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NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Administrative Wage Garnishment
- 2) Code Citation: 23 Ill. Adm. Code 2722
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
2722.10	New Section
2722.15	New Section
2722.20	New Section
- 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 the Higher Education Student Assistance Act. The 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, it 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: PA 97-950, effective August 13, 2012
- 7) Will this rulemaking replace any emergency rulemaking 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

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

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TITLE 23: EDUCATION AND CULTURAL RESOURCES
SUBTITLE A: EDUCATION
CHAPTER XIX: ILLINOIS STUDENT ASSISTANCE COMMISSIONPART 2722
ADMINISTRATIVE WAGE GARNISHMENT

Section

2722.10	Summary and Purpose
2722.15	Definitions
2722.20	Administrative Wage Garnishment Procedures

AUTHORITY: Implementing the Higher Education Student Assistance Act [110 ILCS 947/80(1-5)].

SOURCE: Adopted at 37 Ill. Reg. _____, effective _____.

Section 2722.10 Summary and Purpose

This Part establishes the rules that govern ISAC's administrative wage garnishment procedures, as permitted by the Illinois Higher Education Student Assistance Act.

Section 2722.15 Definitions

For purposes of this Section, the following terms have the meanings ascribed in this Section:

"Act" means the Higher Education Student Assistance Act [110 ILCS 947].

"AWG Order" – An administrative wage garnishment order issued by ISAC to a borrower's employer or employers to withhold the borrower's compensation and remit the withheld compensation to ISAC pursuant to Section 80(1-5) of the Act.

"Borrower" – Includes all original borrowers, cosigners, endorsers or co-makers on a loan or loans.

"Compensation" – Any salary, wages, commissions and bonuses due to the borrower.

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"Date of First Delinquency" – The day following the borrower's first failure to make a scheduled monthly payment in accordance with the terms of the promissory note governing a loan or loans to which this Section applies.

"Default" – The status of a borrower's loans as a result of the borrower's failure to make a total of three cumulative, regularly-scheduled payments after the date of first delinquency.

"Loan" or "Loans" – All loans owned, serviced or held by ISAC unless otherwise excluded. This Part shall not apply to any loans owned, serviced or held as a result of ISAC's participation in programs administered by the U.S. Department of Education under Title IV of the Higher Education Act of 1965, as amended (20 USC 1070).

Section 2722.20 Administrative Wage Garnishment Procedures

- a) If a borrower is in default on a loan to which this Part applies, ISAC shall be entitled to issue an AWG order for purposes of satisfying the borrower's debt on the defaulted loans. The AWG order shall be a lien upon the borrower's compensation.
- b) At least 30 days before issuing an AWG order, ISAC shall mail to the borrower's last known address a written notice of the nature and amount of the debt, the intention of ISAC to initiate proceedings to collect the debt through an AWG order, and an explanation of the borrower's rights. ISAC shall send the notice by first-class mail. The notice must inform the borrower that:
 - 1) ISAC will permit the borrower to inspect and copy agency records related to the debt;
 - 2) The borrower may request an opportunity to enter into a written repayment agreement to avoid the AWG order. ISAC shall grant the borrower's request only if the terms of the repayment agreement amortize the debt within the original period permitted for repayment of the loans; and
 - 3) Upon request, the borrower is entitled to a hearing described in subsection (c). All requests for a hearing shall be made in writing. The date of ISAC's

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receipt of the request in writing shall be used to determine the borrower's right to a hearing before issuance of the AWG order.

- c) After receiving a written request for a hearing, ISAC shall provide the borrower a hearing either in-person, by telephone or in writing at the borrower's election. At the hearing, the borrower may raise any legal or equitable defense, including objecting to the existence or the amount of the debt, the terms of the repayment schedule, or the imposition of the AWG order on the basis that it would result in extreme financial hardship to the borrower. The time of the hearing shall be established by ISAC. All in-person hearings shall be held at ISAC's legal offices in Chicago, Illinois. If the borrower requests an in-person hearing, the borrower is responsible for all transportation costs incurred in traveling to or from the hearing.
- 1) If ISAC receives the borrower's request on or before the 30th day following the date that the notice described in subsection (b) was mailed, it will not issue an AWG order until the hearing is concluded. ISAC will provide a hearing to the borrower in sufficient time to permit a decision to be made within 60 days unless otherwise impractical.
 - 2) If ISAC receives the borrower's request after the 30th day following the date that the notice was mailed, it will provide a hearing to the borrower in sufficient time that a decision may be made within 60 days unless impractical. However, ISAC is not required to delay the issuance of the AWG order.
 - 3) Notice of the entry of the decision and final AWG order by ISAC shall be mailed by first-class mail promptly to the borrower at the borrower's last known address.
- d) A borrower who enters into a written repayment agreement shall not receive additional notice that ISAC may issue an AWG order if the borrower fails to comply with the written repayment agreement.
- e) Thirty-one days after ISAC has mailed the notice to the borrower, or any time thereafter, ISAC shall send an AWG order to the borrower's employers if:
- 1) the borrower fails to exercise the right to prevent the AWG order by requesting a hearing or entering into a written repayment agreement within the 31 days;

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- 2) the borrower fails to comply with the terms of a written repayment agreement; or
 - 3) a hearing officer enters a final decision that an AWG order should be issued or had been previously issued properly.
- f) An employer who receives an AWG order must comply with the terms of the AWG order as set out in this Part.
 - g) ISAC may initiate litigation against any employer to compel compliance with an AWG order or to recover any amount that the employer fails to withhold from the borrower's compensation under the employer's normal pay and disbursement cycle.
 - h) ISAC may not issue an AWG order against a borrower who it knows has been involuntarily separated from employment until the borrower has been reemployed continuously for 12 months.
 - i) An AWG order sent to an employer under this Section must contain only the information necessary for the employer to comply with the order.
 - j) The provisions of Section 12-803 of the Code of Civil Procedure [735 ILCS 5/12-803] relating to minimum compensation subject to collection under wage deduction orders shall apply to AWG orders issued under this Section.
 - k) The AWG order issued by ISAC is a lien on the borrower's compensation. The lien shall continue as to subsequent earnings until the total amount due upon the defaulted loans, plus any accrued interest, collection costs, attorney's fees or other charges, is paid. The employer shall be released from ISAC's AWG order in the event of the borrower's permanent termination.