

CHAPTER 40
OFFSET OF DEBTS OWED STATE AGENCIES

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

“*Claim*” means a liquidated sum due, owing, and payable to a debtor from a public agency.

“*Collection entity*” means the department of administrative services and any other public agency that maintains a separate accounting system, elects to establish a debt collection setoff procedure for collection of debts owed to the public agency, and participates in the department of administrative services’ offset program.

“*Debtor*” means any person owing a debt to a public 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.

“*Judicial branch*” means the same as that set forth in Iowa Code section 602.1102.

“*Liability*” or “*debt*” means a “qualifying debt” as defined in Iowa Code section 8A.504(1) “c” or any liquidated sum due, owing, and payable by a debtor to a public agency. Such liquidated sum may be accrued through contract, subrogation, tort, operation of law, or any legal theory regardless of whether there is an outstanding judgment for that sum.

“*Liability owed to a court*” or “*debt owed to a court*” means any liquidated sum due, owing, and payable to any clerk of the Iowa district court including, but not limited to, “court debt” as defined in Iowa Code section 602.8107(1) which remains unpaid 30 or more days after the date the court debt was due.

“*Liquidated*” means that the amount of the claim or debt is definite, determined, and fixed by agreement of the parties, by operation of law, or through court or administrative proceedings.

“*Offset*” means to set off liabilities owed by persons to public agencies against claims owed to persons by public agencies.

“*Offset program*” means the department program for debt collection under the provisions of Iowa Code section 8A.504 through the daily processing and income tax refund programs.

“*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.

“*Public agency*” or “*agency*” means a board, commission, department, including the department of administrative services, 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, or a clerk of district court. However, “public agency” or “agency” does not mean any of the following:

1. The office of the governor;
2. The general assembly, or any office or unit under its administrative authority; or
3. The judicial branch, as provided in Iowa Code section 602.1102 other than the clerk of the district court. Offset procedures uniquely applicable to debts owed to clerks of the district court are set forth in rules 11—40.10(8A) to 11—40.15(8A).

[ARC 1842C, IAB 1/21/15, effective 2/25/15; ARC 6865C, IAB 2/8/23, effective 3/15/23]

11—40.2(8A) Scope and purpose.

40.2(1) Purpose. The purpose of these rules is to establish a procedure by which public agencies can participate in the department’s offset program by identifying debtors who owe liabilities to those public agencies and to establish a procedure for offsetting those liabilities against claims owed to debtors by public agencies.

40.2(2) Collection. Agencies may collect debts under the provisions of Iowa Code section 8A.504 through the daily processing and income tax refund offset programs.

40.2(3) Inclusions in and exclusions from setoff. The offset system may be used to collect any debt described in Iowa Code section 8A.504 as long as the conditions of rule 11—40.3(8A) are satisfied. However, some claims against public agencies on behalf of certain debtors 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.

[ARC 1842C, IAB 1/21/15, effective 2/25/15]

11—40.3(8A) Participation guidelines.

40.3(1) Participation—cost effective. Those public agencies qualified under rule 11—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. 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 organizational structure (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 a public agency.

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

EXAMPLE F: The debtor is in bankruptcy.

EXAMPLE G: Pursuant to 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).

40.3(2) Minimal debt amounts accepted. Before a debt may be placed in the offset program, the amount of a debtor's original liability must be at least \$50, except when the source of the claim is a tax refund or tax rebate, in which case the debt may be, at a minimum, \$25.

40.3(3) Debts legally enforceable. Public agencies may only place debts in the offset program if the debts are legally enforceable and all of the following conditions are satisfied:

a. The debt shall have been established (liquidated) by one of the following means:

(1) Mutual written agreement between the debtor and the public agency;

(2) Alternative procedures authorized by applicable state or federal law with respect to a "qualifying debt" as defined in Iowa Code section 8A.504(1); or

(3) Court proceeding or administrative process which included notice to the debtor and an opportunity for the debtor to contest the amount of the debt through a contested case procedure under Iowa Code chapter 17A or a substantially equivalent process.

b. The debt shall have been reduced to a final judgment or final agency determination that is no longer subject to appeal, certiorari, or judicial review or shall have been affirmed through appeal, certiorari, or judicial review.

c. The debt shall be in an amount certain that is past due and not subject to any legal prohibition to collection.

40.3(4) Debtor's opportunity to challenge placement of debt in offset program. Unless otherwise provided by applicable state or federal law for a "qualifying debt" as defined in Iowa Code section 8A.504(1) "c," debts shall not be placed in the offset program until after the public agency has:

a. Made a good-faith effort to collect the debt through other means;

b. Provided the debtor advance notice that the debt will be placed in the offset program if not paid when due; and

c. Provided a formal or informal opportunity for the debtor to challenge placement of the debt in the offset program. Such opportunity may be separate from or combined with the debtor's opportunity to contest the amount of the debt. The public agency has the burden to determine whether due process will

be satisfied under the circumstances by the form of the opportunity provided for the debtor to challenge placement of the debt in the offset program.

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11—40.4(8A) Duties of the agency. Public agencies that seek to place debts in the offset program shall have the following duties regarding the department and debtors.

40.4(1) Notification to the department.

a. A public agency seeking to place debts in the offset program must provide a list of debtors to the department. This list must be in a format and type prescribed by the department and include only information relevant to the identification of the debtors owing debts to the public agency.

b. The director shall not process a claim under the provisions of Iowa Code section 8A.504 until notification is received from the public agency that the debt satisfies the requirements of rule 11—40.3(8A) or, in the case of a debt owed to a district court clerk, is a “court debt” as defined in Iowa Code section 602.8107(1) which has been due for 30 or more days. The agency shall provide, along with each liability file, a written statement to the director declaring that the provisions of this paragraph are satisfied.

40.4(2) Notification of change in status of debt. Each public agency that has chosen to submit a debt for participation in the offset program must notify the department immediately of any change in the status of the public agency’s individual debts submitted under the offset program. 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 public agency that has provided a liability file to the department shall be required to recertify the file to the department semiannually. This recertification shall be made in a manner prescribed by the director. Debtors not recertified in the manner prescribed will be removed from the liability file.

40.4(4) Notification to debtor. Each public agency shall send notification to the debtor within 10 calendar days from the date the agency was notified by the department of a potential offset. This notification shall include:

- a.* The public agency’s right to the payment in question.
- b.* The public agency’s right to recover the payment through the offset procedure.
- c.* The basis of the public 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 required appeal procedure.
- f.* The name of the public agency to which the debt is owed, with a telephone number for the debtor to contact the public agency regarding questions about the offset.

The department may require that a copy of this notice be sent to the department, but an agency is not required to routinely send such notices to the department.

40.4(5) Payment of residual funds to debtor. It is the responsibility of the public agency to reimburse the debtor for the difference between the amount of liability payable and the amount of the claim payable to the debtor.

40.4(6) Appeal. Debtors shall have the right to appeal the application of an offset upon notice of the potential offset. An agency subject to Iowa Code chapter 17A shall give notice, conduct hearings, and allow appeals in conformity with Iowa Code chapter 17A. Other public agencies shall give notice, conduct hearings, and allow appeals in a manner substantially equivalent to that provided under Iowa Code chapter 17A.

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11—40.5(8A) Duties of the department—performance of the offset. The department will develop procedures for administering each offset program request by a public agency on an individual debtor 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 public agencies participating in the offset program. The department will notify the public agency of the debtor'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 debtor's or entity's debt to the state. If notification is not made to the department by the public agency within 45 days, the amount of the payment shall be released to the debtor or entity.

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

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11—40.6(8A) Multiple claims—priority of payment. In the case of multiple claims to payments filed under Iowa Code section 8A.504, after satisfaction of the provisions of Iowa Code section 422.73, priority shall be given to claims in the following order:

1. Claims filed by the child support recovery unit or the foster care recovery unit;
2. Claims filed by a clerk of the district court;
3. Claims filed by the college student aid commission;
4. Claims filed by the investigation division of the department of inspections and appeals; and
5. All other claims filed by public agencies under Iowa Code section 8A.504.

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

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11—40.7(8A) Payments of offset amounts. Payments to the public agency requesting participation in the offset program shall be made by the department by the last day of the month in which the request is made.

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11—40.8(8A) Reimbursement for offsetting liabilities. Costs incurred by the department in administering the offset program will be charged to the public agency requesting placement of the debt into the offset program. These 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 higher state or federal law, the director shall allow reimbursement in a manner which conforms to the higher law. Prior to placing a debt in the offset program, the public agency will enter into a memorandum of understanding with the department of administrative services which will outline the costs, responsibilities of the parties, and methods for remuneration of the offset funds.

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11—40.9(8A) Confidentiality of information. Information shared between the department and the public agencies wishing to participate in the offset program shall be deemed confidential pursuant to Iowa Code section 8A.504(2)“b” and shall be disclosed only to the extent necessary to sufficiently identify the debtor(s) liable to the public agency. Identifying information shall be used only for the purpose of participation in the offset program.

[ARC 1842C, IAB 1/21/15, effective 2/25/15]

OFFSET OF DEBTS OWED TO CLERKS OF THE DISTRICT COURT

11—40.10(8A) Incorporation by reference. The department incorporates by reference rules 11—40.1(8A) to 11—40.9(8A). “Debtor,” for purposes of rules 11—40.10(8A) to 11—40.15(8A), shall pertain only to a debtor who owes a debt to a clerk of district court.

[ARC 1842C, IAB 1/21/15, effective 2/25/15]

11—40.11(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 debtor having a valid claim against a public agency that an offset will be applied to the debt. The department will apply the offsets for district clerks as provided in Iowa Code section 8A.504, and the department will send a written notice to the debtor. 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.

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11—40.12(8A) Notice of offset. The department shall send written notification of the offset to the debtor within 10 calendar days from the date the department is notified of such debt by the judicial branch. This notification must include:

1. The clerk of court claiming the liability;
2. The clerk of court’s right to the payment in question;
3. The clerk of court’s right to recover the payment through the offset program;
4. The basis of the clerk of court’s case in regard to the debt;
5. The right of the debtor 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 debtors;
6. The right of the debtor 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;
7. The telephone number of the representative the debtor may contact concerning questions regarding the validity of the offset and the procedures for the offset;
8. That the debtor 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
9. The name of the clerk of the district court and the telephone number for the debtor to contact concerning questions relating to the validity of the underlying liability and regarding the validity of the amount owed.

[ARC 1842C, IAB 1/21/15, effective 2/25/15]

11—40.13(8A) Procedure for contesting. The debtor may contest the validity or amount of the underlying liability by mailing written notification of the debtor’s intent to contest such a liability to the appropriate clerk of the Iowa district court. The Iowa district court will provide the debtor with the procedure and remedies for contesting the validity and amount of the underlying liability.

The debtor may contest the validity of the offset or the right of the offset by mailing written notification to:

Department of Administrative Services
General 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 debtor gives written notice of intent to contest the offset validity or the right of offset, the clerk of the district court and the department will hold a payment in abeyance until the final disposition of the contested liability or offset is determined.

[ARC 1842C, IAB 1/21/15, effective 2/25/15]

11—40.14(8A) Postoffset notification and procedure. Following the offset, the department will notify the debtor that the offset was performed. It is the responsibility of the department to make payment to the debtor 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.

[ARC 1842C, IAB 1/21/15, effective 2/25/15]

11—40.15(8A) Report of satisfaction of obligations. At least monthly, the department will file with the judicial branch a notice of satisfaction of each obligation to the full extent of all moneys collected in satisfaction of an offset obligation. No additional or separate written notice from the department regarding the performed offsets is required.

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

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