

CHAPTER 37
STUDENT LOAN DEBT COLLECTION

283—37.1(261) General purpose. In collection of defaulted student loans, the commission may initiate the license sanction process described in Iowa Code sections 261.121 to 261.127 to suspend, revoke or deny issuance or renewal of a variety of licenses held or applied for by any person who has defaulted on an obligation owed to or collected by the commission. Licenses subject to this sanction are defined in Iowa Code section 252J.1(3). In addition to the procedures set forth in Iowa Code sections 261.121 to 261.127, this chapter shall apply.

The commission may apply administrative wage garnishment and state tax offset procedures established under Iowa Code chapter 261, specifically including private partnership loans authorized for collection under Iowa Code section 261.38.

283—37.2(261) Definitions.

37.2(1) A “debtor” is a person who has defaulted on any obligation owed to or collected by the commission.

37.2(2) A debtor is in “default” if:

a. The debtor is obligated to pay under a federal student loan guaranteed by the commission pursuant to the provisions of Iowa Code sections 261.35 to 261.43, and the debtor’s defaulted loan has been purchased by the commission from an eligible lender;

b. The debtor is obligated to pay under a partnership student loan issued by Iowa Student Loan Liquidity Corporation (ISLLC), and the commission acquires the debtor’s loan as a default pursuant to Iowa Code section 261.38 due to the debtor’s failure to make payments to ISLLC;

c. The debtor becomes obligated to repay the commission under any forgivable loan program administered by the commission, and fails to make an agreed payment within 20 days of the agreed due date; or

d. The debtor enters into a written repayment agreement with the commission and fails to make an agreed payment within 20 days of the due date stated in the repayment agreement.

37.2(3) The phrase “defaulted obligation owed” means the total amount of the debtor’s obligation, including principal and unpaid accrued interest, and may include collection costs and other allowable fees.

283—37.3(261) License sanction program.

37.3(1) *Service of notice.* The notice described in Iowa Code section 261.121(2) shall be served by restricted certified mail, return receipt requested, addressed to the debtor at the debtor’s last-known residence or principal place of business. If the debtor signs for the notice, the return post office receipt shall be proof of service. If the debtor fails to sign for the notice, the commission may personally serve the debtor in accordance with Iowa Rules of Civil Procedure.

37.3(2) *Exclusions from license sanction process.* The commission may determine that the issuance of a certificate of noncompliance is not appropriate pursuant to Iowa Code section 261.122(5) “c,” or that a certificate of noncompliance should be withdrawn pursuant to Iowa Code section 261.124(5) “d,” during periods in which any of the following conditions exist:

a. Written verification that the debtor has been deemed eligible for and is receiving supplemental security income (SSI), similar state- or federal-funded assistance, or county assistance, such as general relief or general assistance.

b. Verified economic hardship which the commission determines from the debtor’s sworn financial statement and other relevant evidence would likely qualify for hardship discharge of student loans under the Bankruptcy Code.

c. A verified temporary illness or disability of the debtor or of another household member which prevents the debtor from working or requires the presence of the debtor in the home as a caretaker.

d. Verified incarceration.

e. Verified participation on an in-treatment basis in a chemical dependency program licensed by the department of public health or a similar program.

37.3(3) *Written agreement.* A debtor may, at any time, with or without a requested conference, enter into a satisfactory written repayment agreement to either avoid the issuance of a certificate of noncompliance or to secure a withdrawal of an issued certificate of noncompliance. In determining whether the terms of a proposed repayment agreement are satisfactory, the commission shall take into account the debtor's ability to pay. Repayment terms shall be deemed satisfactory if the debtor agrees to pay at least the maximum amount which would be subject to an administrative wage withholding procedure, or the equivalent for a self-employed person. In addition, the commission may take into consideration the recent existence of any of the conditions outlined in subrule 37.3(2), if verified, and if the debtor can demonstrate that insufficient time has passed for the debtor to regain an ability to repay obligations owed to the commission.

37.3(4) *Right to court hearing.* The debtor may request a hearing before the district court in the debtor's county of residence. The scope of the court's review is limited to whether the debt is in default, whether the amount of the default is misstated, or whether a mistake has been made in the identity of the debtor.

283—37.4(261) Administrative wage garnishment procedures. The commission shall apply administrative wage garnishment procedures established under the federal Higher Education Act of 1965, as amended and codified in 20 U.S.C. § 1071 et seq., in the collection of all defaulted student loans owed to the commission.

37.4(1) *Notice prior to wage withholding.* A debtor shall receive a "notice prior to wage withholding" from the commission inviting the debtor to enter into voluntary monthly payments with the commission within 30 days after receipt of the notice.

37.4(2) *Right to hearing.* A debtor is entitled to a hearing before an administrative law judge if a petition is filed requesting a hearing on or before the fifteenth day following mailing of the "notice prior to wage withholding."

37.4(3) *Repayment agreement.* A debtor who negotiates a monthly payment with the commission shall receive a "repayment agreement in lieu of wage withholding" reflecting the payment amount and payment date agreed upon (20-day grace period) for the debtor's signature and return to the commission.

37.4(4) *Debtor's failure to arrange timely voluntary payments.*

a. The employer of a debtor who is financially capable of paying, but who fails to make voluntary payments after receiving a "notice prior to wage withholding" from the commission, or who signs a "repayment agreement in lieu of wage withholding" but subsequently fails to make regular monthly payments, shall receive an "order of withholding from earnings" from the commission, directing the debtor's employer to deduct and pay to the commission from the debtor's wages an amount that does not exceed the amount authorized by federal legislation, unless the debtor provides the commission with written consent to deduct a greater amount. A duplicate copy of the order shall be provided to the debtor by the employer.

b. The employer also shall receive from the commission an "employer acknowledgment of wage withholding" which should be completed and returned to the commission within ten business days.

c. The employer shall notify the commission if the debtor changes employment. The employer shall provide the debtor's date of termination, last-known address, and current employer and telephone number (if known).

d. The commission will send the employer a "release of order of withholding from earnings" when the debtor's loan being collected by the commission is paid in full.

283—37.5(261) Offset against state income tax refund or rebate.

37.5(1) *General.* A claim against a defaulted borrower's state income tax refund or rebate will be made to receive payment against any defaulted student loan owed to the commission.

37.5(2) *Certification.* The commission shall submit to the department of revenue a list of defaulted borrowers to certify for offset.

37.5(3) Borrower notification. The commission shall mail a preoffset notice to a defaulted borrower when:

a. The commission is notified by the department of revenue that the defaulted borrower is entitled to a state income tax refund or rebate; and

b. The commission makes claim to the defaulted borrower's state income tax refund or rebate.

The preoffset notice will inform the defaulted borrower of the amount the commission intends to claim and apply to the outstanding defaulted student loan.

37.5(4) Challenge of offset. When the defaulted borrower contests a claim, a written request shall be submitted to the commission within 15 calendar days after the preoffset notice is mailed. When the request is received within the 15-day limit, a hearing shall be granted.

37.5(5) Spousal share. The spouse's proportionate share of a joint return filed with a defaulted borrower, 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 the spouse's proportionate share shall be in writing and received by the commission within 15 calendar days after the mailing date of the preoffset notice.

37.5(6) Claim of offset. The commission may make claim to a defaulted borrower's state income tax refund or rebate when the defaulted borrower has not made a voluntary payment which has been posted to the borrower's account during the 120 days preceding the day an offset tape match is run. A voluntary payment toward a defaulted loan is defined as making an agreed-upon monthly payment through a means other than by offset or garnishment.

37.5(7) Appeals.

a. General. Borrowers with defaulted student loans may appeal commission decisions to offset their state tax refunds or rebates pursuant to the procedures provided in this rule.

b. Procedures. If a defaulted borrower contests a claim, written appeal shall be presented to the commission's state offset coordinator, setting forth reasons for disagreement. The evidence must be presented within 15 calendar days after notification of the proposed offset, and the appellant may request a hearing.

(1) If no hearing is requested, the state offset coordinator will consider all evidence provided and will notify the appellant within 30 calendar days whether the decision is retracted, modified, or upheld. The appellant will be advised of the appellant's right to carry the appeal to an administrative law judge.

(2) If a hearing is requested, the state offset coordinator will set a date for the hearing no later than 30 calendar days from the date that the request was received.

(3) An administrative law judge will preside at the hearing and will consider any written material presented before the hearing as well as other evidence presented during the course of the hearing.

(4) After considering all evidence presented, the administrative law judge will notify the appellant in writing as to the decision on the appeal, advising the appellant of the appellant's right to carry the appeal to a full meeting of the commission or to its appointed appeals panel.

c. Additional provisions. Except as specifically provided in this rule, administrative hearings will be governed by 283—Chapter 4.

These rules are intended to implement Iowa Code sections 261.37, 261.38 and 261.121 to 261.127.

[Filed 8/30/02, Notice 5/29/02—published 9/18/02, effective 10/23/02]

[Filed 9/24/04, Notice 8/18/04—published 10/13/04, effective 11/17/04]

[Filed emergency 6/16/06—published 7/5/06, effective 6/16/06]

[Filed 9/25/06, Notice 7/5/06—published 10/25/06, effective 11/29/06]