

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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