

**HUMAN SERVICES DEPARTMENT[441]**

**Notice of Intended Action**

**Proposing rule making related to child support recovery unit administrative appeal procedures and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 9, “Public Records and Fair Information Practices,” Chapter 95, “Collections,” Chapter 96, “Information and Records,” Chapter 97, “Collection Services Center,” Chapter 98, “Support Enforcement Services,” Chapter 99, “Support Establishment and Adjustment Services,” and Chapter 100, “Child Support Promoting Opportunities for Parents Program,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code chapter 17A and sections 217.6, 252B.3 to 252B.5 and 252B.9.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 17A and sections 217.6, 252B.3 to 252B.5 and 252B.9.

*Purpose and Summary*

This rule making proposes amendments to Chapters 9, 95, 96, 97, 98, 99 and 100 to maintain current Child Support Recovery Unit (CSRU) administrative appeal procedures in light of the recent changes to the appeal rules in Chapter 7. This rule making also reorganizes various rules in Chapters 95 and 98. These amendments will better organize those chapters by keeping all collection rules in Chapter 95 and all enforcement rules in Chapter 98. This rule making proposes new rule 441—98.84(252B) and rescinds rule 441—99.26(252F) to remove outdated and duplicative language. None of the proposed amendments make changes to current CSRU procedures.

*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 441—1.8(17A,217).

*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 December 8, 2020. Comments should be directed to:

Nancy Freudenberg  
Department of Human Services  
Hoover State Office Building, Fifth Floor  
1305 East Walnut Street  
Des Moines, Iowa 50319-0114  
Email: [appeals@dhs.state.ia.us](mailto:appeals@dhs.state.ia.us)

### *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 actions are proposed:

ITEM 1. Amend subrule 9.10(10) as follows:

**9.10(10) Child support recovery.** The child support recovery unit has access to information from most department records for the purpose of establishing and enforcing support obligations. Information about absent parents and recipients of child support services is released according to the provisions of Iowa Code chapters 234, 252A, 252B, 252C, 252D, 252E, 252F, 252G, 252H, 252I, 252J, 252K, 598, 600B, and any other support chapter. Information is also released to consumer reporting agencies as specified in rule ~~441—95.12(252B)~~ 441—98.116(252B).

ITEM 2. Rescind the definitions of “Consumer reporting agency,” “Delinquent support,” “Federal nontax payment,” and “Payor of income” in rule ~~441—95.1(252B)~~.

ITEM 3. Amend rule ~~441—95.3(252B)~~, introductory paragraph, as follows:

**~~441—95.3(252B) Crediting of current and delinquent support.~~** The amounts received as support from the obligor shall be credited as the required support obligation for the month in which they are collected. Any excess shall be credited as delinquent payments and shall be applied to the immediately preceding month, and then to the next immediately preceding month until all excess has been applied. Funds received as a result of federal tax offsets shall be credited according to rule ~~441—95.7(252B)~~ 441—98.84(252B).

ITEM 4. Rescind and reserve rules ~~441—95.6(252B)~~, ~~441—95.7(252B)~~, ~~441—95.8(96)~~ and ~~441—95.12(252B)~~.

ITEM 5. Amend paragraph **95.13(3)“b”** as follows:

*b.* The time limit for initiating an administrative appeal shall be governed by ~~441—subrule 7.5(4) 7.4(3)~~. The time limit provided in ~~441—subrule 7.5(4) 7.4(3)~~ shall start with the date that a written decision as required by subrule 95.13(2) is issued.

ITEM 6. Adopt the following **new** rule ~~441—95.26(17A)~~:

### **~~441—95.26(17A) Right of appeal.~~**

**95.26(1)** Under this chapter, an administrative appeal pursuant to ~~441—Chapter 7~~ shall be limited to the following issues:

a. A person is not entitled to a support payment in full or in part because of the date of collection, as provided under rule 441—95.13(17A), or a dispute based on the date of collection has not been acted on in a timely manner.

b. A termination in services has occurred as provided in rule 441—95.14(252B).

**95.26(2)** A hearing shall not be granted under 441—Chapter 7 when the appellant has a complaint about child support recovery unit collections actions other than those described in this rule. This includes the collection of an annual fee for child support services as specified in Iowa Code chapter 252B.

This rule is intended to implement Iowa Code sections 17A.12 to 17A.20.

ITEM 7. Adopt the following new rule 441—95.27(17A):

**441—95.27(17A) Appeal record.** The record in an administrative appeal under this rule shall include, in addition to those materials specified in Iowa Code section 17A.12(6), the notice of appeal, all evidence received or considered and all other submissions, including the verbatim record of the hearing.

This rule is intended to implement Iowa Code section 17A.12.

ITEM 8. Adopt the following new rule 441—96.7(17A):

**441—96.7(17A) Right of appeal.** Department actions under this chapter are not subject to administrative appeal under 441—Chapter 7.

ITEM 9. Amend **441—Chapter 96**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 17A and section 252B.9.

ITEM 10. Adopt the following new rule 441—97.8(17A):

**441—97.8(17A) Right of appeal.** Department actions under this chapter are not subject to administrative appeal under 441—Chapter 7.

ITEM 11. Amend **441—Chapter 97**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 17A and sections 252B.13A through 252B.17 and ~~section~~ 252D.17.

ITEM 12. Amend **441—Chapter 98**, chapter preamble, as follows:

PREAMBLE

~~In addition to the enforcement services described in 441—Chapter 95, “Collections,” the~~ The child support recovery unit is charged with the responsibility to provide the enforcement services delineated in this chapter.

ITEM 13. Adopt the following new rule 441—98.47(96):

**441—98.47(96) Child support intercept of unemployment insurance benefits.** When the department of workforce development notifies the child support recovery unit that an individual who owes a child support obligation being enforced by the unit has been determined to be eligible for unemployment insurance benefits, the unit will enforce a child support obligation that is owed by an obligor but is not being met by intercept of unemployment insurance benefits. “Owed but not being met” means either current child support not being met or arrearages that are owed.

**98.47(1) Withholding.** The child support recovery unit shall intercept unemployment insurance benefits by initiating a withholding of income pursuant to Iowa Code chapter 252D and this division. The amount to be withheld through a withholding of unemployment insurance benefits shall not exceed the amount specified in 15 U.S.C. 1673(b).

**98.47(2) Provision of receipt.** A receipt of the payments intercepted through unemployment insurance benefits will be provided once a year, upon the obligor’s request to the child support recovery unit.

This rule is intended to implement Iowa Code section 96.3 and 15 U.S.C. 1673(b).

ITEM 14. Amend 441—Chapter 98, Division VI, title, as follows:

DIVISION VI  
DEBTOR OFFSET

ITEM 15. Renumber rule 441—98.81(252B) as 441—98.82(252B).

ITEM 16. Adopt the following new rule 441—98.81(252B):

**441—98.81(252B) Definitions.**

“*Delinquent support*” means a payment, or portion of a payment, including interest, not received by the clerk of the district court or other designated agency at the time it was due. In addition, delinquent support shall also include payments for parental liabilities not received as specified pursuant to rule 441—156.2(234).

“*Federal nontax payment*” means an amount payable by the federal government which is subject to administrative offset for support under the federal Debt Collection Improvement Act, Pub. L. No. 104-134.

“*Mistake of fact*” means a mistake in the identity of the obligor or whether the delinquency meets the criteria for referral.

This rule is intended to implement Iowa Code chapter 252B.

ITEM 17. Amend renumbered subrule 98.82(3) as follows:

**98.82(3) Appeal process.** An obligor may contest the department’s claim by submitting a written request to the department. A hearing shall be granted pursuant to rules in 441—Chapter 7 if the obligor’s request is submitted within 15 days of the date of the preoffset notice. Except as specifically provided in this rule, administrative appeals will be governed by 441—Chapter 7. The issue on appeal shall be limited to a mistake of fact. Any other issue may be determined only by a court of competent jurisdiction.

ITEM 18. Amend renumbered subrule 98.82(4) as follows:

**98.82(4) Joint owner.** A joint owner’s proportionate share of the payment, as determined by the department of ~~administrative services~~, shall be released unless other claims are made on that portion of the payment. The department must receive a request for release of a joint owner’s share within 15 days of the date of the preoffset notice. The request may be made by either owner.

ITEM 19. Amend renumbered subrule 98.82(7) as follows:

**98.82(7) Percentage of payment offset.** The amount of offset shall be 50 percent of the total payment due the obligor, unless the payment results from lottery winnings, from gambling winnings, from sports wagering winnings, or from a payment for a claim under treasurer of state rules on unclaimed property at 781—Chapter 9, in which case the amount of offset shall be 100 percent of the payment. The amount taken shall not exceed the delinquent amount owed by the obligor.

ITEM 20. Adopt the following new rule 441—98.83(252B):

**441—98.83(252B) Offset against state income tax refund or rebate.** The department will make a claim against an obligor’s state income tax refund or rebate when a support payment is delinquent as set forth in 11—Chapter 40. A claim against an obligor’s state income tax refund or rebate shall apply to support which the department is attempting to collect.

**98.83(1)** By the first day of each month, the department shall submit to the department of administrative services a list of obligors who are delinquent at least \$50 in support payments.

**98.83(2)** When the department claims an obligor’s state income tax refund or rebate, the department shall send a preoffset notice to the obligor to inform the obligor of the amount the department intends to claim and apply to support. The department shall send a preoffset notice when:

- a. The department of administrative services notifies the department that the obligor is entitled to a state income tax refund or rebate; and
- b. The obligor has a delinquency of \$50 or greater.

**98.83(3)** When the obligor wishes to contest a claim, a written request shall be submitted to the department within 15 days of the date of the preoffset notice. When the request is received within the 15-day limit, a hearing shall be granted pursuant to rules in 441—Chapter 7. Except as specifically provided in this rule, administrative appeals will be governed by 441—Chapter 7. The issue on appeal shall be limited to a mistake of fact. Any other issue may be determined only by a court of competent jurisdiction.

**98.83(4)** The spouse's proportionate share of a joint return filed with an obligor, as determined by the department of revenue, shall be released by the department of revenue unless other claims are made on that portion of the joint income tax refund. The request for release of a spouse's proportionate share shall be received by the department within 15 days of the date of the preoffset notice.

**98.83(5)** The department shall refund any amount incorrectly offset to the obligor unless the obligor agrees in writing to apply the refund of the incorrect offset to any other support obligation due.

**98.83(6)** The department shall notify an obligor of the final decision regarding the claim against the tax refund or rebate by sending a final disposition of support recovery claim notice to the obligor.

**98.83(7)** Offsets shall be applied as provided in rule 441—95.3(252B).

This rule is intended to implement Iowa Code sections 8A.504, 252B.3, 252B.4 and 252B.5(4).

ITEM 21. Adopt the following new rule 441—98.84(252B):

**441—98.84(252B) Offset against federal income tax refund and federal nontax payment.** The department will make a claim against an obligor's federal income tax refund or federal nontax payment when delinquent support is owed. For purposes of this offset, delinquent support shall include the entire balance of a judgment for accrued support, as provided in Iowa Code section 252B.5(4).

**98.84(1) Amount of assigned support.** If the delinquent support is assigned to the department, the amount of delinquent support shall be at least \$150, calculated by combining the assigned delinquent support in all of the obligor's cases in which the assigned delinquent support is at least \$50.

**98.84(2) Amount of nonassigned support.** If delinquent support is not assigned to the department, the claim shall be made if the amount of delinquent support is at least \$500, calculated by combining the nonassigned delinquent support in all of the obligor's cases in which the nonassigned delinquent support is at least \$50.

*a.* The amount distributed to an obligee shall be the amount remaining following payment of a support delinquency assigned to the department. The department shall distribute to an obligee the amount collected from an offset according to subrule 98.84(9) within the following time frames:

(1) Within six months from the date the department applies an offset amount from a joint income tax refund to the child support account of the responsible person, or within 15 days of the date of resolution of an appeal under subrule 98.84(8), whichever is later, or

(2) Within 30 days from the date the department applies an offset amount from a single income tax refund to the child support account of the responsible person, or within 15 days of the date of resolution of an appeal under subrule 98.84(8), whichever is later.

(3) However, the department is not required to distribute until it has received the amount collected from an offset from the federal Department of the Treasury.

*b.* Federal nontax payment offsets shall be applied as provided in rule 441—95.3(252B).

**98.84(3) Notification to federal agency.** The department shall, by October 1 of each year or at times as permitted or specified by federal regulations, submit a notification(s) of liability for delinquent support to the federal Office of Child Support Enforcement.

**98.84(4) Preoffset notice and review.** Each obligor who does not have an existing support debt on record with the federal Office of Child Support Enforcement will be sent a preoffset notice in writing, using address information provided to the federal Office of Child Support Enforcement, stating the amount of the delinquent support certified for offset.

*a.* Individuals whose names were submitted for federal offset who wish to dispute the offset must notify the department in writing within the time period specified in the preoffset notice.

b. Upon receipt of a complaint from the individual disputing the submission for offset, the child support recovery unit shall conduct a review to determine if there is a mistake of fact and respond to the individual in writing within ten days.

**98.84(5) Recalculation of delinquency.** When the records of the department differ with those of the obligor for determining the amount of the delinquent support, the obligor may provide and the department will accept documents verifying modifications of the order, and records of payments made pursuant to state law, and will recalculate the delinquency.

**98.84(6) Notification of modification or elimination.** The department shall notify the federal Office of Child Support Enforcement, within time frames established by the federal Office of Child Support Enforcement, of any modification or elimination of an amount referred for offset.

**98.84(7) Failure to timely respond.** When an individual does not respond to the preoffset notice within the specified time even though the department later agrees a certification error was made, the individual must wait for corrective action as specified in subrule 98.84(8).

**98.84(8) Offset notice, appeal, and refund.** The federal Department of the Treasury will send notice that a federal income tax refund or federal nontax payment owed to the obligor has been intercepted. When the unit receives information from the federal Office of Child Support Enforcement regarding the offset, or when the individual whose name was submitted for federal offset notifies the department that the individual has received an offset notice, the department shall issue to that individual Form 470-3684, Appeal Rights for Federal Offsets.

a. The individual whose name was submitted for federal offset shall have 15 days from the date of the notice to contest the offset by initiating an administrative appeal pursuant to 441—Chapter 7. Except as specifically provided in this rule, administrative appeals will be governed by 441—Chapter 7. The issue on appeal shall be limited to a mistake of fact. Any other issue may be determined only by a court of competent jurisdiction.

b. The department shall refund the incorrect portion of a federal income tax offset or federal nontax payment offset within 30 days following verification of the offset amount. Verification shall mean a listing from the federal Office of Child Support Enforcement containing the obligor's name and the amount of tax refund or nontax payment to which the obligor is entitled. The date the department receives the federal listing will be the beginning day of the 30-day period in which to make a refund.

c. The department shall refund the amount incorrectly set off to the obligor unless the obligor agrees in writing to apply the refund of the incorrect offset to any other support obligation due.

**98.84(9) Application of offsets.** Offsets of federal income tax refunds shall be applied to delinquent support only. The department shall first apply the amount collected from an offset to delinquent support assigned to the department under Iowa Code chapters 234 and 239B. The department shall then apply any amount remaining in equal proportions to delinquent support due individuals receiving nonassistance services.

This rule is intended to implement Iowa Code sections 252B.3, 252B.4, and 252B.5.

ITEM 22. Amend **441—Chapter 98, Division IX**, heading, as follows:

DIVISION ~~IX~~ X  
EXTERNAL ENFORCEMENT

ITEM 23. Adopt the following **new 441—Chapter 98**, division heading:

DIVISION IX  
CONSUMER REPORTING AGENCIES

ITEM 24. Adopt the following **new** rule 441—98.116(252B):

**441—98.116(252B) Procedures for providing information to consumer reporting agencies.** The child support recovery unit shall make information available to consumer reporting agencies regarding the amount of delinquent support owed by a responsible person only in cases where the delinquent support exceeds \$1,000. However, before the unit will release the information to a consumer reporting

agency, the agency must meet the requirements for a nationwide consumer reporting agency under Iowa Code section 252B.9(3)“j.”

**98.116(1) Request of information.** Agencies may request the information from the Bureau of Collections, Department of Human Services, 400 SW Eighth Street, Suite H, Des Moines, Iowa 50309-4691. Requests for information about an individual shall include the individual’s name and identifying information such as a social security number or birth date. Agencies may also request a listing of all obligors owing support in excess of \$1,000.

**98.116(2) Notice of proposed release of information.** A notice of proposed release of information shall be sent to the last known address of the responsible person 30 calendar days prior to the release of the support arrearage information to a consumer reporting agency. This notice shall explain the information to be released and the methods available for contesting the accuracy of the information.

**98.116(3) Contesting proposed release of information.** The responsible person may, within 15 calendar days of the date of the notice of proposed release of information, request a conference with the child support recovery officer to contest the accuracy of the information to be given to the consumer reporting agency. In contested cases no referral shall be made to the consumer reporting agency until after the amount of overdue support has been confirmed to exceed \$1,000.

This rule is intended to implement Iowa Code section 252B.9(3).

ITEM 25. Reserve rules **441—98.123** to **441—98.130**.

ITEM 26. Adopt the following **new 441—Chapter 98**, division heading:

DIVISION XI  
APPEALS

ITEM 27. Adopt the following **new** rule 441—98.131(17A):

**441—98.131(17A) Right of appeal.**

**98.131(1)** Under this chapter, an administrative appeal pursuant to 441—Chapter 7 shall be limited to the following issues:

*a.* A claim or offset is contested as provided in subrule 98.82(3), 98.83(3), or 98.84(8) by a person’s alleging a mistake of fact.

*b.* A name has been certified for passport sanction as provided in Iowa Code section 252B.5.

**98.131(2)** A hearing shall not be granted under 441—Chapter 7 when the appellant has a complaint about child support recovery enforcement matters other than those described in this rule.

This rule is intended to implement Iowa Code chapter 17A.

ITEM 28. Adopt the following **new** rule 441—98.132(17A):

**441—98.132(17A) Appeal record.** The record in an administrative appeal under this rule shall include, in addition to those materials specified in Iowa Code section 17A.12(6), the notice of appeal, all evidence received or considered and all other submissions, including the verbatim record of the hearing.

This rule is intended to implement Iowa Code chapter 17A.

ITEM 29. Amend **441—Chapter 98**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 96.3 and chapter 252D.

- ITEM 30. Rescind and reserve rule **441—99.26(252F)**.
- ITEM 31. Reserve rules **441—99.118** to **441—99.120**.
- ITEM 32. Adopt the following new **441—Chapter 99**, division heading:

DIVISION VII  
APPEALS

- ITEM 33. Adopt the following new rule 441—99.121(17A):

**441—99.121(17A) Right of appeal.** Department actions under this chapter are not subject to administrative appeal under 441—Chapter 7.

This rule is intended to implement Iowa Code chapter 17A.

- ITEM 34. Adopt the following new rule 441—100.8(17A):

**441—100.8(17A) Right of appeal.** Department actions under this chapter are not subject to administrative appeal under 441—Chapter 7.

This rule is intended to implement Iowa Code chapter 17A.