rules. The rule making conforms the Department’s rules with current practices, laws, regulations and rules affecting the Economic Fraud Control Bureau.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on April 3, 2018. Comments should be directed to:

Director
Department of Inspections and Appeals
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319-0083
Fax: 515.242.6863
Email: david.werning@dia.iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Rescind 481—Chapter 72 and adopt the following **new** chapter in lieu thereof:

CHAPTER 72

ECONOMIC FRAUD CONTROL BUREAU

481—72.1(10A) Definitions.

“*Client*” means any person who has made an application for or is receiving state or federal public assistance from DHS or any other state or federal agency.

“*Collateral contact*” means a reliable source other than the client who is knowledgeable about information relative to pertinent public assistance case factors.

“*Department*” means the department of inspections and appeals.

“*DHS*” means the department of human services.

“*Division*” means the investigations division of the department.

“*EBT*” or “*electronic benefit transfer*” means the electronic process that allows a client to authorize transfer of the client’s benefits from a financial account to a retailer to pay for eligible items received. Clients are issued an EBT card similar to a bank ATM or debit card to receive and use their food assistance.

“*EBT trafficking or misuse*” means the use of food assistance benefits for something other than their intended use.

“*EFCB*” or “*bureau*” means the economic fraud control bureau.

“*Intentional program violation*” or “*IPV*” means having intentionally made a false or misleading statement; or misrepresented, concealed, or withheld facts; or committed an act that is a violation of the Food Stamp Act, Supplemental Nutrition Assistance Program regulations, or any state rule relating to the use, presentation, transfer, acquisition, receipt or possession of a benefit transfer instrument.

“*Pertinent public assistance case factors*” means information considered necessary to verify household composition, income, resources or any other potential program violation.

“*Program violation*” means action that is contrary to the rules of eligibility for any state or federal public assistance program.

“*Public assistance*” means child care assistance, family investment program, food assistance, medical assistance, state supplementary assistance, refugee cash assistance, or any other state or federal assistance program.

“*Referral*” means a request to investigate pertinent public assistance case factors for potential program violations and eligibility issues.

“*Referring agency*” means DHS or any other state or federal agency.

481—72.2(10A) Economic fraud control bureau (EFCB). The EFCB is comprised of two units, the program integrity/EBT unit and the divestiture unit. The functions of each unit are described in 481—paragraph 1.4(1)“c” [see **ARC 3649C**, IAB 2/28/18]. Generally, the EFCB conducts

investigations of public assistance fraud in order to maintain integrity and accountability in the administration of public assistance benefits. Divestiture unit rules are found in 481—Chapter 75.

481—72.3(10A) Types of investigations. The EFCB conducts three types of investigations.

72.3(1) Front-end investigations. The EFCB conducts front-end investigations to determine whether a client has accurately reported the information necessary to become eligible for or to retain public assistance benefits.

72.3(2) Fraud investigations. The EFCB conducts a fraud investigation when the referring agency suspects that a client received public assistance benefits the client was not entitled to receive.

72.3(3) EBT trafficking or misuse. The EFCB conducts an investigation to determine whether a client is responsible for EBT trafficking or misuse.

481—72.4(10A) Referrals. DHS shall initiate public assistance eligibility referrals and EBT trafficking or misuse referrals to the division. EBT trafficking or misuse investigations also may be initiated by the division without a referral. Referrals from other referring agencies may be made directly to the division.

481—72.5(10A) Investigation procedures.

72.5(1) Client contact. The bureau may, but is not required to, contact the client during the course of an investigation. If the bureau contacts the client and the client does not respond, the client's nonresponse will be included in the bureau's investigation findings.

72.5(2) Evidence gathered. The bureau may conduct record reviews and gather evidence to verify a client's employment, wages, residence, household composition, income versus expenses, or property ownership or other relevant facts.

72.5(3) Subpoenas. The director of the department or the director's designee may issue subpoenas pursuant to Iowa Code section 10A.104 and 481—subrules 1.1(6) to 1.1(9) to obtain information necessary to an investigation. Subpoenas may be personally served by division personnel upon the respondent of the subpoena or the respondent's registered agent, mailed directly to the respondent or the respondent's registered agent via USPS mail, or electronically transmitted directly to the respondent or the respondent's registered agent via facsimile or email. Division personnel shall have the authority to determine the appropriate method by which the respondent is requested to deliver information in response to a subpoena duces tecum.

72.5(4) Collateral contacts. The division may use collateral contacts to collect information pertinent to an investigation or verify information provided by the client.

72.5(5) Cooperation. The division may cooperate with local, state or federal law enforcement agencies in conducting an investigation.

481—72.6(10A) EBT trafficking or misuse investigations. In addition to the procedures outlined in rule 481—72.5(10A), the following apply to EBT trafficking or misuse investigations.

72.6(1) Probable cause. Probable cause must be established before an EBT trafficking or misuse investigation may be conducted.

72.6(2) Referrals. Referrals to the division may come from DHS, retailers, law enforcement agencies or the general public. A referral may be initiated following the identification of questionable EBT card transactions through federal or state databases. The bureau may open an investigation without an outside referral.

481—72.7(10A) Findings. At the completion of an investigation, the bureau will transmit its findings in writing to the appropriate state or federal agency and make recommendations based on the evidence obtained or provided during the investigation.

72.7(1) Decisions about public assistance eligibility. The appropriate state or federal agency makes all decisions about public assistance eligibility. DHS will report the case action taken and any determination of overpayment, cost avoidance, or intentional program violation to the division.

72.7(2) *Testimony and hearings.* Staff of the division may be called to testify in administrative and legal proceedings related to an investigation, in addition to conducting EBT intentional program violation hearings.

481—72.8(10A) Confidentiality. The EFCB shall maintain confidentiality of investigative case information in accordance with Iowa Code sections 10A.105 and 22.7(5) and any other applicable state or federal law.

These rules are intended to implement Iowa Code sections 10A.105 and 10A.401 to 10A.403.