

**AGENDA ITEM 7B.**

**APPROVAL TO FILE THE  
PROPOSED ADMINISTRATIVE WAGE GARNISHMENT RULES  
FOR NON-FEDERAL LOANS WITH THE  
JOINT COMMITTEE ON ADMINISTRATIVE RULES**

**Submitted for:** Action

**Summary:** On September 14, 2012, Deputy General Counsel Rich Nowell informed the Commission of ISAC's intent to publish a Notice of Proposed Rulemaking in the *Illinois Register*. The need for rulemaking results from an amendment to the Higher Education Student Assistance Act that authorizes ISAC to garnish the salary, wages, commissions and bonuses of borrowers who have defaulted on loans originated through ISAC's nonfederal lending programs. The proposed rule establishes the procedures for doing so.

The rules presented to the Commission in September were modeled after procedures used by ISAC to recover amounts owed on defaulted federal loans under Title IV of the Higher Education Act of 1965. Though ISAC is obligated to follow these procedures as a guaranty agency with respect to federal loans, the proposed rules for nonfederal lending programs included stronger protections for borrowers in default. Those protections include a 30-day notice period before ISAC may issue a garnishment order, the opportunity to avoid garnishment by entering into a repayment plan approved by ISAC, and the opportunity for a hearing to either contest the validity of the debt or object to the garnishment on the basis that it would result in extreme financial hardship to the borrower. In addition, Illinois law already limits the amount that can be garnished to 15% of a borrower's disposable income.

On October 12, 2012, ISAC published the Notice of Proposed Rulemaking in the *Illinois Register*, initiating a 45-day period during which the public could comment on the proposed rules. During that time, no comments were received. ISAC, therefore, recommends that the Commission adopt the rules as originally published.

In accordance with the Commission's rulemaking procedures, the Commission must approve the filing of the rules with the Joint Committee on Administrative Rules (JCAR), which initiates a second 45-day period during which the members of JCAR may object to the proposed rule. If no objection is received by JCAR that requires a substantive change to the proposed rules, the Executive Direct may thereafter direct staff to file the final rule with the Secretary of State for adoption. If an objection is received that requires a substantive change to the proposed rule, the matter must again be brought before the Commission.

**Action requested:** That the Commission approve the following resolution:

**“BE IT RESOLVED** that the Commission approves the filing of the proposed rules concerning administrative wage garnishment for nonfederal loans with the Joint Committee on Administrative Rules (JCAR).”

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ILLINOIS STUDENT ASSISTANCE COMMISSION

NOTICE OF PROPOSED RULES

TITLE 23: EDUCATION AND CULTURAL RESOURCES

SUBTITLE A: EDUCATION

CHAPTER XIX: ILLINOIS STUDENT ASSISTANCE COMMISSION

PART 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.

“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.

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“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 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 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 30<sup>th</sup> day following the date that the notice described in subsection (b) was mailed, it will not issue an

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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 30<sup>th</sup> 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 31 days;
    - 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.

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- 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.