DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 271, 272 and 273

[Amdt. No. 367]

RIN 0584–AB89

Food Stamp Program: Collecting Food Stamp Recipient Claims From Federal Income Tax Refunds and Federal Salaries

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes methods of collecting two types of Food Stamp Program (FSP) recipient claims from Federal income tax refunds and from Federal salaries. The two types of recipient claims are inadvertent household error (IHE) and intentional Program violation (IPV) claims. These claims represent amounts of benefits which households received but to which they were not entitled. Under this rule claims of these types will be collected from individuals who are no longer participating in the FSP. This rule establishes operating procedures, due-process notices, and appeal rights and other rights and responsibilities of individuals.

DATES: This final rule is effective and must be implemented by October 2, 1995 except that State agencies currently participating in the Federal Income Tax Refund Offset Program (FTROP) must implement 7 CFR 272.2(d)(1)(xii) no later than November 30, 1995.

FOR FURTHER INFORMATION CONTACT: James I. Porter, Supervisor, Issuance and Accountability Section, State Administration Branch, Program Accountability Division, Food Stamp Program, 3101 Park Center Drive, Room 907, Alexandria, Virginia 22302, telephone (703) 305–2385.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related notice to 7 CFR 3015, Subpart V (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This final action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). William E. Ludwig, Administrator of the Food and Consumer Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects the State and local agencies which administer the Food Stamp Program and certain individuals who have received excess food stamp benefits. Half of substantially all State and local administrative costs for administering the Food Stamp Program are reimbursed by the Department.

Executive Order 12778

This rulemaking has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Paperwork Reduction Act

The information collection requirements in this rule were approved by the Office of Management and Budget (OMB) in connection with the test of FTROP and were assigned OMB Control #0584–0446. This rule makes some changes in those requirements. An estimate of the revised burden associated with this collection will be submitted to OMB according to the requirements of the Paperwork Reduction Act. Comments regarding the information collection requirements in this rule, including suggestions to reduce this burden may be sent to: U.S. Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250 and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0584–0446), Washington, DC 20503.

Background

A. General

The Department published a proposed rule on FTROP and the Federal Salary Offset Program (salary offset) on June 28, 1995 at 60 FR 33612. A total of nine comment letters were received on this proposed rule, eight from State agencies and one from a research and action group concerned with nutrition and related issues (an action group). Those comments are discussed below.

The abbreviated citations in the subheadings of section B of this preamble correspond to paragraphs in section 272.18(g)(5), the subheadings in part C correspond to paragraphs in section 273.18(g)(6).

Three State agencies expressed concern that there would not be sufficient time to implement a final rule for the 1996 offset year and recommended that the final rule be phased in for 1997. With the exception of the 60-day notice, the Department believes that State agencies can implement the requirements of the final rule within the 30-day implementation period. As discussed later in this preamble, for October 1, 1995 State agencies which cannot implement the 60-day notice specified in the proposed rule and made final here may use the format and contents for the 60-day notice as used during the test of FTROP.

B. Federal Income Tax Refund Offset Program (FTROP)

Types of claims referable under FTROP—(ii)(A)(1): The action group objected to the inclusion of IHE claims as a type of claim subject to FTROP because it believes such inclusion conflicts with the Food Stamp Act (7 U.S.C. § 2011, et seq.) (the Act). In B.2.c. of the preamble to the proposed rule, the Department explained that Section 13 of the Act authorizes State agencies to use ''other means of collection'' such as FTROP for both IHE and IPV claims when households do not pay them through voluntary allotment reduction, a cash repayment schedule or involuntary allotment reduction. Consequently, under the final rule IHE claims continue to be subject to collection under FTROP.

Properly established claims—(ii)(A)(1): One State agency supported the deletion of the term ''delinquency'' in favor of listing criteria for determining claims past due and legally enforceable, and cited support for the deletion of the three-month ''delinquency period.'' One State agency objected to the proposed requirement that claims be properly established, including the requirement that additional demand letters be provided prior to initiating other collection actions. The State agency believed that this language required additional work for State agencies and was ineffective. The requirement as proposed was intended only to incorporate current requirements for recipient claim

demand letters. Claims for which applicable FSP requirements were met would be considered properly established, and no greater number of demand letters would be required for them to be considered subject to FTROP than are required under current food stamp regulations. To avoid confusion on this point, the final rule deletes the reference to additional demand letters from section 273.18(g)(5)(ii)(A)(*1*).

The action group objected that the proposed rule did not set a minimum period for which a claim must be overdue before it could be referred for offset. The group suggested 90 days, since in some cases, such as where demand letters are hand delivered, the group contended that required notices might be delivered and after only a few days a determination made that the debt was past due. Regardless of how delivered, demand letters provide the household with 90 days to request a fair hearing. In addition to this 90-day period, as the action group acknowledges in its comment, under proposed FTROP procedures, at least 60 more days will elapse before a claim can actually be referred for offset, since under FTROP individuals have 60 days to request a State agency review. Furthermore, just prior to when offsets actually begin in late January, State agencies are required to submit lists of claims to be deleted from IRS offset files due to payments and other adjustments made after the end of the 60-day period. Consequently, individuals have ample opportunity to challenge the intended offset under the procedures as proposed, and the final rule does not specify a 90-day minimum ''delinquency period.''

Joint and several liability—(ii)(A)(2): The proposed rule required that, for claims to be considered past due and legally enforceable (referable under FTROP), State agencies must verify that there is no individual who is jointly and severally liable for the claim also currently participating in the FSP in the State. One State agency supported this requirement, stating that such verification is a part of their on-line claims tracking system. Another State agency objected because they did not have the capability for such verification. While food stamp regulations do not specify a method for such verification, 7 CFR 273.18(a) is clear that State agencies are required to establish claims against all households which received more food stamp benefits than they were entitled to receive or which have a household member who received an overissuance as part of another household. Current food stamp regulations at 7 CFR 273.18(d) specify that households which otherwise fail to pay IHE and IPV claims will have their allotments reduced. Consequently, the verification criteria stated in the proposed rule should be information available to State agencies as part of their ongoing claims collection activities.

The action group also suggested that if an individual begins participating in the FSP after a claim is referred but before it is actually offset, the State agency should be required to collect the claim by implementing an allotment reduction and withdrawing the referral. FCS agrees, which is one reason why the proposed rule at section 273.18(g)(5)(ii)(A)(2) provided that a claim cannot be referred under FTROP where any individual liable for the claim is participating within the State. If the individual is (re)certified after the claim has been referred but before it is offset, as stated in section 273.18(g)(5)(ix)(A), the State agency is obligated to delete the claim from the IRS file. Should an overpayment occur because there is not sufficient time to delete the claim, as stated in section 273.18(g)(5)(ix)(B), the State agency is required to refund any resulting overpayment. The Department believes these provisions address the concerns raised by the group.

The action group raised a number of other objections relating to the impact of joint and several liability for food stamp overissuances on the proposed rule. Section 13(a)(2) of the Act (7 U.S.C. 2022(a)(2)) provides that all adult members of a household at the time of an overissuance are jointly and severally liable for the overissuance. The group felt that in some instances the proposal to collect the claim first by allotment reduction if any person liable for the claim is currently participating in the program is unfair, for example, where a nonparticipating former household member was actually culpable for the overissuance. The action group stated that the equities favor apportioning the claim against the nonparticipating party that actually caused the overissuance. The Department believes that this issue was decided by Congress in Section 13 of the Act when it established joint and several liability for overissuances and the requirement that the remaining household members must repay any overissuance by allotment reduction. The Act makes allotment reduction mandatory for all IPV and IHE claims unless the household agrees to an alternate form of repayment. Moreover, Sections 6 and 13 of the Act clearly contemplate that, in the case of an IPV, the culpable party will be disqualified from participating in the FSP, leaving the claim to be paid by remaining household members.

10-year period—(ii)(A)(4): The proposed rule provided several criteria for determining if a claim was subject to FTROP. One such criteria was that the initial claim demand letter must be dated within 10 years of January 31 of the offset year. As stated in B.3.b of the preamble to the proposed rule, the Department believes that the demand letter establishes when the right of action accrues on recipient claims. Two State agencies stated that the 10-year period should be measured back to the date of the last payment (assuming some were made). The action group objected to the proposal because it felt that it was inconsistent with what the group termed the statute of limitation of six years for pursuing IPV claims and IHE claims. It recommended that the period should begin with the date of the last overpayment.

The Department believes the policy as stated in the proposed rule is consistent with the concept of a ''right of action'' under the IRS tax offset regulations, as that term has been interpreted by a number of reviewing courts. See, e.g. *Grider* v. *Cavasos,* 911 F2d 1158 (5th Cir., 1990); *Jones* v. *Cavasos,* 889 F.2d 1043 (11 Cir., 1989). The courts have permitted tax offset for administrative claims not reduced to judgment even where the judicial statute of limitations has already expired, reasoning that the Federal Government's right of action does not necessarily accrue until the claim is assigned to the Federal Government, or where the judicial statue of limitation has expired but the 10-year FTROP administrative limitation has not.

In addition, the Department believes the proposed rule is also consistent with discovery-tolled statutes of limitation, such as that in 28 U.S.C. 2416. Moreover, the IRS modified its FTROP regulations, substituting the phrase ''right of action'' for ''date of delinquency,'' in order to clarify that in cases such as defaulted student loans, the 10 years for FTROP referral is counted from the date the defaulted loan is assigned to the Federal Government, and not the earlier date on which the actual default occurred. See 57 FR 13035, 13036. The State agency would still be required to establish and calculate the claim by including only those overissuances which occurred within six years of the discovery of the claim as required by 7 CFR 273.18(b) for IHE claims and 7 CFR 273.18(c)(2) for IPV claims. Once the claim is established, however, the State would have 10 years to try to collect it under FTROP. Accordingly, the final rule

makes no change in the language of the proposed rule on the matter of the 10-year period for determining a claim subject to FTROP.

Voluntary payments—(ii)(A)(5): One State agency stated that individuals often regularly pay on claims without signing an agreement to do so. They believed such individuals are indicating willingness to pay the claim as much as if they had signed an agreement. They recommended that the rule language be revised to delete reference to 7 CFR 272.18(g)(2), where payment schedules are discussed. The Department agrees that whether a written agreement exists is not as important as whether a claim is being repaid and that State agencies should have the flexibility to decide if claims are being repaid regularly and so are not subject to FTROP. Accordingly, the final rule makes the recommended change. For consistency, the adjective ''scheduled'' as applied in the proposed rule to involuntary payments is replaced with ''regular.''

The proposed rule stated that claims for which the State agency has received voluntary payments and scheduled, involuntary payments would be considered past due and legally enforceable 30 days after the due date for a regular payment which was not received. The action group contended that the proposed 30-day period for a default on a payment agreement does not permit sufficient time for the State agency to issue the required notice of such default under section 273.18(g)(2). That section of FSP regulations requires that State agencies provide households notice when an installment payment is not received and an opportunity to negotiate a new payment schedule before other collection actions are initiated. These requirements apply to claims which State agencies may want to refer for collection under FTROP. To clarify this matter, in section 273.18(g)(5)(ii)(A)(5) this final rule replaces the proposed 30-day default period with the provision that claims for which State agencies have been receiving regular payments will be deemed past due and legally enforceable if the individual does not respond to a notice of default of a payment agreement and remedy the default as specified in section 273.18(g)(2).

Combined claims/judgment claims—(ii)(B)(2): The proposed rule stated that claims reduced to judgment cannot be combined with other claims. The preamble explained the reason: the IRS requires that judgment claims, which are not subject to the 10-year limit for referral under FTROP, be identified as such. One State agency recommended that the rule be changed to allow combining judgment claims and other claims if the judgment claim is less than 10 years past due. This cannot be done due to the IRS requirement that judgment claims be separately identified. (See IRS Revenue Procedure, ''Magnetic Media Reporting for Federal Income Tax Refund Offset Program (Debtor Master File).)

Another State agency asked if, when an individual owes a judgment claim and another claim and the judgment claim is referred, can the other claim also be referred. In such a case, the other claim cannot be referred for that individual. The IRS would identify those referrals as duplicate records and both would be rejected. In these circumstances, the State agency must refer either the judgment claim or the other claim. Multiple, non-judgment claims may be consolidated.

One State agency asked for a definition of judgment, in particular whether it refers to a civil or criminal action. The word ''judgment'' generally refers to debts resulting from civil actions but restitutionary orders may also result from criminal actions. Since circumstances vary and depend on State and local law, State agencies should consult with their legal counsel if they have questions about how a judgment on a recipient claim affects the 10-year period for being subject to collection from FTROP.

The action group urged that FTROP be limited to collecting debts reduced to judgment. However, the group acknowledged that Congress and the courts have not required this. The group argued that to permit tax offset of non-judgment debts is inconsistent with the Act, and in particular with the provisions in Section 13(c)(2) (7 U.S.C. 2022(c)(2)) which provide for garnishment of State unemployment benefits to recover FSP overissuances. That provision requires either consent of the individual or a ''writ, order, summons, or other similar process in the nature of a garnishment from a court * * *'' The Department believes that the judicial process requirement in Section 13(c)(2) was intended to recognize that unemployment benefits are paid by individual States from State funds, and that it is necessary to follow State procedures to garnish them. In contrast, FTROP involves funds held by another Federal agency, the IRS, for which Congress itself has established the necessary requirements to effect a ''garnishment.'' The Department believes its proposed procedures meet these requirements.

Undelivered 60-day notices—(iii)(D): The proposed rule stated that claims for which 60-day notices are returned as undeliverable may be referred for collection under FTROP. One State agency supported this provision. The action group opposed it on the grounds that it violates due process. As discussed in B.3.c. of the preamble to the proposed rule, IRS regulations provide that the use of the most current address for the debtor provided by the IRS constitutes a reasonable effort to notify the individual about the intended referral for offset. As mentioned in the background to the August 1991 General Notice, the IRS requires that taxpayers notify the IRS of their current address. The Department recognizes that taxpayers may not always comply with this requirement and may move before a timely submitted change of address is processed. For these reasons, among others, in B.3.d. of the preamble to the proposed rule when discussing requests for review, the Department pointed out that State agencies are required to refund over collections if after the 60-day period for requesting such reviews individuals document that a claim collected through FTROP is not past due and legally enforceable. The proposed rule incorporated a reference to this requirement at section 273.18(g)(5)(viii)(B). Consequently, this final rule makes no change in the provision that claims for which 60-day notices are returned as undeliverable may be referred for collection under FTROP.

Contents of the 60-day notice—(iv): Two State agencies supported the inclusion of information and instructions about requesting reviews. One State agency included recommendations for certain editorial changes and reorganization. We considered those recommendations and as a result modified the final rule in section 273.18(g)(5)(iv)(I) to replace the acronym ''FTROP'' with the phrase ''the Federal Income Tax Refund Offset Program.'' The action group also suggested some editorial changes to the proposed 60-day notice language. We are adopting their suggestion to move the second sentence of section 273.18(g)(5)(iv)(D) so it becomes the first sentence of section 273.18(g)(5)(iv)(E) in the final rule. We agree that this change improves the clarity of the notice.

One State agency opposed the proposed 60-day notice on the grounds that the notice would be two pages long and in their experience individuals did not read the information provided in the shorter notice during the test of FTROP. The Department believes that the additional information should be provided for the reasons stated in B.3.d. of the preamble to the proposed rule.

The action group recommended other changes and additions to the 60-day notice, specifically that it contain a statement of the standard for when offset is proper, an explicit offer to renegotiate an installment plan, and a list of possible defenses to offset. As discussed above, the final rule clarifies that current FSP regulations on renegotiating installment plans apply to determining if claims may be referred for collection under FTROP. As the action group acknowledges, the Department proposed the addition of a substantive amount of information to help individuals determine why their claim is considered subject to FTROP and how to request a review of the intended collection action. (The reasons for the additional information were discussed in B.3.d. of the preamble to the proposed rule with respect to the contents of the 60-day notice in general and documenting that a claim is not referrable under FTROP.) The Department has reviewed the action group's suggestions and believes that the additions would not improve the 60-day notice with respect to helping individuals understand the basis for the intended collection action or how to request a review. For example, the action group suggests defining ''jointly and severally liable'' and emphasizing that the notice recipient had to be an *adult* household member at the time of the overissuance in order to be liable for the claim. The proposed rule at section 273.18(g)(5)(iv)(D) required that the 60-day notice state that all adults who were household members when excess food stamp benefits were issued to the household are jointly and severally liable for the value of those benefits, and that collection of claims for such benefits may be pursued against all such individuals. The language clearly states the policy of liability with respect to adult household members, and the Department believes that stating that ''collection of claims for such benefits may be pursued against all such individuals'' is sufficient explanation of ''joint and several liability'' for purposes of the 60-day notice. Consequently, the final rule makes no changes in the proposed rule with respect to this provision. The Department has carefully reviewed all of the action group's suggestions and believes that they would unnecessarily lenghten the 60-day notice. Accordingly, the Department is not adopting them.

One State agency commented that if this rule were published thirty days after the end of the comment period, there would be insufficient time to revise the content of the 60-day notice in time for mailing prior to October 1, 1995. The Department recognizes that this may be a problem for some State agencies and has decided to allow State agencies which cannot make the necessary changes in time to use the same notice format used during the test of FTROP in previous years for offset year 1996. Section 273.18(g)(5)(iii)(A) has been revised to reflect this option. While the Department believes that the previous notice format was sufficient to provide adequate notice to persons potentially subject to offset, because the new format is an improvement in that it provides more information, the Department urges all State agencies to use the new format for the 1996 offset year if possible. All State agencies will be required to use the new format for the 1997 and subsequent offset years.

Tax refunds subject to offset—(iv)(B): The action group asserted that tax refunds which represent an Earned Income Tax Credit (EITC) should not be subject to offset because such an action is at cross purposes with the EITC. As discussed in B.2.c. of the preamble to the proposed rule, the Department does not agree with this position since Congress has not enacted legislation excluding EITC from such debt collection as FTROP. Additionally, the Department wishes to point out that the Supreme Court resolved this issue by holding in *Sorenson* v. *Secretary of the Treasury*, 475 U.S. 851 (1986), that an EITC refund is subject to offset under FTROP.

Offset fee—(iv)(C): The proposed rule stated that the 60-day notice must advise individuals that a charge for the administrative cost of collection would be added to their claims and that amount would also be deducted if the claim, or any portion of the claim, was deducted from their tax refund. Two State agencies supported this proposal. The action group opposed it on the grounds that it is burdensome, that the IRS could increase the amount of the charge, and that there is no authority for it in the Act. As stated in B.3.d. of the preamble to the proposed rule, individuals can avoid paying the fee by paying the claim voluntarily. The IRS bases the amount of the offset fee on the cost of operating FTROP. Section 13(a) of the Act (5 U.S.C. 2022(a)) gives the Secretary general authority with respect to recipient claims, and the Department believes that this entails authority to impose reasonable administrative charges for collecting claims. Accordingly, the final rule makes no change in this provision for assessing offset fees against individuals.

There are instances during a particular offset year when more than one offset for a food stamp claim is made against a tax refund due an individual. One State agency asked whether in such cases the IRS charges a second offset fee. The IRS currently charges an offset fee each time it makes an offset, and they deduct that fee from the amount offset before sending funds to FCS. FCS will add the amount of the IRS fee to a claim referred under FTROP only once for a particular offset year. The Department will advise State agencies about funding additional offset fees.

One State agency commented that notifying individuals about the amount of the offset fee would be burdensome to State agencies and increase Federal costs. The proposed rule required that State agencies notify individuals about the amount of the offset fee when they notify them about the amount of any offset. (See section 273.18(g)(5)(viii)(A).) As stated in the preamble to the proposed rule, FCS will advise State agencies of the amount of the fee. FCS expects to so in December or early January. This should give State agencies sufficient time to insert the amount in offset notices to be sent to individuals. State agencies would need to redesign current offset notices to accommodate this information. State agencies should be able to use their current offset notices to inform individuals about any second offsets made.

One State agency suggested that IRS should be able to determine the amount of the fee in time for it to be included in the 60-day notice or that a flat $10 fee be charged. FCS will not know the amount of the fee in time to provide it to State agencies for those notices. As a result, the Department believes the 60-day notice should advise individuals of the approximate amount of the fee. Accordingly, the final rule requires that 60-day notices include such information. For the foreseeable future, the amount to be used is $10.00. FCS will advise State agencies should that amount need to be changed.

In light of State agency comments indicating that implementation of the offset fee would be difficult to accomplish for the 1996 offset year and the fact that this final rule is being published later in the tax cycle than was originally hoped, the Department has decided to delay implementation of the offset fee until the 1997 offset year. State agencies which elect to utilize the new 60-day notice as discussed above will be required to delete any reference in the notice to the collection of the fee.

Toll-free/collect phone numbers—(iv)(E) and (vii)(B): The proposed rule required that, because of IRS requirements, the telephone number of

the State agency contact in both the 60-day notice and the notice to individuals about offsets must be either toll-free or collect. One State agency objected to these requirements. The final rule retains them because of the IRS requirements.

Review requests—(iv)(F): The proposed rule required that 60-day notices advise individuals that review requests must be in writing. One State agency supported that requirement. The action group favored allowing oral requests. The group stated that requiring written requests imposes a burden on people with limited literacy skills. As discussed in B.3.d. of the preamble to the proposed rule, we continue to believe that review requests must be submitted in writing to avoid the difficulty of discerning whether an oral or telephonic contact is simply to inquire about the claim or constitutes a formal review request. Individuals with limited literacy skills could obtain assistance from whomever helps with their other written communications. They might also advise State agencies about their difficulty so that a solution appropriate to the particular circumstances could be worked out.

The action group also questioned whether it is appropriate to require documentation to be submitted along with the request for review since it may take time for an individual to obtain the necessary documentation and this could cause them to miss the 60-day deadline for a review. The action group suggested that adjournment for good cause should be allowed to provide time to obtain documents. As the Department explained in B.3.e. of the preamble to the proposed rule, DEFRA requires that the State agency consider any evidence that the debt is not past due or legally enforceable which is submitted within 60 days of the notice. The 60-day limit in the proposed rule complies with this requirement. Moreover, as the Department stressed in B.3.h. of the proposed rule, if after the 60-day period the individual produces documentation showing the claim is not past-due or legally enforceable, existing FSP regulations require that any amount collected on the claim be refunded. Accordingly, the final rule does not change the requirement that documentation or evidence be submitted with the review request.

Bankruptcy—(iv)(G): The proposed rule stated that the 60-day notice must state that a claim is not legally enforceable if a bankruptcy prevents collection of the claim. Under the August 1991 General Notice, the individual was required to document an assertion of bankruptcy. Three State agencies commented on the proposed change. They asked what the new language meant, objected to it on the grounds that individuals' bankruptcy petitions were often denied, and stated that individuals should be required to document bankruptcy. As discussed in B.3.d. of the preamble to the proposed rule, bankruptcy law prohibits requiring documentation of bankruptcy. If it is necessary to validate an individual's assertion of bankruptcy, a State agency should check the records of the appropriate bankruptcy court.

State agency action on review requests—(v): One State agency reported that when a review request is received without documentation, it reviews its case files to determine whether the claim is past due and legally enforceable. They found this burdensome and difficult to accomplish within the 60-day period. They recommended a two stage response for such situations, the first a notice that adequate documentation was not received, the second detailing information about the claim from the case file.

The proposed rule provided for expanded guidance to individuals (in 60-day notices) about documenting the status of their claim, and stated that State agencies must determine whether or not claims are past due and legally enforceable based on a review of their records, and of documentation, evidence or other information from the individual. The proposed rule also stated that a reason for a determination that a claim was past due and legally enforceable is the individual's failure to provide documentation to the contrary. The Department expects that the scope of State agency file review will be sufficient to respond to the issues raised by the documentation, evidence and/or explanation provided with the review request. One State agency supported the requirement for stating the reason for the decision on the review, including citing inadequate documentation. The final rule makes no change in the requirement.

The action group contended that the review by the State agency of a proposed tax refund offset must be a full hearing when an individual alleges in the FTROP review process that they never received a demand letter. As discussed above in connection with review requests, and as discussed in B.3.d. of the preamble to the proposed rule, the Department believes that the review rights provided in the proposed rule comply with statutory and regulatory requirements. The group also argued for an additional full fair hearing on the grounds that some households which are not participating when they receive their fair hearing notice do not respond because they believe the State agency has no way to collect the overpayment except by allotment reduction if the household again participates in the program. The Department does not find that the equities in such a situation favor providing an additional opportunity for a fair hearing merely because a household now views the collection threat as credible.

One State agency stated that referring claims denied for lack of documentation to FCS will be a waste of FCS time since in such situations individuals will have no more documentation to provide FCS than they did the State agency. Individuals, not State agencies, request FCS reviews of State agency decisions. The opportunity for such review is required in IRS rules as discussed in B.3.e. of the preamble to the proposed rule. Accordingly, the requirement is retained in the final rule.

October 31 cut-off—(v)(E): In the FTROP process there are two important due-process time frames, the 60-day period individuals have to request a State agency review and the 30-day period to request an FCS review. To accommodate these time frames and to provide State agencies time to prepare and submit certified files in early December of each year, the proposed rule provided that State agencies could not refer for offset a claim for which a timely State agency review request is received unless by October 31 preceding the offset year the State agency determined the claim past due and legally enforceable, and notified the individual of that decision.

Two State agencies objected to the October 31 cut-off date because of the number of claims for which review requests are received between October 31 and November 30. The Department is concerned that the October 31 cut-off will reduce the number of claims which might otherwise be referable for collection under FTROP. Because more time is needed to give due consideration to alternatives for dealing with this matter, this rule makes no change in proposed rule with respect to the cut-off. The Department intends to address the cut-off date in a later rulemaking.

Actions on offsets—(viii): The action group urged the Department to provide post-deprivation hearings in addition to the two pre-offset reviews which are available, particularly to insure that claims which are mistakenly offset are repaid promptly. The Department believes that the proposed system of a State agency review followed by an FCS review is sufficient to provide adequate

due process to individuals. Moreover, section 273.18(g)(5)(viii)(B) of this rule references the provision at section 273.18(i)(4) of food stamp regulations which requires that the State agency return overpayments as soon as possible after the overpayment becomes known.

Reporting—(ix)(C): The proposed rule eliminated the management report required by the August 1991 General Notice and replaced it with a requirement that annually and no later than the tenth of October of the year prior to the offset year State agencies report in writing to the FCS regional office the number of 60-day notices mailed and the total dollar value of the claims associated with those notices. One State agency supported this change. To be consistent with change in the mailing date of 60-day notices, this final rule requires that the report be submitted no later than 10 days after 60-day notices are mailed.

Alternate 60-day notice—(x): The required contents for this 60-day notice are set forth in section 273.18(g)(5)(x). This section contains the specifications from the August 1991 General Notice, updated to reflect a statutory change and slightly modified in response to experience during the test of FTROP. FCS has previously provided State agencies language for this notice and has discussed it during training sessions.

C. Federal Salary Offset

As stated in the proposed rule, the Department tested salary offset under the authority of a General Notice published August 29, 1994 at 59 FR 44400. The Department received one formal comment on that General Notice and is responding to that comment in this preamble. In addition, the Department used experience from the test of salary offset as well as comments received on the proposed rule in developing these final salary offset regulations.

Claims subject to salary offset—(i): One State agency recommended that, because of the overall work required of State agencies in connection with salary offset, only those claims owed by Federal employees which are not collected by offset from tax refunds should be pursued through salary offset. All claims submitted for FTROP are matched against Federal employee records to identify claims owed by Federal employees. The IRS requires that all such claims be stripped from the files of claims which will be referred for collection through FTROP. Consequently, to the extent that they are identified by this procedure, claims owed by Federal employees may not be referred for collection by FTROP and are accordingly subject to the salary offset procedures.

Two State agencies commented that State agencies should not be required to participate in salary offset as a condition of participating in tax offset. They argued that the salary collection effort is burdensome and not cost effective. FCS is requiring State agencies to participate to ensure that Federal employees are held to the same standards of repayment as other citizens. Although FCS has not changed the requirement in the proposed rule that State agencies participating in tax offset also participate in salary offset, FCS wants to clarify what the required participation entails for State agencies. Particularly, FCS does not intend this rule to change current policy at 7 CFR 273.18(d)(4)(iv), and 7 CFR 273.18 (e)(1) and (e)(2) which allow State agencies to cease collection activities when they are not cost effective.

FCS acknowledges that to date experience with salary offset is limited. FCS intends to work with State agencies in partnership to apply new experience and new technologies to develop the most cost effective collection methods possible. In support of that goal, FCS wants to clarify that just as State agencies would not be required to pursue collection of every claim no matter how small, FCS will not necessarily refer every claim identified as being owed by a Federal employee to State agencies for the collection effort specified in the salary offset regulation.

The action group was concerned that the State agency may collect an amount which exceeds the claim by continuing other means of collection while salary offset procedures are pending, including food stamp allotment reductions. All claims referred for salary offset must also meet the eligibility requirements for FTROP, including the requirements in section 273.18(G)(5)(ii) that the portion of the claim referred under FTROP or salary offset must not be simultaneously subject to other forms of collection and that no individual liable for the claim is currently participating in the FSP.

Confidentiality requirements—(ii)(C): One State agency stated that, since personnel have been advised of the confidentiality requirements for FTROP data, repeating the security agreements would not serve a useful purpose. The IRS specifies data security requirements for FTROP, the Department of Defense and the United States Postal Service for salary offset. Security procedures for FTROP and salary offset data may be identical in a State agency, but State agencies should review the security procedures for salary offset to make sure that they meet the requirements of this final rule and take steps to assure that personnel understand that salary offset data must be accorded the specified confidentiality and security protection.

Notices—(iii) and (v)(E): The action group urged the Department to require the same level of detail in what the group called the ''notice of impending salary offset'' as in the 60-day notice used for FTROP. As proposed, salary offset utilizes two notices. First, the proposed rule requires State agencies to provide individuals with an ''advance notice of salary offset.'' This notice is provided so that the State agency may offer the debtor a chance to voluntarily pay the debt before it is referred to FCS. The second notice is required by Departmental rules at 7 CFR 3.55 which details the contents of the ''Notice of Intent'' of salary offset. The proposed rule specified that the FSP notice of intent would comply with Departmental requirements subject to several modifications. The Departmental regulations detail the information which is required to be provided debtors in the notice of intent to assure that, among other things, they have sufficient information about appealing the intent salary offset. The Department believes that the contents of these two notices provide ample information for debtors about their rights and responsibilities with respect to salary offset. Accordingly, the final rule makes no changes in the proposed requirements for the two salary offset notices.

Referrals to FCS—(iii)(B): The proposed rule required that within 90 days of the date of the advance notice, the State agency refer to FCS all claims for which the State agency does not receive timely and adequate response as specified in the advance notice. The advance notice gave debtors 30 days to respond to State agencies. Consequently, State agencies had 60 days to refer ''no-response'' claims to FCS. One State agency commented that this 60-day period was inconsistent with the 30 days for determining a voluntary payment for a claim under FTROP overdue. There was no inconsistency since the two time periods applied to two different types of action.

The State agency commenting on the General Notice stated that the requirements for documentation of salary offset claims referred to FCS were excessive. This same concern was expressed during the test of FTROP by State agencies in connection with the requirements for documenting claims appealed to FCS regional offices. The proposed rule modified the requirements for documentation in both

situations to allow for copies of electronic records of demand letters, for example. One State agency commenting on the proposed rule stated that the documentation requirements for salary offset claims were still burdensome. The Department believes that the documentation requirements for referred salary offset claims give State agencies significant flexibility to provide documents and records in the way most feasible for their paper and electronic record systems. Accordingly, the final rule makes no change in the requirement as proposed.

$50 minimum—(iii)(C)(3): The action group suggested that the proposed $50 per month minimum voluntary payment to avoid salary offset is too high. They recommend $50 or 10 percent of disposable income, whichever is less. The Department set the $50 level of payment to be consistent with the standards for involuntary salary withholding established at 7 CFR 3.64 of USDA regulations and for this reason has retained the $50 minimum payment in this final rule.

Information encouraged in the advance notice—(iii)(C)(1): The proposed rule encouraged State agencies to include certain information about the specific claim in their advance notice to the debtor. One State agency commented that including the encouraged information with the advance notice would make automated notices impossible. Including the information is not required. State agencies are encouraged to include such information in order to demonstrate that the claim is valid. Accordingly, the final rule includes the language unchanged.

Appeals to FCS—(iii)(C)(5): One State agency stated that providing an appeal to FCS delays collection of the debts. The right to a Federal level hearing is provided by statute (5 U.S.C. 5514(a)(2)), which also provides that debtors must request such hearings within 30 days of receipt of the notice of intent from FCS, and the hearing must be concluded within 60 days of the date of the debtor's request. The final rule makes no changes in the proposed regulations for hearings on collections of recipient claims through salary offset.

FCS actions on referred claims—(v): The action group urged the Department to adopt a ''post-taking hearing'' so that employees will have an opportunity to appeal over collections from their salary which may occur if collection continues beyond the amount of the claim, or if collections are made and the employee did not receive the initial notice of offset. With respect to collections beyond the amount of the claim, Departmental regulations at 7 CFR 3.67 require that any over collection be promptly refunded. Employees will have verified records of their claim amounts and pay stubs reflecting the offsets from salaries. Refunds of collections beyond the amount of the claims would be made if employees bring any such errors to the attention of their employing agency.

With respect to the action group's second comment, there may be instances where employees do not receive the notice of intent from FCS. Departmental regulations at 7 CFR 3.56(c) provide that appeals received after the 30-day opportunity to make such appeals may be granted if the employee shows that he or she did not receive the notice of intent.

Implementation

State agencies must implement this rule by October 2, 1995, except that State agencies currently participating in FTROP must submit the amendment to the Plan of Operation required at 7 CFR 272.2(d)(1)(xii) no later than November 30, 1995.

List of Subjects

7 CFR Part 271

Administrative practice and procedures, Food stamps, Grant programs—social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Records, Reporting and recordkeeping requirements, Social Security, Students.

Accordingly, 7 CFR parts 271, 272 and 273 are amended as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

1. The authority citation for parts 271, 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

2. In § 271.2, the definition of *Offset year* is added in alphabetical order to read as follows:

§ 271.2 Definitions.

* * * * *

Offset year means the calendar year during which offsets may be made to collect certain recipient claims from individuals' Federal income tax refunds.

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.1, a new paragraph (g)(143) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(143) *Amendment 367.* The provisions of Amendment 367 must be implemented no later than October 2, 1995 except that State agencies currently participating in the Federal Income Tax Refund Offset Program (FTROP) must implement section 272.2(d)(1)(xii), which relates to the submission of the Plan of Operations, within November 30, 1995.

4. In § 272.2, a new sentence is added to the end of paragraph (a)(2) and a new paragraph (d)(1)(xii) is added to read as follows:

§ 272.2 Plan of operation.

(a) *General Purpose and Content.*

* * *

(2) *Content.* * * * The Plan's attachments shall also include the commitment to conduct the optional Federal Income Tax Refund Offset Program and the Federal Salary Offset Program.

* * * * *

(d) *Planning Documents.*

(1) * * *

(xii) If the State agency chooses to implement the Federal Income Tax Refund Offset Program and the Federal Salary Offset Program, the Plan's attachments shall include a statement in which the State agency states that it will comply with the provisions of Sections 273.18 (g)(5) and (g)(6) of this chapter.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

5. In § 273.18 new paragraphs (g)(5) and (g)(6) are added to read as follows:

§ 273.18 Claims against households.

* * * * *

(g) *Method of collecting payments.*

* * *

(5) *Federal income tax refund offset program.*

(i) *General requirements.* State agencies which choose to implement the Federal income tax refund offset program (FTROP) shall:

(A) Submit an amendment to their Plan of Operation as specified in Section 272.2(d)(1)(xii) of this chapter stating that they will comply with the

requirements for FTROP and with the requirements for the Federal Salary Offset Program (salary offset). Such amendments shall be submitted to the appropriate FCS regional office no later than twelve months before the beginning of a State agency's first offset year.

(B) Submit data for FTROP to FCS in the record formats specified by FCS and/or the Internal Revenue Service (IRS), and according to schedules and by means of magnetic tape, electronic data transmission or other method specified by FCS.

(ii) *Claims referable for offset.* State agencies may submit for collection from Federal income tax refunds recipient claims which are past due and legally enforceable.

(A) Such claims must be:

(*1*) Only inadvertent household error claims or intentional Program violation claims. These claims shall be properly established according to the requirements of this section (which pertains to claims against households) and the requirements of section 273.16 (which pertains to disqualification for intentional Program violations). In addition, these claims shall be properly established no later than the date the State transmits its final request for IRS addresses for the particular offset year. Furthermore, the State agency shall have electronic records and/or paper documents showing that the claim was properly established. These records and documents include such items as claim demand letters, results of fair hearings, advance notices of disqualification hearings, results of such hearings, and records of payments.

(*2*) Claims for which the State agency has verified that no individual who is jointly and severally liable as specified in paragraph (a) of this section is also currently participating in the FSP in the State.

(*3*) Claims which meet at least the minimum dollar amount established by the IRS.

(*4*) Claims for which the date of the initial demand letter is within 10 years of January 31 of the offset year, except that claims reduced to final court judgments ordering individuals to pay the debt are not subject to this 10-year limitation.

(*5*) Claims for which the State agency is receiving neither regular voluntary payments nor regular, involuntary payments such as wage garnishment. Claims for which a State agency has been receiving regular payments under paragraph (g)(2) of this section are considered past due and legally enforceable if the individual does not respond to a notice of default as specified in paragraph (g)(2) of this section.

(*6*) Claims for which collection is not barred by a bankruptcy.

(*7*) Claims for which the State agency has provided the individual with all of the notification and opportunities for review as specified in paragraphs (g)(5)(iii), (g)(5)(iv), (g)(5)(v) and (g)(5)(vi) of this section.

(B) In addition:

(*1*) All claims to be submitted for collection under FTROP shall be reduced by any amounts subject to collection from State income tax refunds or from other sources which may result in collections during the offset year.

(*2*) If a claim to be submitted for collection under FTROP is a combination of two or more recipient claims, the date of the initial demand letter for each claim combined shall be within the 10-year range specified in paragraph (g)(5)(ii)(A)(*4*) of this section. Claims reduced to judgment shall not be combined with claims which are not reduced to judgment.

(*3*) If a claim to be submitted under FTROP is apportioned between two or more individuals who are jointly and severally liable for the claim pursuant to paragraphs (a) and (f) of this section, the sum of the amounts submitted shall not exceed the total amount of the claim.

(iii) *60-Day notice to individuals.* (A) Prior to referring claims for collection under FTROP, the State agency shall provide individuals from whom it seeks to collect such claims with a notice, called a 60-day notice. For offset year 1996, State agencies have the option of providing the 60-day notice specified in paragraph (g)(5)(iv) of this section or in paragraph (g)(5)(x) of this section. For offset year 1997 and subsequent years, State agencies shall provide the 60-day notice specified in paragraph (g)(5)(iv).

(B) With the exception of such State-specific information as names and job titles and information required for State agency contacts, a State agency's 60-day notice shall contain only the information specified in paragraph (g)(5)(iv) of this section. In the certification letter required in paragraph (g)(5)(vii) of this section, the State agency shall include a statement that its 60-day notice conforms to this requirement. This requirement shall not apply to State agencies which choose to use the 60-day specified in paragraph (g)(5)(x) of this section for offset year 1996.

(C) Unless otherwise notified by FCS, the State agency shall mail 60-day notices for claims to be referred for collection through FTROP no later than October 1 preceding the offset year during which the claims would be offset.

(D) The State agency shall mail 60-day notices using the address information provided by the IRS unless the State agency receives clear and concise notification from the taxpayer that notices from the State agency are to be sent to an address different from the address obtained from the IRS. Such clear and concise notification shall mean that the taxpayer has provided the State agency with written notification including the taxpayer's name and identifying number (which is generally the taxpayer's SSN), the taxpayer's new address, and the taxpayer's intent to have notices from the State agency sent to the new address. Claims for which 60-day notices addressed as required in this paragraph are returned as undeliverable may be referred for collection under FTROP.

(iv) *Contents of the 60-day notice.* Except that the language set out in paragraph (g)(5)(iv)(C) of this section shall not be included in the notice for offset year 1996, the State agency's 60-day notice shall state that:

(A) [Name of the State agency or an equivalent phrase] has records documenting that you, [the name of the individual], Social Security Number: [the individual's Social Security Number] are liable for [the unpaid balance of the recipient claim(s) the State agency intends to refer] resulting from overissued food stamp benefits. [The name of the State agency or equivalent phrase] has previously mailed or otherwise delivered demand letters notifying you about the claim, including the right to a fair hearing on the claim, and has made any other required collection efforts.

(B) The Deficit Reduction Act of 1984, as amended, authorizes the Internal Revenue Service (IRS) to deduct such debts from tax refunds if they are past due and legally enforceable. [Name of the State agency or an equivalent phrase] has determined that your debt is past due and legally enforceable as specified by the Deficit Reduction Act of 1984, the IRS regulations, and Food Stamp Program (FSP) regulations. We intend to refer the claim for deduction from your Federal income tax refund unless you pay the claim within 60 days of the date of the notice or make other repayment arrangements acceptable to us.

(C) If we refer your claim to the IRS, a charge for the administrative cost of collection will be added to your claim and that amount will also be deducted if the claim, or any portion of the claim, is deducted from your tax refund. This

charge will be approximately [the amount provided by FCS].

(D) All adults who were household members when excess food stamp benefits were issued to the household are jointly and severally liable for the value of those benefits, and collection of claims for such benefits may be pursued against all such individuals.

(E) Our records do not show that the claim is being paid according to either a voluntary agreement with us or through scheduled, involuntary payments. To pay the claim voluntarily or to discuss it, you should contact: [an office, administrative unit and/or individual, the contact's street address or post office box, and a toll-free or collect telephone number].

(F) You are entitled to request a review of the intended collection action. We must receive your request for review within 60 days of the date of this notice. Such a request must be written, must be submitted to the address provided in this notice and must contain your Social Security Number. We will not refer your claim for offset while our review is pending.

(G) The claim is not legally enforceable if a bankruptcy prevents collection of the claim.

(H) You may want to contact your local office of the IRS before filing your Federal income tax return. This is true where you are filing a joint return, and your spouse is not liable for the food stamp claim and has income and withholding and/or estimated Federal income tax payments. In such circumstances your spouse may be entitled to receive his or her portion of any joint refund. Your own liability for this claim, including any charge for administrative costs, may still be collected from your share of such a joint refund.

(I) If you request a review of our intent to collect the claim from your income tax refund, you should provide documentation showing that at least one of the items listed below is incorrect for the claim cited in this notice. If you do not have such documentation, for example a cancelled check, you should explain in detail why you believe that the claim is not collectible under the Federal Income Tax Refund Offset Program.

(J) The claim cited in this notice is subject to collection from your tax refund for the following reasons:

(*1*) The claim was properly established according to Food Stamp Program regulations and was caused by an inadvertent household error or an intentional Program violation;

(*2*) No individual who is jointly and severally liable for the claim is also currently participating in the Food Stamp Program in [the name of State initiating the collection action];

(*3*) The claim is for at least [the minimum dollar amount required by the IRS];

(*4*) The date of the initial demand letter for the claim is within 10 years of January 31, [the offset year]. If the claim was reduced to a final court judgment ordering you to pay the debt, this 10-year period does not apply, and the date of the initial demand letter may be older than 10 years; and

(*5*) We are neither receiving voluntary payments pursuant to an agreed upon schedule of payments as provided in current Food Stamp Program regulations nor are we receiving scheduled, involuntary payments such as wage garnishment. Claims for which we have been receiving regular payments under current Food Stamp Program regulations are considered past due and legally enforceable if you did not respond to a notice of default.

(K) In addition, collection of the claim is not barred by bankruptcy.

(v) *State agency action on requests for review.* (A) For all written requests for review received within 60 days of the date of the 60-day notice, the State agency shall determine whether or not the subject claims are past due and legally enforceable, and shall notify individuals in writing of the result of such determinations.

(B) The State agency shall determine whether or not claims are past due and legally enforceable based on a review of its records, and of documentation, evidence or other information the individual may submit.

(C) If the State agency decides that a claim for which a review request is received is past due and legally enforceable, it shall notify the individual that:

(*1*) The claim was determined past due and legally enforceable, and the reason for that determination. Acceptable reasons for such a determination include the individual's failure to provide adequate documentation that the claim is not past due or legally enforceable;

(*2*) The State agency intends to refer the claim to the IRS for offset;

(*3*) The individual may ask FCS to review the State agency decision. FCS must receive the request for review within 30 days of the date of the State agency decision. FCS will provide the individual a written response to such a request stating its decision and the reasons for its decision. The claim will not be referred to the IRS for offset pending the FCS decision; and

(*4*) A request for an FCS review must include the individual's SSN and must be sent to the appropriate FCS regional office. The State agency decision shall provide the address of that regional office, including in that address the phrase ''Tax Offset Review.''

(D) If the State agency determines that the claim is not past due or legally enforceable, in addition to notifying the individual that the claim will not be referred for offset, the State agency shall take any actions required by food stamp regulations with respect to establishing the claim, including holding appropriate hearings and initiating collection action.

(E) The State agency shall not refer for offset a claim for which a timely State agency review request is received unless by October 31 preceding the offset year the State agency determines the claim past due and legally enforceable, and notifies the individual of that decision as specified in paragraphs (g)(5)(v)(C)(*1*), (g)(5)(v)(C)(*2*), and (g)(5)(v)(C)(*3*) of this section.

(vi) *FCS action on appeals of State agency reviews.*

(A) FCS shall act on all timely requests for FCS reviews of State agency review decisions as specified in paragraph (g)(5)(v)(C) of this section. A request for FCS review is timely if it is received by FCS within 30 days of the date of the State agency's review decision.

(B) If a timely request for FCS review is received, and the State agency's decision is dated on or before October 31 of the year prior to the offset year, FCS shall:

(*1*) Complete a review and notification as specified in paragraphs (g)(5)(vi)(C), (g)(5)(vi)(D), and (g)(5)(vi)(E) of this section, including providing State agencies and individuals the required notification of its decision; or

(*2*) Notify the State agency that it has not completed its review and that the State agency must delete the claims in question from files to be certified to FCS according to paragraph (g)(5)(vii) of this section. If FCS fails to timely notify the State agency and because of that failure a claim is offset which FCS later finds does not meet the criteria specified in paragraph (g)(5)(ii) of this section, FCS will provide funds to the State agency for refunding the charge for the offset fee.

(C) If a timely request for FCS review is received, and the State agency's decision is dated after October 31 of the year prior to the offset year, FCS shall complete a review as specified in paragraphs (g)(5)(vi)(D), (g)(5)(vi)(E) and (g)(5)(vi)(F) of this section, but the claim shall not be referred for offset as

specified in paragraph (g)(5)(v)(E) of this section.

(D) When FCS receives an individual's request to review a State agency decision, FCS shall:

(*1*) Request pertinent documentation from the State agency about the claim. Such documentation shall include such things as printouts of electronic records and/or copies of claim demand letters, results of fair hearings, advance notices of disqualification hearings, the results of such hearings, records of payments, 60-day notices, review requests and documentation, decision letters, and pertinent records of such things as telephone conversations; and

(*2*) Decide whether the State agency correctly determined the claim in question is past due and legally enforceable.

(E) If FCS finds that the State agency correctly determined that the claim is past due and legally enforceable, FCS will notify the State agency and individual of its decision, and the reason(s) for that decision, including notice to the individual that any further appeal must be made through the courts.

(F) If FCS finds that the State agency incorrectly determined that the claim is past due and legally enforceable, FCS will notify the State agency and individual of its decision, and the reason(s) for that decision. FCS will also notify the State agency about any corrective action the State agency must take with respect to the claim and related procedures.

(vii) *Referral of claims for offset.* (A) State agencies shall submit to FCS a certified file of claims for collection through FTROP by the date specified by FCS in schedules which FCS will provide as stated in paragraph (g)(5)(i) of this section. At the same time State agencies shall also provide to their FCS regional office a letter which specifically certifies that all claims contained in that certified file meet the criteria for claims referable for FTROP as specified in paragraph (g)(5)(ii) of this section, and that for all such claims a notice and opportunity to request a review as required in paragraphs (g)(5)(iii), (g)(5)(iv), (g)(5)(v) and (g)(5)(vi) of this section have been provided. The certification letter shall also state that the State agency has not included in the certified file of claims any claim which, as provided in paragraph (g)(5)(vi) of this section, FCS notified the State agency is not past due or is not legally enforceable, or any claim for which FCS notified the State agency that it has not completed a timely requested review, or for which the State agency has not completed a timely requested review. Finally, the certification letter shall also state that with the exception of State-specific information such as names and positions and State-specific information required for State agency contacts, the State agency's 60-day notice contains only the information specified in paragraph (g)(5)(iv) of this section.

(B) The State agency shall provide to FCS the name, address and toll-free or collect telephone numbers of State agency contacts to be included in IRS notices of offset. State agencies shall state in the letter required in paragraph (g)(5)(vii)(A) of this section how they determined that such information is accurate and shall provide FCS updates of that information if and when that information changes.

(viii) *State agency actions on offsets made.* (A) Promptly after receiving notice from FCS that offsets have been made, the State agency shall notify affected individuals of offsets made, including the amount charged for offset fees, and the status of the claims in question.

(B) As close in time as possible to the notice of offset required in paragraph (g)(5)(viii)(A) of this section, the State agency shall refund to the individual (as required by paragraph (i)(4) of this section) any over collection which resulted from the offset of the individual's Federal income tax refund.

(C) If an offset results from a State agency including in the certified file of claims required by paragraph (g)(5)(vii)(A) of this section a claim which does not meet the criteria specified in paragraph (g)(5)(ii) of this section, the State agency shall refund the amount offset to the individual, including any amounts collected to pay for the offset fee charged by the IRS. The State agency may claim any such latter amount as an allowable administrative cost under Part 277 of this chapter. The State agency shall not be responsible for refunding any portion of the charges for offset fees incurred for IRS reversals of offsets when, for example, the IRS refunds amounts offset, including offset fees, to taxpayers who properly notified the IRS that they are not liable for claims which were collected in whole or part from their share of a joint Federal income tax refund.

(ix) *Monitoring and reporting offset activities.* State agencies shall monitor FTROP activities and shall take all necessary steps to:

(A) Update IRS files, reducing the amounts of or deleting claims from those files to reflect payments made after referral to FCS, or deleting claims which for other reasons no longer meet the criteria for being collectible under FTROP.

(B) Promptly refund to the individual any over collection of claims as required in paragraph (g)(5)(viii)(B) of this section.

(C) Annually and no later than the tenth of October of the year prior to the offset year report in writing to the FCS regional office the number of 60-day notices mailed and the total dollar value of the claims associated with those notices.

(D) Submit data security and voluntary payment reports as required by FCS and the IRS.

(E) Report collections of all recipient claims collected under the procedures of paragraph (g)(5) of this section as required by paragraph (i)(2) of this section.

(x) *Contents of the alternate 60-day notice.* As specified in paragraph (g)(5)(iii)(A) of this section, for offset year 1996 State agencies may use a 60-day notice specifying the following information:

(A) The State agency has records documenting that the individual, identified with his or her Social Security Number, is liable for a specified, unpaid balance of a claim for overissued food stamp benefits, and that the State agency has notified the individual about the claim and made prior collection efforts as required by the Food Stamp Program. The notice must also state that the claim is past due and legally enforceable.

(B) The Deficit Reduction Act of 1984, as amended by the Emergency Unemployment Act of 1991, authorizes the Internal Revenue Service to deduct such debts from tax refunds, and the State agency intends to refer the claim for such deduction unless the individuals pays the claim within 60 days of the date of the notice, or makes other repayment arrangements acceptable to the State agency.

(C) Instructions about how to pay the claim, including the name, address and telephone number of an office, administrative unit or person in the State agency who can discuss the claim and the intended offset with the individual.

(D) The following information about requesting a review of the intended offset:

(*1*) The individual is entitled to request a review of the intended referral for offset;

(*2*) The State agency will not act on review requests which it receives later than 60 days after the date of the 60-day notice;

(*3*) Claims for which timely review requests have been received will not be referred for offset while under review;

(*4*) A review request must provide evidence or documentation why the individual believes that the claim is not past due or is not legally enforceable;

(*5*) A review request is not considered received until the State agency receives such evidence or documentation; and

(*6*) A review request must contain the individual's Social Security Number.

(E) The individual should contact the State agency if he or she believes that a bankruptcy proceeding prevents collection of the claim or if the claim has been discharged in bankruptcy.

(F) The individual may want to contact the Internal Revenue Service before filing his or her Federal income tax return if the individual is married, filing a joint return, and if his or her spouse is not liable for the food stamp claim and has income and withholding and/or estimated Federal income tax payments. In such circumstances the spouse may be entitled to receive his or her portion of any joint refund. False claims concerning such liability may subject individuals to legal action.

(G) All individuals are jointly and severally liable for overpayment of food stamps if they were adult household members when the food stamps were overissued.

(6) *Federal salary offset program.*

(i) *Claims subject to salary offset.* All recipient claims submitted by State agencies participating in the Federal income tax refund offset program (FTROP) shall be subject to the matching procedures specified in this paragraph. Individuals identified by the match shall be subject to the salary offset procedures specified in this paragraph.

(ii) *Identification of recipient claims owed by Federal employees.* (A) FCS will match all recipient claims submitted by State agencies participating in FTROP against Federal employment records maintained by the Department of Defense and the United States Postal Service. FCS will remove recipient claims matched during this procedure from the list of recipient claims to be referred to the Internal Revenue Service (IRS) for collection through FTROP.

(B) When FCS receives a list of Federal employees matched against recipient claims for a particular State agency, it will notify the State agency in writing accompanied by a data security and confidentiality agreement containing the requirements specified in paragraph (g)(6)(ii)(C) of this section for the State agency to sign and return. When that agreement is returned, signed by an appropriate official of the State agency, FCS will provide the list of matched Federal employees to the State agency.

(C) State agencies which receive lists of matched employees shall take the actions specified in this paragraph to ensure the security and confidentiality of information about those employees and their apparent debts, and shall ensure that any contractors or other non-State agency entities to which the records may be disclosed also take these actions:

(*1*) By such means as card keys, identification badges and security personnel, limit access to computer facilities handling the data to persons who need to perform official duties related to the salary offset procedures. By means of a security package, limit access to the computer system itself to such persons;

(*2*) During off-duty hours, keep magnetic tapes and other hard copy records of data in locked cabinets in locked rooms. During on-duty hours, maintain those records under conditions that restrict access to persons who need them in connection with official duties related to salary offset procedures;

(*3*) Use the data solely for salary offset purposes as specified in paragraph (g)(6) of this section, including not extracting, duplicating or disseminating the data except for salary offset purposes;

(*4*) Retain the data only as long as needed for salary offset purposes as specified in paragraph (g)(6) of this section, or as otherwise required by FCS;

(*5*) Destroy the data by shredding, burning or electronic erasure; and

(*6*) Advise all personnel having access to the data about the confidential nature of the data and their responsibility to abide by the security and confidentiality provisions stated in paragraph (g)(6)(ii)(C) of this section.

(D) Prior to taking any action to collect recipient claims as specified in paragraph (g)(6)(iii) of this section, State agencies shall review the claims records of matched Federal employees to verify the amount of the recipient claim owed, and to remove from the list of claims any recipient claims which have been paid, which are being paid according to an agreed to schedule, or which for other reasons are not collectible.

(iii) *State agency advance notice of salary offset.* (A) Following the review specified in paragraph (g)(6)(ii)(D) of this section, State agencies shall provide each Federal employee verified as owing a recipient claim (debtor) with an advance notice of salary offset (advance notice). This advance notice shall be mailed to the debtor at the address provided by FCS, or shall be otherwise provided, within 60 days of State agency receipt of the list specified in paragraph (g)(6)(ii)(B) of this section.

(B) Within 90 days of the date of the advance notice, the State agency shall refer to FCS all claims for which the State agency does not receive timely and adequate response as specified in the advance notice. Such referrals shall consist of a copy of the advance notice sent to the debtor and copies of records relating to the recipient claim. Records relating to the recipient claims include such things as copies of printouts of electronic records and/or copies of claim demand letters, results of fair hearings, advance notices of disqualification hearings, the results of such hearings, records of payments, review requests and documentation, decision letters, and pertinent records of such things as telephone conversations.

(C) The advance notice shall state that:

(*1*) According to State agency records the debtor is liable for a claim for a specified dollar amount due to receiving excess food stamp benefits. State agencies are encouraged to include as much other information about the claim as possible, including such things as whether it was caused by household error or intentional Program violation, the date of the initial demand letter, any hearings or court actions which relate to the claim, and what, if any, payments have reduced the amount of the original claim;

(*2*) Through a computer match the debtor was found to be employed by [the name and address of the employing agency of the debtor]. The computer match was conducted under the authority of and according to procedures required by the Privacy Act of 1974, as amended;

(*3*) Collection from the wages of Federal and USPS employees for debts such as food stamp recipient claims is authorized by the Debt Collection Act of 1982. The claim will be referred to FCS for such collection action unless within 30 days of the date of the advance notice the State agency receives either:

(*i*) Payment of the claim in full. Claims of $50 or less shall be paid in full within 30 days or they will be referred to FCS for collection from the individual's Federal salary; or

(*ii*) The first installment payment for the claim. Claims of more than $50, if not paid in full within 30 days, must be paid in installments of at least $50 a month. Debtors may pay more than $50 on any installment payment. The advance notice shall state the monthly due date of installment payments and that if a monthly installment payment of

at least $50 is not received by the due date, the claim will be referred to FCS for offset from the individual's Federal salary with no further opportunity to enter a voluntary repayment agreement;

(*4*) The name, address and a toll-free or collect telephone number of a State agency contact (an individual or unit) for repayment and/or discussion of the claim; and

(*5*) Debtors may submit documentation to State agencies showing such things as payments of claims or other circumstances which would prevent collection of claims. Unless the State agency receives such documentation within 30 calendar days of the date of the advance notice and the documentation clearly shows that the claim has been paid or is not legally collectible, the State agency shall refer the claim to FCS for collection from the debtor's salary. The State agency shall notify debtors in writing when claims for which an advance notice was issued will not be referred for collection from salaries. Debtors have the right to a formal appeal to FCS. Notification about how to make such appeals is required and will be provided to debtors before any collection action from salaries is taken.

(iv) *State agency retention and reporting of collections.* (A) State agencies shall retain collections of recipient claims paid voluntarily to State agencies and to FCS through salary offsets at the rates specified in paragraph (h) of this section for the appropriate reporting period. From time to time as volume warrants, FCS will report and transfer amounts collected from salaries to State agencies. Collections by State agencies and by FCS on all such claims shall be reported as appropriate.

(B) If a debtor fails to make an installment payment, within 60 days of the date the payment was due, State agencies shall refer the claim to FCS, reporting the default, the dollar amount collected and the balance due.

(v) *FCS actions on claims referred by State agencies.* Departmental procedures at 7 CFR 3.51–3.68 shall apply to claims referred by State agencies to FCS as required by paragraphs (g)(6)(iii)(B) and (g)(6)(iv)(B) of this section subject to the following modifications:

(A) In addition to the definitions set forth at 7 CFR 3.52, the term ''debts'' shall further be defined to include recipient claims established according to this section; and the terms ''State agency'' and ''FCS'' shall be defined as set forth in section 271.2 of this chapter.

(B) Pursuant to 7 CFR 3.34(c)(4) and 7 CFR 3.55(d), the Secretary has determined that collection of interest, penalties and administrative costs provided at 7 CFR 3.65 is not in the best interests of the United States and hereby waives collection of such charges.

(C) In addition to providing the right to inspect and copy Departmental records as specified at 7 CFR 3.60(a), the Secretary shall provide copies of records relating to the debt in response to timely requests. For a request to be timely, FCS must receive it within 30 calendar days of the date of the notice of intent.

(D) Pursuant to 5 CFR 550.1104(d)(6), an opportunity to establish a written repayment agreement provided at 7 CFR 3.61 shall not be provided.

(E) The notice of intent for FSP salary offset shall comply with the requirements of the Departmental notice of intent which are set forth at 7 CFR 3.55, subject to the following modifications:

(*1*) In addition to the statement that the debtor has the right to inspect and copy Departmental records relating to the debt, the notice of intent shall state that if timely requested by the debtor, the Secretary shall provide the debtor copies of such records. It shall further advise, as required by 7 CFR 3.60(a), that to be timely such requests must be received within 30 days of the date of the notice of intent; and

(*2*) The statement of the right to enter a written repayment agreement provided by 7 CFR 3.55(f) shall not be included.

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Dated: August 29, 1995.

Ellen Haas,

Under Secretary for Food, Nutrition and Consumer Services.

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