

**421.65 Setoff procedures.**

1. *Definitions.* As used in [this section](#), unless the context otherwise requires:

a. “*Obligor*” means a person, not including a public agency, who has been determined to owe a qualifying debt.

b. “*Public agency*” means a board, commission, department, including the department of revenue, or other administrative office or unit of the state of Iowa or any other state entity reported in the Iowa annual comprehensive financial report, or a political subdivision of the state, or an office or unit of a political subdivision. “*Public agency*” does include the clerk of the district court as it relates to the collection of a qualifying debt. “*Public agency*” does not include the general assembly or office of the governor.

c. “*Public payment*” means any claim a public agency owes to an obligor.

d. “*Qualifying debt*” means any of the following:

(1) Any debt, which is assigned to the department of health and human services, or which is owed to the department of health and human services for unpaid premiums under [section 249A.3, subsection 2](#), paragraph “a”, subparagraph (1), or which child support services is otherwise attempting to collect, or which foster care services of the department of health and human services is attempting to collect on behalf of a child receiving foster care provided by the department of health and human services.

(2) Any debt which is in the form of a liquidated sum due, owing, and payable to the clerk of the district court.

(3) Any liquidated sum certain, owing, and payable to a public agency, with respect to which the public agency has provided the obligor an opportunity to protest or challenge the sum in a manner in compliance with applicable law and due process, and which has been determined as owing through the challenge or protest, or for which the time period provided by the public agency to challenge or protest has expired.

2. *Setoff procedure.* The department shall establish and maintain a procedure to set off against each public payment any qualifying debt the obligor owes to a public agency. The procedure shall only apply when the department determines, in its discretion, it is feasible and complies with applicable law. The procedure shall meet the following conditions:

a. Each participating public agency shall obtain and forward to the department the full name and social security number of each obligor, or similar identifying information for an obligor who is not a natural person, and any other information concerning the person the department shall require. The department shall cooperate with public agencies in the exchange of information relevant to identifying public payments and qualifying debt that may be subject to setoff. However, the department shall provide only relevant information required by a public agency. The information shall be held in confidence and used for the purpose of setoff only. [Section 422.72, subsection 1](#), does not apply to this paragraph.

b. Each participating public agency shall, at least annually, certify to the department the information required by paragraph “a”, the amount of each obligor’s liability to and the amount of each claim on the public agency, and that all liabilities submitted constitute qualifying debt. The department may, by rule, require more frequent certifications or certifications of additional information about the qualifying debt or the obligor. The department may, in its discretion, review the accuracy of any certification made pursuant to this paragraph.

c. The department may, by rule, establish a minimum amount of liabilities and claims that may be setoff.

d. Upon submission of an allegation of liability by a public agency, the department shall notify the public agency whether the obligor is entitled to a public payment, and, if so entitled, shall notify the public agency of the amount of the obligor’s entitlement and last address known to the department. [Section 422.72, subsection 1](#), does not apply to this paragraph.

e. Upon notice of entitlement to a public payment, the department shall send written notification to the obligor and any known co-payee of the public payment. The notification shall contain the public agency’s assertion of its rights to all or a portion of the payment and of the public agency’s entitlement to recover the liability through the setoff procedure, the basis of the assertion, the opportunity to request that a jointly or commonly owned right to

payment be divided among owners, and the obligor's opportunity to give written notice of intent to contest the setoff procedure or that the debt is a qualifying debt.

f. Upon the request of an obligor or a co-payee of the public payment received by the department within the time period provided in the written notification, and upon receipt of the full name and social security number of the co-payee, or similar identifying information of a co-payee who is not a natural person, the department shall notify the public agency that the public agency shall divide a jointly or commonly owned right to payment in the manner determined by the department. Any jointly or commonly owned right to payment is rebuttably presumed to be owned in equal portions by its joint or common owners.

g. The department shall, after the department has sent the notice to the obligor provided in paragraph "e", set off the amount last certified by the public agency as owed to the agency against the public payment. The department shall refund any balance of the payment to the obligor. The department shall periodically transfer amounts set off to the public agencies entitled to them, reduced by any fees charged for setoff. If an obligor gives written notice of intent to contest a setoff, the public agency shall hold a refund or rebate until final disposition of the challenge. Upon completion of the setoff, the department shall provide written notice of the completed setoff to the obligor and any co-payees of the payment subject to setoff.

h. The department's existing right to credit against tax due or to become due under [section 422.73](#) is not to be impaired by a right granted to or a duty imposed upon the department by [this section](#). [This section](#) is not intended to impose upon the department any additional requirement of notice, hearing, or appeal concerning the right to credit against tax due under [section 422.73](#).

i. If the alleged liability is owing and payable to the clerk of the district court and setoff as provided in [this section](#) is sought, all of the following shall apply:

(1) The judicial branch shall prescribe procedures to permit an obligor to contest the amount of the obligor's liability to the clerk of the district court.

(2) The department shall, except for the procedures described in subparagraph (1), provide for any other applicable procedures concerning setoff as provided in [this subsection](#).

(3) Upon completion of the setoff, the department shall file, at least monthly, with the clerk of the district court a notice of satisfaction of each obligation to the full extent of all moneys collected in satisfaction of the obligation. The clerk shall record the notice and enter a satisfaction for the amounts collected. A separate written notice is not required.

3. *Challenges to a setoff.*

a. Challenges under [this section](#) may be initiated only by an obligor. The department's review of a challenge to a setoff is not subject to [chapter 17A](#).

b. The obligor challenging the setoff shall submit a written challenge in the manner provided in the notice described in [subsection 2](#), paragraph "e", within fifteen days of the date of the notice.

c. The department, upon receipt of a written challenge, shall provide written notice of the challenge to the public agency. The department shall review the information submitted by the public agency prior to the setoff and shall obtain additional information from the public agency if necessary to establish that the liability is a qualified debt, or to verify the identity of the obligor or the amount owed. The department shall set a time to occur within ten days of receipt of the challenge to review the relevant facts of the challenge with the obligor. An alternative time may be set at the request of the obligor. If the obligor does not participate in the review at the scheduled time and an alternative time is not requested and approved, the review shall take place without the obligor being present. Information in favor of the obligor and the public agency shall be considered in the review. Only a determination that the debt is not a qualified debt or a mistake of fact, including a mistake in the identity of the obligor, or a mistake in the amount owed, shall be considered as a reason to deny or modify the setoff.

d. If the department determines that a mistake of fact has occurred or that the liability submitted does not constitute a qualified debt, the public agency shall promptly return the setoff funds to the original payee or payees unless there is another qualifying debt available for setoff.

e. If the department finds no mistake of fact and that the liability is a qualified debt, the

department shall provide a notice of that effect to the obligor and the public agency, and the public agency shall retain the funds subject to setoff.

f. The obligor shall have the right to file an action for wrongful setoff in district court within thirty days of the date of the notice to the obligor provided in paragraph “e”, either in the county where the obligor is located or the county where the main office of the public agency is located. The defendant in such action shall be the public agency, with an additional copy of such petition to be served upon the office of the attorney general. Actions under [this section](#) are in equity and not actions at law and are an obligor’s exclusive remedy to challenge any action arising from or related to [this section](#).

g. Recovery under [this subsection](#) is limited to restitution from the public agency of the amount that has been wrongfully setoff or obtained by the public agency.

h. A challenge under [this subsection](#) shall not be used to extend, toll, or reopen the statute of limitations to challenge or contest a qualified debt. Only mistakes of fact, failure of the public agency to comply with the provisions of [this section](#), or a liability that is not a qualified debt, shall constitute grounds for challenge under [this subsection](#).

4. *Priority.* In the case of multiple claims to payments filed under [this section](#), priority shall be given to claims filed by child support services or foster care services, next priority shall be given to claims filed by the clerk of the district court, next priority shall be given to claims filed by the department of inspections, appeals, and licensing relating to investigations by the department, next priority shall be given to claims that will be deposited into the state general fund, and last priority shall be given to claims filed by other public agencies. In the case of multiple claims in which the priority is not otherwise provided by [this subsection](#), priority shall be determined in accordance with rules to be established by the department.

5. *Reciprocal agreements.* The director shall have the authority to enter into reciprocal agreements with departments or agencies of other states that have established a setoff procedure.

6. *Fees.* The department may establish fees for use of the setoff system to be paid by participating public agencies to the department.

[2020 Acts, ch 1064, §16, 28; 2020 Acts, ch 1118, §73, 74; 2022 Acts, ch 1045, §7, 8; 2023 Acts, ch 19, §1353, 1358, 1359, 2042, 2044; 2023 Acts, ch 64, §104, 111; 2023 Acts, ch 115, §43, 44](#)

Referred to in §8A.323, 96.11, 99D.2, 99D.28, 99F.1, 99F.19, 99G.38, 217.34, 234.8, 256.197, 321.11A, 321.31, 321.40, 422.12K, 422.20, 422.72, 456A.16, 602.8102(58A), 602.8107, 642.2

2020 enactment of section is effective on the date of rules adopted by the department of revenue to implement 2020 Acts, ch 1064, see 2020 Acts, ch 1064, §28; 2020 Acts, ch 1118, §73, 74; the Code editor received notice that the system designed to implement the setoff procedures established in 2020 Acts, ch 1064, and the accompanying rules, will be operational on November 13, 2023; rules governing transition, see 2020 Acts, ch 1118, §72

NEW section