

**REVENUE DEPARTMENT[701]**

**Adopted and Filed**

**Rulemaking related to the setoff program**

The Revenue Department hereby adopts new Chapter 26, “Setoff of Qualifying Debts Owed to Public Agencies,” Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code section 421.65 as enacted by 2020 Iowa Acts, House File 2565; and 2020 Iowa Acts, House File 2641, division VI.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 421.65 as enacted by 2020 Iowa Acts, House File 2565; and 2020 Iowa Acts, House File 2641, division VI.

*Purpose and Summary*

The primary purpose of this rulemaking is to make effective 2020 Iowa Acts, House File 2565. That legislation sets forth the statutory authority that will transition the setoff program from the Department of Administrative Services (DAS) to the Iowa Department of Revenue (IDR). The setoff program allows public agencies, including but not limited to state agencies, clerks of court, and municipalities, to collect debt by intercepting payments owed by a public agency to a citizen and applying those payments to qualifying debt.

House File 2565 transfers the setoff program from DAS to IDR. 2020 Iowa Acts, House File 2641, section 73, amended the effective date of House File 2565 to the later date of January 1, 2021, or the effective date of rules adopted by IDR implementing House File 2565, which are adopted herein. All Iowa Code citations within the new rules are to those sections as enacted by House File 2565.

IDR’s authority to administer setoffs will be under Iowa Code section 421.65. IDR is required to promulgate rules to describe the priority of payment when multiple agencies within the same priority group make a claim to the same setoff payment. IDR is also permitted to promulgate rules to describe the frequency and contents of certifications of debt by public agencies submitting debt to the program and to establish a minimum debt submission amount by rule.

These rules also establish procedures and requirements for participating agencies. The rules require that public agencies submitting debt to the program enter into a memorandum of understanding with IDR, set forth details about debt balances and notifications of changes of such balances, describe challenge processes and requests for division of the setoff payment, contemplate a transition period, and provide an explanation and examples about the fee paid by public agencies for use of the setoff system.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on August 9, 2023, as **ARC 7054C**. An Advisory Notice was also published in the August 23, 2023, Iowa Administrative Bulletin correcting erroneously published information regarding the telephone number and access code for participating in the public hearing.

A public hearing was held on August 29, 2023, at 9 a.m. in Room 430, Hoover State Office Building, Fourth Floor, 1305 East Walnut Street, Des Moines, Iowa. Virtual and telephone options were also available. One public comment was received. Iowa Legal Aid provided comments both orally at the public hearing and via written comment through Litigation Director and General Counsel Alex Kornya.

Iowa Legal Aid comment summary:

1. The rule should affirmatively recognize the application of debtor’s exemptions to setoff under Iowa Code section 421.65.
2. The rule should sufficiently describe the content notices must contain that give debtors an adequate chance to raise exemptions.
3. The rule should explicitly provide that application of exemptions are within the scope of an offset challenge.
4. The rule should define “date of the notice” as the triggering date for challenges as the date the notice was actually received or, barring that, when it was sent.
5. The method by which IDR will contact a debtor who files a challenge should be reasonably calculated to reach the debtor under due process guidelines and in any event specifically described in the rule.
6. Review hearings should be set expediently but with enough time to get information from the creditor agency.
7. The medium of the review hearing should be specified in the rule—it is assumed that a choice between a telephone or video review would be feasible for IDR.
8. The rule should specify that the final IDR determination of a challenge must be in writing so that a district court would have something to review.
9. The rule should provide that a nonobligor co-payee can sever a joint right to payment during the entire period of time the nonobligor co-payee is eligible to claim that payment.
10. The rule should explicitly provide that the scope of inquiry about whether a debt is “qualifying” is within the scope of IDR to decide.
11. The system used to carry out offsets should be calibrated to avoid overcollection and issue quick refunds in case overcollection nevertheless takes place.
12. Feasibility language from the prior rule should be reintroduced.
13. Consider employing a system by which the debtor could check in advance to see if they have a debt that is subject to offset.

Since publication of the Notice, the title of new Chapter 26 was revised and is now “Setoff of Qualifying Debts Owed to Public Agencies.” Rule 701—26.3(421) was revised to refer to the “effective” date of the memorandum of understanding rather than the “execution” date of the memorandum of understanding. Subrule 26.8(3) was revised to allow IDR to determine that it should make a split payment to an obligor on behalf of a public agency if the requirement to make a split payment would cause the public agency significant hardship.

#### *Adoption of Rulemaking*

This rulemaking was adopted by IDR on September 13, 2023.

#### *Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa. There is no cost to the State other than the costs that result from the statute and the need for the IDR to develop a system to operate the setoff program as a result of the statute. Development of the system is well underway. Iowa Code section 421.65 requires that public agencies pay a fee for the use of the setoff system. Details regarding the fee are set forth in these rules. The DAS currently charges a \$7 fee for each offset. As set forth in these rules, a fee of \$7 will be paid by participating public agencies to the IDR for each setoff when the IDR assumes the setoff program. These costs would accrue to participating public agencies. Based on information provided by the DAS, over the three most recent complete fiscal years, the average number of fee collections each year was approximately 109,000. This average is assumed to be typical for any year. At a cost of \$7 per setoff, the overall administrative costs to all participating public agencies combined are thus estimated to be \$763,000 each year. Because both the DAS and the IDR fees are \$7, it is expected that the administrative costs for the new program under the IDR will be substantially similar to the current program under the DAS.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition IDR for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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).

*Effective Date*

This rulemaking will become effective on November 13, 2023.

The following rulemaking action is adopted:

ITEM 1. Adopt the following **new** 701—Chapter 26:

CHAPTER 26

SETOFF OF QUALIFYING DEBTS OWED TO PUBLIC AGENCIES

**701—26.1(421) Minimum qualifying debt amounts accepted.** Before a qualifying debt may be submitted by a public agency to the setoff program, the amount of the qualifying debt must be \$50 or more. The minimum amount is the total of all qualifying debt(s) owed to one public agency by one obligor.

This rule is intended to implement Iowa Code section 421.65.

**701—26.2(421) Minimum setoff amount.** If the balance of a qualifying debt, according to the records of the department, reaches an amount that is less than \$50, the debt will be removed from the setoff program. The minimum amount is the total of all qualifying debt(s) owed to one public agency by one obligor.

This rule is intended to implement Iowa Code section 421.65.

**701—26.3(421) Memorandum of understanding required.** Before a public agency may submit qualifying debt to the department for setoff, that public agency shall enter into a memorandum of understanding with the department. The department will reject any debts submitted by a public agency prior to the effective date of the memorandum of understanding. Prior to entering into a memorandum of understanding with the department, the public agency shall provide any relevant information required by the department.

This rule is intended to implement Iowa Code section 421.65.

**701—26.4(421) Certification to the department.**

**26.4(1)** At the time a qualifying debt is submitted to the department for setoff, the public agency must certify to the department the information required by Iowa Code section 421.65(2) "a," the amount of each obligor's liability to the public agency, the date the debt became qualifying debt, that all liabilities submitted constitute qualifying debt, and any other relevant information required by the department.

**26.4(2)** In the event that there are existing liabilities in the setoff program when the public agency submits new qualifying debt for setoff, the public agency shall certify, as described in subrule 26.4(1), all qualifying debt placed in the setoff program, including qualifying debt that was previously placed in

the setoff program. Qualifying debt that is not certified in the manner required by the department may be removed from the setoff program.

This rule is intended to implement Iowa Code section 421.65.

**701—26.5(421) Notification of change in status of debt.** Each public agency that has submitted a qualifying debt for participation in the setoff program shall timely notify the department of any change in the status of the public agency’s individual debts submitted to the setoff program. This notification shall be made at the time described in the memorandum of understanding. A change in status may come from invalidation of the liability, reduction of the liability, receipt of notice of bankruptcy, or other factors.

This rule is intended to implement Iowa Code section 421.65.

**701—26.6(421) Multiple claims—priority of payment.** In the case of multiple claims to public payments, priority shall be determined pursuant to the priority provisions found in Iowa Code section 421.65(4). Among claims entitled to the same priority pursuant to the priority provisions found in Iowa Code section 421.65(4), priority shall be determined by the date the debt became a qualifying debt, with higher priority assigned to liabilities that first became qualifying debt. If multiple claims entitled to the same priority became qualifying debt on the same day, priority shall be determined by the date and time that the liability was first submitted to the department for setoff, with higher priority assigned to liabilities first submitted.

This rule is intended to implement Iowa Code section 421.65.

**701—26.7(421) Challenges.**

**26.7(1)** Challenges may be submitted to the department via the manner described on the challenge notice furnished to the obligor by the department pursuant to Iowa Code section 421.65(2)“e.” Challenges shall be submitted within 15 days of the date of the notice. Challenges may be initiated only by an obligor.

**26.7(2)** Upon receipt of a challenge, the department will contact the obligor to schedule a review conference.

**26.7(3)** The department shall notify the public agency of the challenge. The public agency shall provide the department with any relevant information that the department requests for the challenge.

**26.7(4)** The public agency shall hold the setoff funds until final disposition of the challenge.

**26.7(5)** During the review conference, the department will review the information. After the review conference, the department will issue a determination based on the preponderance of the available information.

**26.7(6)** Successful challenges. The department shall notify a public agency of a successful challenge. At the direction of the department, the public agency shall refund all or a portion of the setoff amount to the obligor or return all or a portion of the setoff amount to the department. The public agency must adhere to the department’s determination and has no appeal opportunity. In the event of a successful challenge, the department shall retain the fee paid by the public agency for use of the setoff program.

**26.7(7)** Unsuccessful challenges. The department shall notify a public agency of an unsuccessful challenge.

**26.7(8)** In the event of an unsuccessful setoff challenge, an obligor may file an action in district court as described in Iowa Code section 421.65(3)“f.” The defendant shall be the public agency with an additional copy of such petition to be served upon the office of the attorney general. Neither the department nor any department officials or employees shall be named as parties in such a district court action. The public agency shall be responsible for any defense and costs.

**26.7(9)** The date and time of filing a challenge shall be computed in accordance with rule 701—7.4(17A).

This rule is intended to implement Iowa Code section 421.65.

**701—26.8(421) Requests for division of a public payment subject to setoff.**

**26.8(1)** Requests for division of a public payment subject to setoff may be submitted to the department via the manner described on the challenge notice furnished to the obligor by the department pursuant to Iowa Code section 421.65(2)“e.” Requests for division shall be submitted within 15 days of the date of the notice. Requests for division may be made only by an obligor or co-payee of the public payment.

**26.8(2)** The obligor or co-payee requesting the division of a payment must submit to the department their full name and social security number or similar identifying information for an obligor or co-payee who does not have a social security number.

**26.8(3)** The department shall notify a public agency of a successful request for division. At the direction of the department, the public agency shall divide a jointly or commonly owned right to payment and refund the applicable setoff amount in the manner determined by the department. The department may determine that it should refund the setoff amount to the obligor or co-payee on behalf of the public agency if the department determines, in its sole discretion, that the public agency is unable to make the payment or the requirement to make the payment would cause the public agency significant hardship. If the department determines that it should refund the setoff amount, the public agency must return the setoff funds to the department immediately after receiving notice from the department. The public agency must adhere to the department’s determination and has no appeal opportunity. In the event of a successful request for division, the department shall retain the fee paid by the public agency for use of the setoff program.

**26.8(4)** Any jointly or commonly owned right to payment is rebuttably presumed to be owned in equal portions by its joint or common owners.

**26.8(5)** The date and time of filing a request for division shall be computed in accordance with rule 701—7.4(17A).

This rule is intended to implement Iowa Code section 421.65.

**701—26.9(421) Transition period.** Any setoff for which the public payment is made available to the public agency prior to the effective date of Iowa Code section 421.65 shall be governed by the statute, rules, and procedures related to Iowa Code section 8A.504, even if such procedures continue after the effective date of Iowa Code section 421.65.

This rule is intended to implement Iowa Code section 421.65.

**701—26.10(421) Fees.**

**26.10(1)** A fee of \$7 shall be paid by participating public agencies to the department for each setoff. The public agency shall be charged the fee each time a public payment is set off and applied to the public agency’s qualifying debt. The fee shall be taken by the department out of the setoff funds before the department transfers such funds to the public agency.

**26.10(2)** The fee shall not be collected by the public agency via the setoff program unless it is a qualifying debt as defined in Iowa Code section 421.65(1)“d.”

**26.10(3)** The department shall retain the fee regardless of the outcome of any challenge or requests for division of public payments.

**26.10(4) Examples.**

EXAMPLE 1: Setoff fee is not qualified debt: Debtor A owes \$100 of qualified debt to Public Agency Z and \$200 of qualified debt to Public Agency Y. Public Agency Z submits \$100 to the setoff program, and Public Agency Y submits \$207 to the setoff program (\$200 of qualified debt and \$7 for the setoff fee). The department would accept the placement from Public Agency Z and would try to match public payments for setoff. The department would reject the placement from Public Agency Y and not match it with public payments. Additionally, the department would grant any challenges for setoff fees that were rolled up and resubmitted to the setoff program.

EXAMPLE 2: Setoff fee is not refundable: Debtor A successfully challenges a setoff placed by Public Agency Z for \$100. Public Agency Z will return \$100 to Debtor A. The department will not return the fee to Public Agency Z.

EXAMPLE 3: Setoff fee is credited against qualified debt: Debtor A owes \$100 of qualified debt to Public Agency Z. Public Agency Z submits \$100 to the setoff program. The setoff program matches a \$50 public payment with Debtor A. The department will distribute \$43 to Public Agency Z and keep \$7 for the setoff fee, and Debtor A will have a remaining balance of \$50.

EXAMPLE 4: Setoff fee is taken per distribution:

Public Agency Z places \$100 for Debtor A. The setoff program matches one public payment. The department would take one setoff fee when it distributes the funds to Public Agency Z.

Public Agency Z places \$100 for Debtor A. The setoff program matches two public payments from two different sources. The department would take two setoff fees when it distributes the funds to Public Agency Z.

Public Agency Z places \$100 for Debtor A and \$100 for Debtor B. The setoff program matches one public payment for Debtor A and one public payment for Debtor B. The department would take two setoff fees when it distributes the funds to Public Agency Z.

This rule is intended to implement Iowa Code section 421.65.

[Filed 9/15/23, effective 11/13/23]

[Published 10/4/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/4/23.