

AGENDA ITEM 4.

PROPOSED RULE AND AMENDMENTS

Submitted for: Information

Summary: This item reports on ISAC's publication of a Notice of Proposed Rulemaking in the *Illinois Register*. For additional information concerning the rulemaking procedures, please refer to the end of this summary.

The attached notice advises the public of ISAC's intent to implement a recent amendment to the Higher Education Student Assistance Act. The amendment authorizes ISAC to garnish the salary, wages, commissions and bonuses ("compensation") of certain borrowers in order to recover funds owed to the State through ISAC's nonfederal lending programs. The rule limits garnishment to borrowers in default status, which results from the borrower's failure to make three regularly-scheduled payments on the loan.

Procedures for garnishment are modeled after garnishment procedures used to recover amounts owed on defaulted federal loans under Title IV of the Higher Education Act of 1965, as amended. ISAC, as a guaranty agency, is currently obligated to initiate administrative garnishment to recover amounts owed on federal loans using procedures established by federal regulations. The proposed rule authorizes ISAC to follow similar procedures for the recovery of state funds. However, these procedures include stronger protections for borrowers than required by federal regulations. A summary of the procedures follows.

Upon default, the proposed rule requires that a notice be sent to a borrower to notify the borrower of the intended garnishment. The notice must be sent at least 30 days before ISAC enters an administrative wage garnishment order ("AWG Order") instructing employers to garnish a borrower's wages. The notice must also advise a borrower of his or her right to enter into a repayment plan to avoid garnishment or to request a hearing concerning the garnishment.

If the borrower exercises his or her right to enter into a repayment plan, ISAC will agree to the repayment terms so long as such terms amortize the debt over the original loan period. If the borrower exercises his or her right to request a hearing concerning the garnishment, the borrower may raise any legal or equitable defenses to challenge the existence or amount of the debt at a formal hearing before an independent hearing officer. At the hearing, the borrower may also object to the garnishment on the basis that it would result in extreme financial hardship on the borrower.

If the borrower exercises his or her right to request a hearing within 30 days after the notice is mailed, ISAC must provide the borrower a hearing before issuing an AWG Order. If the borrower exercises his or her right to enter into the repayment plan after 30 days, ISAC must provide the borrower a hearing but may nevertheless issue an AWG Order before the hearing. Regardless of whether an AWG Order has been issued, the borrower may request a hearing at any time.

Thirty days after sending notice to the borrower or any time thereafter, ISAC may issue an AWG Order (1) if the borrower fails to exercise the rights described above, (2) if the borrower fails to comply with the terms of the written repayment agreement, or (3) if a hearing officer enters a final decision resulting in an AWG Order. However, at no time may ISAC issue an AWG Order against a borrower who was involuntarily separated from employment until he or she has been continuously reemployed for 12 months.

If issued, an AWG Order is sent to a borrower's employers and is made a lien against the borrower's compensation. After receiving an AWG Order, the borrower's employer is responsible for withholding the amount garnished and remitting payment to ISAC. When compensation is garnished, the borrower is entitled to additional protection from overly-burdensome collection efforts—including laws limiting amounts withheld to no more than 15% of the borrower's disposable income and safeguards prohibiting garnishment from minimum wage borrowers.

Publication of the attached notice initiates a 45-day public comment period. During this period, the public is invited to comment on the proposed procedures for administrative wage garnishment. Following the 45-day period, the rule may be further revised to address concerns raised as a result of public comments submitted.

Following the first notice period, the proposed rules and public comments will be presented to the Commission for consideration. At that time, the Commission may recommend additional changes to the rules. Once approved, the Commission may direct the Executive Director to file the rules with the Joint Administrative Committee on Administrative Rules (JCAR), initiating a second 45-day notice period to members of the General Assembly serving on the committee. At the end of the second 45-day period, if no objection has been received by JCAR, the Executive Director may direct staff to file the final rule with the Secretary of State.

Action requested:

None

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ILLINOIS STUDENT ASSISTANCE COMMISSION

NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Administrative Wage Garnishment
- 2) Code Citation: 23 Ill. Adm. Code 27XX
- 3)

<u>Section Numbers:</u>		<u>Proposed Action:</u>
27XX.10	Summary and Purpose	Adopt
27XX.20	Definitions	Adopt
27XX.30	Administrative Wage Garnishment Procedures	Adopt
- 4) Statutory Authority: Section 80(1-5) of the Higher Education Student Assistance Act [110 ILCS 947/80(1-5)]
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking establishes procedures for implementing amendments to 110 ILCS 947/80. The amended statute allows ISAC to issue administrative wage garnishment orders (AWG orders) to collect funds owed to the State as a result of a borrower's default on loans owned, held, or issued by ISAC. Before ISAC may issue an AWG order, ISAC must by law provide a borrower notice of the demand and an opportunity to request a hearing concerning the amount or existence of the loan. A borrower may also object to the garnishment as imposing an extreme financial hardship on the borrower. In addition to having the opportunity to request a hearing, a borrower may also enter into a repayment agreement with ISAC to avoid issuance of the AWG order.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a state mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)] and does not necessitate a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.

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- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested parties may submit comments in writing within 45 days after publication to:
- Lynn Hynes
Agency Rules Coordinator
Illinois Student Assistance Commission
1755 Lake Cook Road
Deerfield IL 60015
(847) 948-8500, ext. 2305
email: lynn.hynes@isac.illinois.gov
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: The proposed rules will minimally impact all employers by requiring their compliance with administrative orders issued under this part.
- B) Reporting, bookkeeping or other procedures required for compliance: In order to comply with garnishment orders issued as a result of the proposed rulemaking, employers will be required to follow procedures similar to those used when employers receive wage deduction or garnishment orders under State and federal law. Impact on small businesses, small municipalities and not for profit corporations will not be greater than the impact resulting from compliance with such orders.
- C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2012 (originally proposed as an amendment to 23 Ill. Adm. Code 2721).

The full text of the proposed rules begins on the next page: