

CHAPTER 40
OFFSET OF DEBTS OWED STATE AGENCIES

11—40.1(8A) Definitions. For the purposes of this chapter, the following definitions shall govern:

“*Collection entity*” means the department of administrative services and any other state agency that maintains a separate accounting system and elects to establish a debt collection setoff procedure for collection of debts owed to the state or its agencies.

“*Debtor*” means any person owing a debt to the state of Iowa or any state agency.

“*Department*” means the Iowa department of administrative services.

“*Director*” means the director of the Iowa department of administrative services or the director’s designee.

“*Liability*” or “*debt*” means any liquidated sum due and owing to the state of Iowa or any state agency which has accrued through contract, subrogation, tort, operation of law, or any legal theory regardless of whether there is an outstanding judgment for that sum. Before setoff, the amount of a person’s liability to a state agency shall be at least \$50.

“*Offset*” means to set off or compensate a state agency which has a legal claim against a person or entity where there exists a person’s valid claim on a state agency that is in the form of a liquidated sum due, owing and payable. Before setoff, the amount of a person’s claim on a state agency shall be at least \$50.

“*Person*” or “*entity*” means an individual, corporation, business trust, estate, trust, partnership or association, or any other legal entity, but does not include a state agency.

“*State agency*” or “*agency*” means a unit of state government, which is an authority, board, commission, committee, council, department, examining board, or independent agency as defined in Iowa Code section 7E.4, including but not limited to each principal central department enumerated in Iowa Code Supplement section 7E.5. However, “state agency” or “agency” does not mean any of the following:

1. The office of the governor or the office of an elective constitutional or statutory officer.
2. The general assembly, or any office or unit under its administrative authority.
3. The judicial branch, as provided in Iowa Code section 602.1102.
4. A political subdivision of the state or its offices or units, including but not limited to a county, city, or community college.

11—40.2(8A) Scope and purpose.

40.2(1) The purpose of these rules is to establish a procedure by which state agencies can cooperate in identifying debtors who owe liabilities to those state agencies and to establish a procedure for offsetting debtors’ claims against state agencies with liabilities or debts which those debtors owe the state agencies.

40.2(2) Agencies may collect debts under the provisions of Iowa Code Supplement section 8A.504 through the daily processing offset system. Agencies utilizing the income tax refund offset system under the provisions of Iowa Code Supplement section 8A.504, which allows for the recovery of child support, foster care, and public assistance payments; the recovery of guaranteed student or parental loans; or recovery of any liquidated sum due, owing, and payable to the clerk of the district court may also utilize this offset system to collect debts due. Any state agency exempt from the provisions of Iowa Code Supplement section 8A.513 and that is making payments shall be subject to these rules.

40.2(3) Inclusions in and exclusions from setoff. The offset system may be used to collect any debt described in rule 40.1(8A). However, some claims against the state or state agencies on behalf of certain persons are made from funds exempt from collection and are thus unavailable for offset. A consolidated listing of payment sources unavailable for offset is available from the department’s state accounting enterprise.

11—40.3(8A) Participation guidelines. Those state agencies qualified under rule 40.2(8A) to use this chapter’s offset provisions should utilize these provisions when it is cost-effective to do so. Final determination regarding whether or not it will be cost-effective to offset any debt owed will be at the

discretion of the director. Generally, it will not be cost-effective to offset a debt if the total anticipated collection cost will exceed the amount of the claim that could reasonably be expected to be realized as a result of the collection costs. The cost-effectiveness criteria that the director applies will not be the same for every agency. Circumstances differ among agencies. The following nonexclusive examples are intended to provide guidance in determining cost-effectiveness. These examples represent instances in which it might not be cost-effective to offset debts.

EXAMPLE A: A debtor has ceased operations for an extended period of time.

EXAMPLE B: A business has changed its form (e.g., from a sole proprietorship to a partnership or corporation).

EXAMPLE C: A debt has been placed with a private collection firm and it appears likely that the firm will collect the debt.

EXAMPLE D: The age or health of a debtor is such that it is unlikely that the debtor will be receiving any payments from the state or a state agency.

EXAMPLE E: The debtor is a foreign student who has left the country.

EXAMPLE F: The debtor is a person in bankruptcy.

EXAMPLE G: By statute or federal regulations certain agencies cannot write off debts. If the debt of one of these agencies has been owed for a substantial amount of time, it may be reasonable to assume that referral would not be cost-effective (e.g., the debtor has changed its name or address or for some other reason would be impossible to locate).

11—40.4(8A) Duties of the agency. An agency seeking offset shall have the following duties regarding the department and debtors.

40.4(1) Notification to the department. An agency must provide a list of debtors to the department of administrative services. This list must be in a format and type prescribed by the department and include only information relevant to the identification of the person owing.

The director shall not process a claim under the provisions of Iowa Code Supplement section 8A.504 until notification is received from the state agency that the debt has been established through notice and opportunity to be heard. The agency shall provide along with each liability file a written statement to the director declaring that the debt has occurred.

40.4(2) Change in status of debt. A state agency that has provided a liability file to the department of administrative services must notify the department immediately of any change in the status of a debt to the state. This notification shall be made no later than 30 calendar days from the occurrence of the change. A change in status may come from payment of the debt, invalidation of the liability, alternate payment arrangements with the debtor, bankruptcy, or other factors.

40.4(3) Semiannual certification of file. Each agency that maintains a liability file shall be required to certify the file to the department semiannually. This certification shall be made in a manner prescribed by the director. Debtors not certified in the manner prescribed will be removed from the liability file.

40.4(4) Notification to debtor. An agency shall send notification to the debtor within ten calendar days from the date the agency was notified by the department of a potential offset. This notification shall include:

- a. The agency's right to the payment in question.
- b. The agency's right to recover the payment through the offset procedure.
- c. The basis of the agency's case in regard to the debt.
- d. The right of the debtor to request the split of the payment between parties when the payment in question is jointly owned or otherwise owned by two or more persons.
- e. The debtor's right to appeal the offset and the procedure to follow in that appeal.
- f. The name of the agency or division and a telephone number for the person owing to contact in the case of questions.

The department may require that a copy of this notice be sent to the department. Once the offset has been completed, the agency shall notify the debtor of the action taken along with the balance, if any, still due to the agency. It is the responsibility of the agency to make payment to the person owing the state

any payment offset by the department to which the state is not entitled, in accordance with established procedures.

11—40.5(8A) Duties of the department—performance of the offset. The department will develop procedures for administering each offset program request on an individual basis. Procedures will vary in order to achieve the greatest efficiency in administering each offset.

Before issuing an authorized payment to a person or entity, the department will match the payment against a debt listing provided by the state agencies participating in the offset program. The department will notify the state agency of the person's or entity's name, address, identifying number, and amount of the entitled payment.

The department shall hold the payment which offsets the liquidated sum due and payable for a period not to exceed 45 days while awaiting notification from the agency as to the amount required to satisfy the person's or entity's debt to the state. If notification is not made to the department by the state agency within 45 days, the amount of the payment shall be released to the person or entity.

The department will make the offset only after the state agency has notified the debtor as prescribed in subrule 40.4(4). The department shall then refund any balance amount due from the state to the person or entity.

11—40.6(8A) Multiple claims—priority of payment. In the case of multiple claims to payments filed under Iowa Code Supplement section 8A.504, after satisfaction of the provisions of Iowa Code section 422.73, priority shall be given to claims filed by the child support recovery unit or the foster care recovery unit. Next priority shall be given to claims filed by the college student aid commission. Next priority shall be given to claims filed by the office of investigations. Next priority shall be given to claims filed by a clerk of the district court. Last priority shall be given to claims filed under Iowa Code Supplement section 8A.504.

The order of priority for offset against multiple claims by more than one state agency shall be determined by the date the liability was listed with the department. Subsequent entries of claims by state agencies shall be offset in order of the date the listing was made with the department.

11—40.7(8A) Payments of offset amounts. Payments to the agency requesting the offset shall be made by the department on the twenty-fifth day of each month.

11—40.8(8A) Reimbursement for offsetting liabilities. Costs incurred by the department in administering the offset program will be charged to the state department requesting offset. The costs will be deducted from the gross proceeds collected through offset and may include direct expenses such as salaries, supplies, equipment, and system modification and development costs; or indirect costs such as space, security, or utility costs. If the above-described procedure is prohibited by paramount state or federal law, the director shall allow reimbursement in a manner which conforms to the paramount law.

11—40.9(8A) Confidentiality of information. Information shared between state agencies shall be deemed confidential and shall be disclosed only to the extent that sufficient information is given that is relevant to the identification of persons liable to or claimants of state agencies. The information is to be used for the purpose of offset only.

JUDICIAL OFFSET PROCEDURES

11—40.10(8A) Incorporation by reference. In providing judicial offset procedures, the department incorporates by reference the following rules and subrules to be applied to the substance and procedure under this heading:

1. 11—40.2(8A) Scope and purpose.
2. 11—40.3(8A) Participation guidelines.
3. 11—subrule 40.4(1) Duties of the agency—notification to the department.

4. 11—subrule 40.4(2) Duties of the agency—change in status of debt.
5. 11—subrule 40.4(3) Duties of the agency—semiannual certification of file.
6. 11—40.5(8A) Duties of the department—performance of the offset.
7. 11—40.7(8A) Payments of offset amounts.
8. 11—40.8(8A) Reimbursement for offsetting liabilities.
9. 11—40.9(8A) Confidentiality of information.

11—40.11(8A) Definitions. The definitions set forth in 11—40.1(8A) are incorporated by reference and are applicable to rules 11—40.10(8A) to 40.16(8A) except the definitions of “‘liability’ or ‘debt’” and “‘offset’” which shall be defined for the purpose of these rules as follows:

“*Liability*” or “*debt*” means any liquidated sum due and owing to any clerk of the Iowa district court which has accrued through the following means including, but not limited to, fines, judgments, court costs, or any legal theory regardless of whether there is an outstanding judgment for that sum. Before setoff, the amount of a person’s original liability to a state agency must be at least \$50, unless otherwise provided as based on the discretion of the department.

“*Offset*” means to set off or compensate any clerk of the Iowa district court which has a legal claim against a person or entity where there exists a person’s valid claim on a state agency that is in the form of a liquidated sum due, owing and payable. Before setoff, the amount of a person’s claim on a state agency shall be at least the minimum amount as indicated in the definition of “‘liability’ or ‘debt’” as set forth in this rule. If the source of a person’s claim is a tax refund or tax rebate, the minimum will be \$25.

11—40.12(8A) Applicability and procedure. For liabilities accrued and owing to any and all clerks of the Iowa district court, the department shall issue a written notice informing any person having a valid claim against a state agency that an offset will be performed against the claim. The department will perform the offsets for such clerks as provided in Iowa Code Supplement section 8A.504, and the department will send a written notice to the person liable for such a liability prior to and after the offset has been performed. Subsequently, the department will also provide administrative procedures and available remedies for contesting the validity of such an offset. The Iowa district court will provide the procedures and remedies for challenging the underlying liability at issue. This rule applies only to liabilities and debts owed to the clerks of the Iowa district court.

11—40.13(8A) Notice of offset. The department shall send written notification of the offset to the person that has a valid claim against any state agency that is a liquidated sum, due and payable and in which such a person is liable for a liability owed to any and all clerks of the Iowa district court within ten calendar days from the date the department is notified by the judicial branch of the uncollected liability. This notification must include:

1. The judicial branch’s right to the payment in question;
2. The judicial branch’s right to recover the payment through the offset procedure;
3. The basis of the judicial branch’s case in regard to the debt;
4. The right of the person who owes the liability to request, within 15 days of the mailing of the notice, that the payment between parties be split when the payment in question is jointly owned or otherwise owned by two or more persons;
5. The right of the person liable to contest the right of offset and the validity of such offset with the department by mailing, to the department’s legal counsel, a protest within 15 days of the mailing of such notice, and that the procedure to follow in that appeal will conform, according to the context, to the rules of the department involving protests and contested case proceedings in 11—Chapter 7.
6. The name of the agency or division and the telephone number for the person liable for the liability to contact concerning questions regarding the validity of the offset and the procedures for the offset;
7. That the person liable for the liability has the opportunity to contest the validity and amount of the liability by mailing, within 15 days of mailing of the notice of offset, a written application to contest the liability to the appropriate clerk of the Iowa district court; and

8. The name of the clerk of the district court and the telephone number for the person liable for the liability to contact concerning questions relating to the validity of the underlying liability and regarding the validity of the amount owed.

11—40.14(8A) Procedure for contesting. A person liable for a liability under this heading may contest the validity or amount of the underlying liability by mailing written notification of the person's intent to contest such a liability to the appropriate clerk of the Iowa district court. The Iowa district court will provide the person liable with the procedure and remedies for contesting the validity and amount of the underlying liability.

A person liable for a liability payable to the judicial branch that has been deemed qualified for offset may contest the validity of the offset or the right of the offset by mailing written notification to the Department of Administrative Services, Legal Counsel, Hoover State Office Building, Third Floor, Des Moines, Iowa 50319. The department will provide the procedure and remedies for contesting the validity of the offset and right of offset pursuant to the applicable contested case rules set forth in 11—Chapter 7.

If a person liable to the judicial department gives written notice of intent to contest either the validity or the amount of the liability or the validity of the offset or right of offset, the judicial department and the department will hold a payment in abeyance until the final disposition of the contested liability or offset.

11—40.15(8A) Postoffset notification and procedure. Following the offset, the department will notify the person liable that the offset was performed. It is the responsibility of the department to make payment to the person liable to the Iowa district court clerk of any amount to which the Iowa district court clerk is not entitled to receive under the offset, in accordance with established procedures.

11—40.16(8A) Report of satisfaction of obligations. At least monthly, the department will file 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. No additional or separate written notice from the department regarding the performed offsets is required.

These rules are intended to implement Iowa Code Supplement sections 8A.504, 422.16, 422.20, 422.72, and 422.73.

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