DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. No. 389]

RIN 0584–AB88

Food Stamp Program: Recipient Claim Establishment and Collection Standards

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: Food stamp recipient claims are established and collected against households that receive more benefits than they are entitled to receive. At the Food and Nutrition Service, we are revising Food Stamp Program regulations that cover food stamp recipient claims. This rule aims to improve claims management in the Food Stamp Program while providing State agencies with increased flexibility in their efforts to increase claims collection. We incorporate into this rule the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 that affect recipient claims. In addition, this action is consistent with the President's regulatory reform effort.

The last major revision to the Food Stamp recipient claim regulations was in 1983. Recent legislation, technological advances and changes in Federal debt management procedures have made many parts obsolete.

This rule accomplishes several specific objectives while updating the Food Stamp recipient claims regulations. First, it incorporates changes mandated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Second, the presentation of our policies, and, in some cases, the policies themselves are streamlined by this rule. Third, this action incorporates Federal debt management regulations and statutory revisions into recipient claim management. Finally, this rule provides State agencies with additional tools to facilitate the establishment, collection and disposition of recipient claims.

DATES: Sections 273.18(c)(1)(ii)(B), 273.18(f) and 273.18(g) are effective retroactive to August 22, 1996. The remaining amendments of this rule are effective and must be implemented no later than August 1, 2000.

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SUPPLEMENTARY INFORMATION:

I. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

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

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, we must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

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

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Shirley R. Watkins, Under Secretary for Food, Nutrition and Consumer Services, has certified that this rule will not have a significant impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have a preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Dates'' section of this preamble. Prior to any judicial challenge to the provisions of this rule or the applications of its provisions, all applicable administrative procedures must be exhausted.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have ''federalism implications,'' agencies are directed to provide a statement for inclusion in the preamble of the regulation describing the agency's considerations in terms of the three categories called for under section (6)(a)(B) of Executive Order 13132:

Prior Consultation With State Officials

Prior to drafting this final rule, we received input from State and local agencies at various times. Since the FSP is a State administered, federally funded program, our regional offices have informal and formal discussions with State and local officials on an ongoing basis regarding program implementation and performance. This arrangement allows State and local agencies to provide feedback that forms the basis for many discretionary decisions in this and other FSP rules. In addition, we presented our ideas and received feedback on current and future claims policy at various regional, State, and professional conferences. Lastly, the comments on the draft rule received from State and local officials were carefully considered in the drafting of this final rule.

Nature of Concerns and the Need To Issue This Rule

State and local agencies generally want greater flexibility in their management of recipient claims. To maximize efficiency, a State agency usually tries to integrate, to the fullest extent possible, its food stamp recipient claims process with claims operations for similar programs. State and local officials have indicated that imposing requirements unique only to food stamp claims hampers this consolidation of effort, thereby leading to inefficiencies.

Extensive prescriptive regulations already exist for food stamp recipient

claims. We must change these regulations to address the concerns of State and local officials. Addressing these concerns is a primary objective of this rule.

Extent to Which We Meet These Concerns

We believe that we adequately address the issue of State flexibility in this final rule. When discretion is allowed and where appropriate, we specifically provide State agencies with the opportunity to develop and use their own procedures to manage recipient claims. In addition, we are also willing to approve a waiver of any discretionary provision in this rule where a State can demonstrate that its own procedure would be more effective and efficient, providing such a waiver would not result in a material impairment of any statutory or regulatory rights of participants or potential participants and would otherwise be consistent with the waiver authority set out at 7 CFR 272.3(c).

Regulatory Impact Analysis

Need for Action

This action is needed to: (1) Implement changes in food stamp recipient claims mandated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, (PRWORA); (2) incorporate Federal debt management regulations and statutory revisions into recipient claim management; (3) provide State agencies with additional tools for establishing, collecting and disposing of recipient claims; and (4) streamline policies and procedures where appropriate.

Benefits

The Federal government and State agencies are the beneficiaries from the provisions in this rule. The Federal government will benefit from increased recipient claims collections brought about by additional collection tools. In addition to the added retention amounts rendered through these increased collections, State agencies will also benefit by the streamlined requirements and procedures in this rule.

Costs

The increased collections brought about by this rule will reduce Program costs by $392.5 million for the five year period fiscal year 2001 through fiscal year 2005.

II. Paperwork Reduction Act

The information collection requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB Nos. 0584–0069, 0584–0446 and 0584–0492.

Reporting and Record Keeping Burdens

FNS–209 Report (OMB No. 0584–0069)

Claim activity is reported by State agencies on the Status of Claims Against Households (FNS–209) report. The OMB approved the information collection requirements for completing and submitting the FNS–209 report under OMB Control Number 0584–0069. This rule makes some changes to the form and reporting requirements. A revised form FNS–209 and a burden estimate will be submitted to OMB under the currently approved OMB Control Number 0584–0069.

Federal Collection Methods for Food Stamp Program Recipient Claims (0584–0446)

The information collection burden for Federal collections of recipient claims is covered under OMB Control Number 0584–0446. This rule makes some changes to those requirements. An estimate of the revised burden associated with this collection has already been approved by OMB.

Repayment Demand and Program Disqualification (0584–0492)

The burden associated with providing notice and demand for payment to households has been approved under OMB Control Number 0584–0492. This rule does not change this burden.

Recipient Claims and Other Reporting Forms Consolidation and Redesign

The proposed rule contained a 60-day notice proposing to combine and consolidate the FNS–209 with a number of other reports. The purpose of this proposal is to reduce the number of reports and data elements to be reported.

We have suspended all work on this project. Other Federal and State priorities (especially Year 2000 changes) have taken precedence. In addition, postponing this project provides us with an opportunity to further assess our data needs and requirements. We will reannounce our forms consolidation proposal with a new 60-day notice when appropriate. All comments received for the 60-day notice included in the May 28, 1998, proposed rule will be taken into account at that time.

III. Background

A. General

Purpose of Rule

This rule creates new standards for establishing and collecting food stamp recipient claims. We aim to strike the optimal balance among various competing goals including program integrity, fiscal accountability, practical claim management, and the rights of individuals and households. We believe that this rule achieves this goal.

Plain Language Changes

President Clinton's memorandum of June 1, 1998, requires us to write new regulations in plain language. This final rule conforms to this requirement. As a result, the formatting and wording used in the regulatory text of this rule differs from the format and text in the proposed rule. However, unless specifically addressed in the comment discussion below, the changes are only in the presentation of the material and not to the actual requirements. We believe the result is a regulation that is both easier to read and understand.

Overview of Food Stamp Recipient Claims

The claims environment

Households receiving overpayments or misusing food stamp benefits undermine the integrity of the FSP. Individual overpayments are relatively small, usually under $500. However, we estimate that, in fiscal year 1998, over $1.4 billion in benefits were overpaid in the aggregate. The efficient and effective establishment and collection of recipient claims to collect these overpayments is essential to program integrity. Nearly 720,000 claims were established in fiscal year 1999 totaling over $307 million.

Although State agencies administer the FSP and collect overpayments, these benefits are federally funded and claims established from overpayments are Federal debts. This unique arrangement is the reason why we need extensive regulations in this area. A strict application of the standard federal collection rules is not the best solution for recipient claim debt management. The reason for this is two-fold. First, the Food Stamp Act of 1977, 7 U.S.C. 2011–2032, (FSA), which governs the FSP, contains certain collection provisions and household protections that are not included in other Federal laws. Second, we must accommodate State agencies in their efforts to operate their respective claims operations as efficiently as possible. A State agency usually tries to integrate its food stamp recipient claims process with claims operations for similar programs such as Temporary Assistance for Needy Families (TANF). To accomplish this, we need to afford State agencies a certain degree of flexibility while maintaining enough

control to ensure effective claims management.

Claim Types and Establishing Claims

A recipient claim falls into one of three categories:

1. Intentional program violation (IPV) claim—This is a claim that is established because the overpayment was caused by fraudulent activity by the household. State agencies are currently able to retain 35 percent of what they collect for this type of claim.

2. Inadvertent household error (IHE) claim—This is a claim that is established if the overpayment was caused by the household unintentionally violating program rules. State agencies are able to retain 20 percent of what they collect for this type of claim. They retain a somewhat higher amount, 35 percent, if the collection is through unemployment compensation benefit intercept.

3. Agency error (AE) claim—This is a claim that is established because the overpayment was caused by a mistake on the part of the State or local agency. State agencies receive no retention for collecting this type of claim.

State agencies establish a claim by documenting the amount and reason for the overpayment, and issuing a demand letter to the household. Nationwide, claims establishment for fiscal year 1999 includes:

	IPV claim	IHE claim	AE claim	Total
Established				
Number	40,712	441,941	237,298	719,951
Amount	$41.1 million	$212.8 million	$53.9 million	$307.8 million
Avg. claim established	$1,010	$481	$227	$427

Collecting Claims

State agencies use various methods to collect claims. The two primary methods are allotment reduction and the Federal debt collection programs such as the Treasury Offset Program:

1. Allotment Reduction—This is when the household's benefits are reduced each month to collect the claim. Allotment reduction is the primary collection method for households that continue to participate in the FSP.

2. Federal Treasury Offset Program (TOP)—State agencies refer delinquent claims to TOP. This is the most effective collection method for households that no longer participate in the FSP. TOP intercepts federal payments that are to be made to individuals. The sources for these offsets vary but currently they are primarily from Federal income tax refunds and Federal salaries.

3. Other Methods—These include, but are not limited to, lump sum and installment payments, wage garnishments, unemployment compensation benefit intercepts, and state income tax refund and lottery winnings.

This is a breakout by the method of collection for fiscal year 1999:

	Allotment reduction	TOP	Other methods	Total
Amount collected	$83.6 million	$85.1 million	$44.3 million	$213.0 million

Of these amounts collected, State agencies retained about $22.7 million for IPV collections and about $22.0 million for collecting IHE claims.

Welfare Reform

PRWORA amended the FSA in a number of ways. This rule implements the provisions of PRWORA relating to recipient claims. The specific provisions were originally addressed in the proposed rule. We received comments on the implementation of a number of these provisions and these comments are addressed in the following section of this preamble.

B. Comment Discussion

Publication of Proposed Rule and Comments

We published the proposed rule, *Food Stamp Recipient Claim Establishment and Collection Standards,* on May 28, 1998, at 63 FR 29303. A total of 96 comment letters were received on this rule. The letters were from 5 recipient interest groups, 3 governmental associations, 40 State agencies, 46 local agencies (43 from 1 State), and 2 non-FNS Federal agencies. The responses contained 494 separate comments. We thank you for your comments and interest. The final rule is a better rule because of your recommendations. We separated the comments by category and discuss them below.

Recipient Claims as Federal Debts

Food Stamp recipient claims are State-administered Federal claims. We included in the proposed rule that these debts are subject only to this and other federal regulations governing Federal debts. We received one comment on this provision in the proposed rule:

Does this new language in the rule restrict a State agency's ability to manage claims?

One State agency was concerned that the language specifying that recipient claims are Federal debts is too strong and restricts State agencies from performing claims establishment and collection more efficiently. It is a legal fact that these claims are Federal debt and, as such, they are subject to certain requirements. However, State agencies may benefit from this Federal claim status. For example, our intention with this provision is to make clear that food stamp recipient claims are included in many of the collection authorities and methods available for other Federal claims. We do not intend to stifle State agency flexibility. To make this clear, we will revise the provision by removing the word ''only'' to allow this flexibility. (See § 273.18(a)(i)(2)). We also want to remind State agencies that waivers to these regulations are available and may be requested. We will readily approve waivers that serve the best interest of the FSP by increasing efficiency and effectiveness in claims management. Of course, we cannot approve requests that compromise the statutory or regulatory rights of households or are specifically prohibited by the FSA.

Intentional Program Violations

An intentional Program violation (IPV) exists when a person is found to have intentionally violated program rules. A different section of our regulations (7 CFR 273.16) covers how IPVs are determined. We call any resulting claim an IPV claim. In the

proposed rule, a claim is handled as an IPV claim if one of the following occurs:

(1) A court determines that a household member committed an IPV;

(2) A household member is determined at an administrative disqualification hearing (ADH) to have committed an IPV;

(3) A household member signs a disqualification consent agreement for a suspected IPV referred for prosecution; or

(4) A household member signs a waiver of his/her right to an ADH.

One change that we made in the proposed rule (§ 273.18(c) at 63 FR 29325) is to make it optional for State agencies to establish a suspected IPV claim as an inadvertent household error (IHE) claim. We made this proposal to increase flexibility in this area.

The public submitted several comments on IPV claims:

Should we provide additional criteria to determine what claims should be pursued as IPV claims?

One State agency commented that we should provide additional criteria to determine what other occurrences could be pursued as IPV claims. Another State agency recommended that we recognize hearing formats unique to a particular State agency as acceptable for determining an IPV and the resulting IPV claim.

These comments have merit. However, the recommendations deal more with IPV determinations rather than establishing IPV claims. An IPV claim comes from an IPV. It is the finding of IPV itself that determines whether the claim should be pursued as an IPV claim. To come up with additional criteria, we need to address IPV pursuit and determination rather than IPV claim determination. The requirements for actual pursuit and determination of IPVs are not addressed in the proposed rule or in the regulations affected by this rule. Therefore, we will defer these comments until we propose changes to the section of our regulations (7 CFR 273.16) that covers IPV pursuit and determination.

Do we need to add an additional method for determining an IPV?

One State agency recommended that we add an additional method for determining an IPV and the resulting IPV claim. The State agency requested that a claim be considered an IPV when a client enters into a plea bargain or similar negotiations to avoid being adjudicated as guilty, but agrees to pay the debt without admitting guilt.

This situation is already included as an IPV in our current regulations. State agencies already have the ability to use methods described by the commenter to determine IPVs and establish IPV claims under the paragraph on deferred adjudication at 7 CFR 273.16(h) in our current regulations. Therefore, an additional method for IPV determination is not necessary.

Should we have a sub-category for a suspected IPV?

Instead of providing the option to establish a pending IPV claim as an IHE claim, one State agency recommended that we create a separate sub-category for pending IPV claims. The State agency believes that this would alleviate problems associated with establishing a claim prior to prosecution. The State agency's point is valid and the suggestion is good. However, we decided to take a different approach to resolve issues relating to the claim referral and establishment process. As a result, the final rule does not include many of the claim management requirements found in the proposed rule. In the final rule at § 273.18(d), State agencies may develop their own claim management plan to deal with suspected IPVs (as well as other issues). The *Claim Referral and Establishment* section of this preamble provides a more detailed discussion of this matter.

Why not retain the personal contact requirement when an IPV is established?

Our current policy at 7 CFR 273.18(d)(2) states that, if possible, a personal contact shall be made with the household when beginning collection action on an IPV claim. We eliminated this requirement in the proposed rule. Two recipient interest groups believe that we should retain this requirement. The commenters believe that this rule is beneficial to households by insuring that recipients have time to plan for imminent collection activity, and reduce the likelihood that such collection activity is taken in error.

We disagree with the commenters' assertion that this provision provides added benefits to the household. The household affected by an IPV claim has ample opportunity during the hearing and demand letter process to discuss the overpayment as well as future collection action. The retention of this provision is not necessary and therefore is not included in the final rule.

Calculating the Amount of the Claim

The proposed rule goes into detail on how to calculate a claim caused by an overpayment. The final rule at § 273.18(c) provides this information in a user-friendly table. We received several comments on calculating claim amounts:

Should any underpayments be applied to reduce an overpayment when determining the amount of a claim?

One recipient interest group recommended that all household circumstances should be included when establishing a claim. This includes applying any underpayment occurring because of the change in household circumstances against the overissuance with the difference being the claim. The commenter further believes that fairness dictates that this should be done even for periods beyond those for which an underpayment can be restored. The limit for the restoration of benefits is currently one year prior to when the State agency discovers the underpayment.

We believe that the proposed and final rule adequately cover this situation. When a claim is calculated, the State agency determines the correct amount of food stamp benefits for the months in question. This covers circumstances directly relating to the cause of the claim that cause underpayments as well as overpayments. For example, assume an additional household member with earned income joins the household. In this case, the additional income would cause an overpayment. Conversely, an additional household member with no income would cause an underpayment. The additional income would be offset (to some extent) by the larger household size in determining the amount of the claim. For periods in which there are net monthly underpayments, they may be offset against any resulting claim.

The only situation that is not covered by the final rule is when the underpayment happened more than one year before the State agency learned about it. In this instance, the State agency may not use the underpayment to offset an overpayment when calculating a claim. While we recognize that this may not appear fair to the household, this is the law. Section 11(e)(11) of the FSA (7 U.S.C. 2020(e)(11)) does not allow restoring benefits that are greater than one year old.

We want to make one final point regarding claims calculation. When calculating a claim, a State agency is expected to only use new data that it becomes aware of due to circumstances regarding the claim. A State agency is not required to re-verify all factors pertaining to the household.

Why are we not allowing the earned income deduction when calculating IHE claims?

We proposed to not allow the 20 percent earned income deduction to that part of any earned income that the household failed to report timely. One State agency objected to this proposed policy change. The commenter argued that, since the household inadvertently made the mistake, we should not further penalize the household. The State agency also argued that our proposal would conflict with its TANF policy. While the commenter does make some valid points, we have no choice in this matter. This rule change is set by legislation. Section 809 of the PRWORA, by amending section 5 of the FSA (7 U.S.C. 2014), specifically prohibits the inclusion of the 20 percent earned income deduction for these types of claims. As a result, this provision remains as proposed in the final rule. (See § 273.18(c)(1)(ii)).

Claims for Recipient Trafficking

The proposed rule would provide State agencies with the authority to establish recipient claims for trafficking. The public submitted 41 comments on this proposal. State and local agencies generally supported this proposal with some agencies expressing minor concerns or requesting clarifications. However, several recipient interest groups, along with a few State agencies, questioned the legality as well as the propriety of this proposal.

Are trafficking claims legal and appropriate?

Five commenters disagreed with our assertion in the proposed rule that the FSA allows us to authorize State agencies to establish claims for trafficking. The commenters contend that the FSA only provides for claims due to an actual overpayment and that we have no authority to develop new principles for when a debt is owed. We concur with the commenters that, generally, an overpayment occurs when a household receives more benefits than the household is entitled to receive. However, we still believe that we are able to extend claim establishment authority to instances of trafficking and benefit misuse. Section 13(a)(1) of the FSA (7 U.S.C. 2022(a)(1)) allows us to provide State agencies with '' * * * the power to determine the amount of * * * any claim * * * including, *but not limited to,* claims arising from * * * overissuances to recipients * * * (emphasis added).'' The ''not limited to'' language shows that Congress did not intend to specifically limit this authority to overpayments caused by certification and issuance errors. Moreover, Congress directed us to issue such regulations as are necessary or appropriate for the effective and efficient administration of the FSP so long as the regulations are consistent with the FSA, 7 U.S.C. 20139(c). Since the misuse of FSP benefits is clearly inconsistent with the purposes of the Program, and the establishment of claims can deter the misuse of benefits and allow for recovery of such benefits, we believe the establishment of claims for trafficking against recipients is within our authority. Considering this, our proposed provision is authorized by the FSA and therefore remains in this final rule.

Why are all household members, and not just the trafficker, responsible for paying a trafficking claim?

The proposed policy states that all adult household members are jointly and separately responsible for the payment of claims. One commenter remarked that only the trafficker should be responsible for a trafficking claim rather than all adult household members. The commenter points out that each adult in a household cannot reasonably be expected to be present or even aware each time someone in the household transacts the benefits. Therefore, according to the commenter, a responsible adult household member would often have no means of being aware of, much less preventing, the trafficking. While this is a valid point in some cases, we believe that, in most instances, responsible household members are able to control the use of their benefits. First, when the State agency initially issues the electronic benefits transfer (EBT) card, a household undergoes an orientation or receives written training materials on the proper uses of the card. Second, we have no reason to believe that responsible household members are not savvy enough to recognize when the benefits are not properly being used. Finally, EBT cards contain personal identification numbers to specifically limit who has access to benefits. For these reasons, we believe that it is appropriate to hold all adult household members jointly and severally liable for a trafficking claim.

Should a State agency set up a claim against the household when a household member did not conduct the improper transaction?

Two commenters assert that trafficking claims may be inappropriate because EBT transaction printouts (that form the basis for most of the EBT-related claims) do not identify who actually used the EBT card in the improper transaction. As an example, the commenters state that a disabled or temporarily incapacitated person may ask a friend, neighbor, or family member to purchase food. The disabled person would have no way of controlling what these ''helpers'' do with the benefits. In general, recipients are responsible for preventing benefit misuse by others. However, we agree with the commenters that these instances may in fact occur. Where good cause, such as the household being taken advantage of by an authorized representative, can be established then there should be no trafficking claim. The State agency may then, with the household's assistance, pursue the trafficking violation against the individual who inappropriately used the household's benefits. (See § 273.18(a)(4)(iii).)

Shouldn't this proposal be used only for more serious forms of trafficking?

One State agency commented that the proposal is too severe and it should only be used for some instances of trafficking. The commenter continues by stating that an otherwise responsible household may try to redeem benefits for other than food items due to some emergency. While we recognize that some forms of trafficking may be less objectionable than others, we still must disagree with this comment. With rare exception, the FSA (7 U.S.C. 2013(a)) and longstanding policy is clear in not allowing FSP benefits to be used for anything other than food. Compromising on this policy in this instance would undermine the basis for the FSP itself.

How will this proposal deter trafficking?

One recipient interest group commented that implementing this proposal is unlikely to deter future traffickers. The commenter's reasoning is that the increase in the penalty that this rule would make is quite small in comparison to the other penalties that already exist for trafficking. Existing penalties include program disqualification and, for more grievous offenses, fines and imprisonment. According to the commenter, adding this relatively small penalty with these larger penalties already in place, will have no effect to deter future trafficking. We would first point out that the proposal was not intended to establish a penalty but to authorize claims to recover the value of misused benefits, which could also have a deterrent effect. While we are unable to estimate the magnitude of this deterrent effect, at a minimum, authorizing claims for

trafficking allows us to recover misused FSP benefits. Furthermore, our proposal is an integral part of a comprehensive effort to deter trafficking and, as such, this approach, including all of the applicable penalties, must be looked upon in its entirety. For this reason, the proposal will remain in the final rule.

Why establish a recipient claim when the retailer, rather than the household, ''profits'' from a trafficking transaction?

One State agency strongly objected to this proposal because it believes that it is the retailer, and not the recipient, that profits from a trafficking transaction. The retailer profits by providing cash at a discounted rate (usually 50–60 percent) for benefits. As a result, the household almost certainly realizes a reduced value from the benefits. The commenter believes that, since the transaction benefits the retailer, it is the retailer, rather than the household that should bear more of the burden for this responsibility.

Trafficking requires both a retailer and a recipient. Severe penalties are already in place for retailers and we are constantly looking for ways, both legislatively and administratively, to further strengthen our efforts against irresponsible retailers. Until now, program disqualifications have been the only recourse against recipients who traffick. We believe that this is not enough. Authorizing State agencies to establish a claim against recipient traffickers provides an additional disincentive for those recipients who do, in fact, traffick.

We also disagree with the commenter's contention that State agencies should not additionally punish recipients because they are not ''profiting'' from trafficking transactions. We concur with the commenter that a trafficking household is making an unprofitable transaction from a purely financial point of view. However, whether the trafficking household actually ''profits'' should not be an issue. Fraud and abuse that threatens program integrity is the basis for this provision. Evidently, in their view, recipients profit from these transactions since it provides them with additional cash or material goods.

Can collections be made against both the retailer and the household for the same amount trafficked?

In the preamble to the proposed rule (63 FR 29307) we addressed the fact that there is no correlation between retailer fines and recipient trafficking claims. Retailer fines provide for monetary penalties significantly larger than the amount trafficked. In these instances both the retailer fine and recipient claim can be independently collected with no coordination necessary between the two categories of debt. However, in addition to these larger penalties, we are moving towards administratively establishing claims against retailers for the amount trafficked. Since both this action and recipient trafficking claims directly correspond to the amount trafficked, we must take into account the False Claims Act (31 U.S.C. 3729–3731). The False Claim Act (31 U.S.C. 3729–3731) does not allow a collection to exceed the total amount lost. We are currently looking at ways to make it administratively feasible to collect from both the recipient and the retailer while ensuring that total collections will not exceed total amount lost. For the purposes of this rule, however, no change is necessary.

Can this provision result in a household actually owing more than the household is issued?

Two commenters stated that this proposal may result in households owing more benefits than were actually issued. This would occur when a household receives an overissuance and then trafficks those benefits. In this scenario, the household would essentially repay double the original benefit issued. We agree with the commenter that this is possible. However, we do not believe that this warrants not allowing recipient trafficking claims in these instances. Trafficking is independent of the issuance or certification process and therefore any corresponding claims assessed by the State agency are unrelated. In addition, we have a longstanding policy that an individual may receive more than one IPV for violating two or more unrelated program rules (such as change reporting and trafficking) during the same time period. This same policy is being extended to recipient trafficking claims.

Is this proposal considered an unfunded mandate and will additional funding be made available?

We received seven comments on the added workload imposed by this proposal and whether additional funding or training will be made available. Three commenters consider this proposal an unfunded mandate. Two commenters added that the pursuit of traffickers should be solely a federal responsibility.

The purpose of this proposal is to supplement our existing policy regarding the pursuit of recipient trafficking. State agencies have always been required to pursue any IPV, including recipient trafficking. This is *not* new policy and this rule is *not* introducing new policy regarding additional IPV pursuit. Therefore, this is not an unfunded mandate. The purpose of this proposal is simply to authorize State agencies to establish claims against traffickers that are already being pursued. In many of these instances, the amount trafficked has already been determined. As such, the added costs to establish these claims are minimal.

Establishing claims for trafficking allows State agencies to recover more of the costs associated with the pursuit of fraud. Currently, when a State agency pursues an IPV against a trafficker, the agency receives nothing more than the normal administrative match. Pursuing claims against these traffickers allows the State agency to retain 35 percent of collections for IPVs with minimal additional establishment costs.

As discussed above, the pursuit, prosecution and determination of IPV against recipients who traffic is not new policy. However, we do recognize that, with the advent of EBT (that provides States with the ability to identify potential traffickers), this is a relatively new area for some State agencies. We also recognize that, since this is a new area, some State agencies may be pressed to allocate additional resources. Because of these concerns, we are taking the opportunity in this preamble to address this issue. Obviously, State agencies are not expected to ''catch'' and subsequently pursue every single questionable EBT transaction. However, State agencies are to pursue potential recipient trafficking incidents referred by us. In addition, while a State may pursue any other trafficking offense, State agencies should prioritize their efforts and concentrate on those trafficking incidents that are more egregious. These include those of a repeated nature that contain high dollar amounts. In addition, States should also concentrate their efforts on incidents that include trafficking for controlled substances, firearms and similar. States agencies are encouraged to set pursuit and prosecutorial standards and dollar thresholds to ensure that their recipient trafficking program is targeted towards these areas. This will result in enhanced program integrity as well as a recipient trafficking pursuit process that is both effective and efficient.

What is considered trafficking?

Three commenters requested clarification on what specifically is considered trafficking. To accommodate this request, we will cross reference the text in this final rule at § 273.18(a)(1)(ii)

with our standard definition found in 7 CFR 271.2 of our regulations.

How should we, as State agencies, calculate trafficking claims?

The proposed rule stated that the amount of a trafficking claim would be the value of the trafficked benefits as determined by the individual's admission, adjudication, or the documentation that forms the basis for the trafficking determination.

One State agency asked whether the claim would be the amount of food stamp benefits that the client expended in the trafficking transaction or the amount of cash the individual realized as a result of the trafficking transaction. The claim would always be for the amount of the food stamp benefits since that was the amount of benefits lost because of the illegal transaction.

Are EBT documentation records sufficient for determining the amount of the claim?

We received one comment stating that EBT transaction records are not sufficient to determine the amount of the claim. In addition, two State agencies commented that, since many times we alert the State agency of the trafficking offense, we should also develop the information to document the fact of trafficking and the claim amount. We disagree that this is a Federal responsibility. Although, at times, we will provide State agencies a good deal of information on specific recipient trafficking incidents, several State agencies have pointed out in comments and at public forums that EBT transaction documentation is a clear indicator of the amount trafficked. These agencies further emphasize that they can easily convert these amounts into the corresponding claim. We are always willing to provide technical assistance upon request to State agencies in this area.

Should we have an inadvertent benefit misuse (Non-IPV trafficking) claim?

The proposed rule includes a provision that allows State agencies to establish ''inadvertent'' benefit misuse claims against households. State agencies may use this authority in trafficking situations that do not warrant IPV determinations. Three commenters requested more clarification and guidance for this proposal. One commenter disagreed with this proposal and contended that any misuse of benefits is intentional.

The provision was originally proposed to maximize State agency flexibility in this area. However, upon further examination, we do not believe that it is appropriate for State agencies to establish a benefit misuse claim against those households that have not been found to have trafficked. Our purpose in authorizing this type of claim is to deter trafficking. Allowing ''inadvertent benefit misuse'' claims for unintentional offenses does little to contribute to this goal. Therefore, the final rule does not authorize a State agency to establish a benefit misuse or trafficking claim against a household unless there is an actual determination of IPV. (See § 273.18(a)).

Claim Referral and Establishment

We proposed many changes to improve the management and establishment of claim referrals. A claim referral is the identification of a potential overpayment that needs to be investigated and established as a claim. The current regulations provide no guidance on managing suspected overpayments and claim referrals. As a result, some State agencies were either not establishing claims or they were not developing or enforcing internal time frames, thereby causing a backlog of claim referrals. When a backlog exists, claims are not timely established. Claims that are established timely stand a better chance of being collected.

To address this situation, we proposed standards for claim establishment. The proposed standards included the following:

(1) Defining the discovery and establishment dates for claims;

(2) Requiring the tracking of claim referrals;

(3) Establishing the end of the quarter following the quarter of discovery as the time frame for claim establishment; and

(4) Defining that a backlog exists when over 10 percent of referrals do not meet the establishment time frame.

We received 129 comments from 77 commenters on this proposal. Only four comments supported some aspect of our proposal. The remaining 125 comments generally indicated that we are interfering too much with State-specific processes. These processes are unique and cross program and organizational boundaries. Changing these procedures and processes to conform to our specific rules would cause inefficiencies within State agencies that would be contrary to the spirit of this rule.

Our primary purpose in proposing these changes was to improve claim referral management. However, the comments received clearly show that flexibility is needed in this area. Therefore, in the final rule, we include an optional provision to improve claim referral management that addresses this need for flexibility. This new procedure reflects the collective view of the comments that State agencies can better manage claim referrals if States have latitude to tailor the management of claims establishment and collection to local situations.

The final rule retains the proposed standard for establishing claims. However, in lieu of using this standard, we are allowing State agencies to develop and follow their own standards and procedures subject to our approval (see § 273.18(d)). At a minimum, this procedure, known as a State claim referral management plan, must include the following:

State Claim Referral Management Plan Minimum Requirements

(1) Justification as to why your standards and procedures will be more efficient and effective than our claim referral standard.

(2) Procedures for the detection and referral of potential overpayments or trafficking violations.

(3) Time frames and procedures for tracking regular claim referrals through date of discovery to date of establishment.

(4) A description of the process to ensure that these time frames will be met.

(5) Any special procedures and time frames for IPV claim referrals.

(6) A procedure to track and follow-up on IPV claim referrals when they are referred for prosecutorial or similar action.

This plan will be subject to our approval. We will approve any plan that demonstrates that procedures are in place to ensure that claim referrals are acted on in an effective and efficient manner. In addition, we will provide assistance to those State agencies who need help in developing a plan. A State agency will maintain maximum flexibility in this area, provided it is following its plan and managing claim referrals efficiently. We do reserve the right, however, to step in and impose requirements as part of a corrective action plan if a State agency is not performing this function in an efficient and effective manner.

Our goal, as described above, is to ensure efficient and effective claims referral management while maximizing State agency flexibility. Allowing State agencies to develop their own plan maximizes this flexibility. However, we need to ensure that the State agency's plan results in overall effective and efficient claims management. For this, we believe the best measure is claims collections. A high rate of collection is indicative of a high level of efficiency and effectiveness throughout the claims

process. We will therefore assess State agencies performance by comparing collections with overpayment rates in a State. State agencies whose collections are low compared to past and current national levels will be required to develop a corrective action plan to address any deficiencies. (See § 273.18(a)(3)).

Claims Threshold and Cost-Effectiveness Policy

A claims threshold is the overpayment dollar amount under which State agencies do not need to pursue a particular overpayment. We currently have a $35 claims threshold. This current threshold applies only to non-participating households with non-IPV overpayments. We proposed many changes in the May 28, 1998 rule:

PROPOSED THRESHOLD AND COST-EFFECTIVENESS DETERMINATION POLICY FOR STATE AGENCIES

You May Follow Your Own Cost Effectiveness Plan and		
opt not to establish any claim if . . .	Unless . . .	or . . .
you determine that the claim referral is not cost effective to pursue.	you do not have a cost-effectiveness plan approved by us.	you have already established the claim.
Or You May Follow the FNS Threshold and		
opt not to establish any claim if . . .	Unless . . .	or . . .
You determine that the claim referral is $125 or less.	the household is participating in the FSP	you have already established the claim.

We received 24 comments on this comprehensive proposal. Seven commenters specifically supported our proposal to allow State agencies to develop and use their own cost-effectiveness plan. We derived the following questions from the other comments:

Why not retain the original $35 FNS threshold for IHE claim referrals?

One State agency supported retaining the old $35 threshold for IHE claim referrals. As discussed in the proposed rule (63 FR 29308), we believe that the $35 benchmark is outdated and does not accurately reflect State establishment and collection costs. We continue to believe that the $35 benchmark needs to be updated. We are therefore retaining the proposed $125 threshold amount in the final rule. (See § 273.18(e)(2).) However, the use of this maximum threshold is optional. The final rule does not prevent any State agency from establishing any claim for an amount lower than the $125 threshold. In other words, the State agency submitting this comment is free to establish any claim, regardless of the amount.

Why do we extend the FNS threshold to include IPV claim referrals?

The proposed threshold included IPV referrals. Three commenters believe that the threshold should not include IPV referrals. They believe that it is inappropriate because the overissuance is caused by an individual intentionally breaking program rules. The severity of the offense, according to the commenters, dictates that a claim be established and pursued.

We recognize the commenters' concerns. However, we still believe that this policy should remain a State agency option. The goal of this rule is to maximize flexibility. Even though the overpayment was intentional, there may be instances in which it is in the best interest of the FSP for a State agency not to pursue the resulting IPV claim because of the relatively low dollar amount. This final rule retains this flexibility. (See § 273.18(e)(2).)

Should participating households be excluded from the FNS threshold?

The proposed rule excludes participating households from the threshold. The reasoning behind this is that these claims may be recovered by reducing the household's allotment. Six commenters believe this exclusion is unfair and impractical. It is unfair, according to the commenters, because the poorest households, those still participating in the Program, need to repay every overpayment. On the other hand, those not participating and generally more well-off, are not charged with repaying smaller overpayments. The commenters also argued that the proposal is impractical because of the dynamic nature of the FSP. Since households move on and off the FSP, State agencies are unable to accurately assess which households are actually no longer participating in the FSP.

We recognize the difficulties associated with limiting this threshold to non-participating households. However, allotment reduction is a readily available collection method for participating households. We believe that program integrity would suffer if a relatively large number of overpayments that are easily recoverable are routinely not pursued. In addition, the costs associated with allotment reduction are relatively small. Therefore, we are not extending the FNS threshold to include participating households. (See § 273.18(e)(2)). However, to maximize flexibility, we would consider appropriate a threshold for participating households that is lower than the threshold for non-participating households. State agencies may include such a two-tier threshold when it submits its own cost effectiveness plan for our approval.

Why don't we increase the amount of the FNS threshold to equal the highest amount allowed through waivers?

So far we have approved cost effectiveness waivers for up to $250 for non-participating households. One State agency recommended that we increase our FNS threshold from the proposed $125 to the highest amount ($250) currently approved through waivers. The commenter stated that a review of the currently approved waivers demonstrates that the $125 threshold is too low. We do recognize that a number of State agencies incur costs significantly above the $125 threshold. However, we purposely set this threshold lower to ensure that prudent claims management is maintained among those States that incur relatively low claim establishment and collection costs. States with higher costs are free to develop their own methodology. The $125 FNS threshold in the proposed rule remains. (See § 273.18(e)(2)).

What is meant by not applying the FNS threshold to already established claims?

In the proposed rule, the FNS threshold does not apply to already established claims. One State agency asked for clarification. The $125 FNS threshold covers the combined costs of establishing and collecting the claim.

The threshold no longer applies once the claim is established. Disposing of an already established claim because it is not cost effective to collect is discussed in the *Terminating Claims* section of this preamble.

Shouldn't the FNS threshold automatically increase with inflation?

The proposed FNS threshold is fixed at $125. One commenter recommended that the threshold automatically increase with inflation. The commenter makes a valid point. However, we are reluctant to include this in the final rule because we are unsure if we should tie claim establishment and collection costs directly to inflation. Advances in automation and the introduction of other efficiencies may actually bring down establishment and collection costs in the future. The threshold remains fixed in the final rule (See § 273.18(e)(2)).

Isn't the FNS threshold unfair to larger households?

Two commenters suggested that the claims threshold take into account both the monthly amount and duration of the overpayment. They felt it was unfair that a larger household can easily have an overpayment well over $125 in just one month, while a smaller household, that receives a smaller issuance, can have an overissuance that extends several months, but does not total over $125. The commenters felt that overpayments of short duration should not be pursued. The real problem is ongoing overpayments. The commenters suggested that a claim must both exceed $125 in total and represent overpayments continuing for more than three months.

We recognize that a larger household, on average, would have a larger claim than a smaller household. However, basing a threshold both on duration and amount systematically excludes large overpayments from collection and removes an incentive for households to report changes timely. We do not believe that this is good claims management. The rule remains unchanged.

Will having different thresholds for some State agencies result in unequal treatment for households?

State agencies have the option in the proposed rule to develop their own cost-effectiveness procedures. One commenter is concerned that this may result in unequal treatment to households across State lines. Unequal thresholds are certain to happen under this rule. However, State agencies have been working with different thresholds based on waivers for many years. Providing this flexibility provides State agencies with an important claims management tool. The fact that some will escape payment does not change the fact that all collections are from those who previously received overpayments. This proposal will remain in the final rule. (See § 273.18(e)(2)).

Will State agencies receive guidance to determine their own cost-effectiveness provisions?

Some State agencies requested technical assistance to develop their cost-effectiveness provisions. We are developing broad guidelines based on prior waiver submissions. You may contact your regional office to obtain these guidelines as well as to receive other technical assistance in this area.

What is meant by ''jurisdiction'' in the preamble of the proposed rule?

The preamble of the proposed rule (63 FR 29309) states that ''. . . no jurisdiction would be prevented from establishing and/or pursuing the collection of any claim that falls under the threshold.'' One State agency asked whether a ''jurisdiction'' meant a region, state or a county. The answer is State agency. However, our intent in this passage is not to dictate any further requirements or limitations. The intent is simply to provide that it is up to each State agency to decide how it wishes to use the threshold. We have no problem with State agencies delegating this authority to counties or other local agencies.

How can we be sure that any overissuance has a chance to be developed into a claim?

We are concerned that any claims threshold not create an incentive for households to obtain overpayments below the threshold with impunity. To address this concern, we include in the final rule the stipulation that a claim must be pursued for any overpayment discovered through the quality control system. This ensures the chance that any overpayment, regardless of size, may be subject to establishment and collection. (See § 273.18(e)(2)).

In summary, what changes regarding this proposal are incorporated into the final rule?

There is only one change in threshold and cost-effectiveness determination policy from the proposed rule. That change is that a claim must be pursued if the overpayment is discovered in a quality control review.

Notification of Claim

The proposed rule contains several new requirements regarding notification. These requirements affected either the food stamp application or the initial demand letter. We received 28 comments regarding the new and existing requirements.

Why must we add language to the application form concerning the use of the social security numbers to pursue claims?

Six State agencies and one recipient interest group commented that it is more appropriate to include this information in the demand letter rather than the application form. The recipient interest group commented that the language appeared intimidating and may actually discourage participation in the program.

The purpose of this language is not to be intimidating but rather to inform recipients how their social security number may be used. This notification is required by the Privacy Act of 1974 (5 U.S.C. 552a, note 2) and the Debt Collection Act of 1982 (31 U.S.C. 3716(a)). As a result, we have no choice but to include this notification in the final rule. However, we are simplifying the language to make it appear less intimidating. (See § 273.2(b)(4)).

One State agency asked why we include that claims ''may be referred * * * to the Department of Justice (DOJ) for litigation'' in the language to be included in the application form. We proposed to add this language because, since food stamp claims are Federal claims, they may, in fact, be referred to DOJ. However, because recipient claims are usually for relatively small amounts, referral to DOJ would be extremely rare. Therefore, we are not including this requirement in the final rule.

Does the household need to have actually received the notice for the notice requirements to have been met?

Three recipient interest groups and two State agencies submitted comments concerning whether the household actually needs to receive the notice. The State agencies requested clarification as we do not address this specific area in the proposed rule. The recipient groups want to ensure that the household does, in fact, receive the notice. These comments are connected to the fact that we deleted a provision in the existing rule at 7 CFR 273.18(d)(1)(i)(B) that allowed State agencies not to pursue a claim if the household cannot be located.

We believe sending the notice via first class mail is an efficient and reliable

method to deliver demand letters. If the mail is not returned by the Postal Service, the State agency can assume that the household received the notice. The State agency may then proceed with collection action.

If the mail is returned, then obviously the household did not receive the notice. Under the existing regulations, the State agency did not need to further pursue this claim. The proposed rule eliminated this option. Considering the comments received above, we are reinstating this option in the final rule. State agencies may (but are not required to) terminate the claim if the household cannot be located. (See § 273.18(e)(8)).

Are State agencies allowed to send the demand letter and notice of adverse action (NOAA) separately?

The proposed rule requires the State agency to provide the household with a NOAA ''as part of or along with'' the initial demand letter/claim notification. Two commenters stated that they send the NOAA separate from the demand letter. The NOAA is sent subsequent to the demand letter, when it is determined what ''adverse action'' will take place.

In our proposal, we did not intend to require that the NOAA accompany the demand letter. However, in looking at the proposed language, we see how it could be interpreted in that way. Therefore, we are changing this language in the final rule to clear up this confusion. (See § 273.18(e)(3)(iii)).

Should the household be advised in the demand letter that the State agency can compromise the household's claim?

Two recipient interest groups commented that the State agency needs to notify the household that the State may be able to compromise its claim. The groups cite a recent court case, *Bliek* v. *Palmer*, 102 F. 3d 1472 (8th Cir. 1997). In *Bliek*, the court ruled that the failure to properly advise a household of the agency's compromise authority violates the household's due process rights.

While we do not agree with the court decision that we were violating the due process rights of the household, we do recognize the benefits of including this language in the demand letter. Therefore, we are including language for the demand letter specifying that the State agency may compromise a claim in the demand letter requirements. (See § 278.18(e)(3)(iv)(M)).

Don't we need more information in the demand letter in addition to informing the household of the ''type'' of claim?

One recipient interest group commented that it is unclear as to what we mean when we require that the household must be informed of the type of overpayment. Our intention is that the household would be informed of the reason for the overpayment and time period involved. This also includes whether it is an IPV, IHE or AE claim as well as a brief explanation (such as unreported income, etc.). We make this intention clear in the final rule at § 273.18(e)(3)(iv).

We also received two comments stating that the demand letter needs to show how the claim was calculated. We agree and will include this as a requirement in the final rule. (See § 273.18(e)(3)(iv)(E)).

Must the demand letter contain a due date?

The purpose of including the due date in the demand letter is to determine delinquency. We received two comments on the proposed requirement to include a due date in the demand letter. One State agency asked whether a specific date is needed or if language such as ''30 days from the date of this letter'' is sufficient. The commenter believed that a specific date is not needed since: (1) It is clear to the household when payment or a response is due and (2) the State agency would still be able to determine delinquency status. We agree. The second commenter believed that including a due date would confuse participating households. The due date is irrelevant for these households because they are about to have their benefits automatically reduced to pay off the claim. Again, we agree. However, any subsequent notification to the household once it leaves the program must include a due date. The final rule reflects this change. (See § 273.18(e)(3)(iv)(N)).

Can a State agency continue to provide participating households with the choice of how to repay the claim?

The proposed rule requires State agencies to automatically collect any claim from a participating household through allotment reduction. One State agency asked whether they could still give a participating household a choice in the demand letter of how to pay the claim.

We believe that allotment reduction is by far the most efficient way to collect a claim. However, to maintain the spirit of this rule, we do not object if a State agency wishes to give the household other options. The only requirement is that the household pay off the claim at the same or higher level of the amount that would have been collected through allotment reduction. This is reflected in the final rule at § 273.18(e)(3)(iv) and § 273.18(g)(i).

What exactly needs to be included in the initial demand letter/claim notification?

Two recipient interest groups commented that we should spell out exactly what needs to be in the demand letter. We agree. The following table lists what needs to be in the demand letter. The changes discussed above are included in this listing and at § 273.18(e)(3)(iv) in the final rule:

The initial demand letter or NOAA must include . . .

(1) The amount of the claim.
(2) The intent to collect from all adults in the household when the overpayment occurred.
(3) The type (IPV, IHE, AE or similar language) and reason for the claim.
(4) The time period associated with the claim.
(5) How the claim was calculated.
(6) The phone number to call for more information about the claim
(7) That, if the claim is not paid, it will be sent to other collection agencies, who will use various collection methods to collect the claim.
(8) The opportunity to inspect and copy records related to the claim.
(9) Unless the amount of the claim was established at a hearing, the opportunity for a fair hearing on the decision related to the claim
(10) That, if not paid, the claim will be referred to the Federal government for federal collection action.
(11) That the household can make a written agreement to repay the amount of the claim prior to it being referred for Federal collection action.
(12) That, if the claim becomes delinquent, the household may be subject to additional processing charges.
(13) That the State agency may reduce any part of the claim if the agency believes that the household is not able to repay the claim.
(14) A due date to either repay or make arrangements to repay the claim, unless the State agency is to impose allotment reduction
(15) If allotment reduction is to be imposed, the percentage to be used and the effective date.

Claims and Fair Hearings

Households have 90 days to request a fair hearing if they believe that some

part of the claim is incorrect. Several comments were received on the interaction between fair hearings and claims.

What must the State agency include in the demand letter/repayment notice sent following a fair hearing decision?

In the proposed rule, when a hearing decision is rendered sustaining an overpayment, the State agency must send a second demand letter to the household. Three State agencies questioned the need for such a letter as the household already received the original letter.

It was not our intention to have the post-fair hearing demand letter be the same as the original demand letter. However, we still believe that some type of notice is necessary. The post-fair hearing demand notice only needs to be a statement saying that the household still owes the claim and what will be the next step (i.e., allotment reduction or demand for payment). The date of delinquency will be based on the time period provided in this notice. This clarification is reflected in the final rule at § 273.18(e)(6)(ii).

In addition, one local agency asked whether the household can request a fair hearing based on this notice. The answer is no. Since the amount of the claim has already been sustained at a hearing, a second hearing on the same issue is not an option.

Does collection action really need to stop when a fair hearing is requested?

In the proposed rule, all collection actions would stop if a fair hearing is requested. Five State agencies disagreed with this proposal. The commenters stated that this procedure would result in collection delays of several months. We recognize the commenters' concerns. However, we believe that the rights of households supersede these concerns. For this reason, our policy to cease collection action when a fair hearing is requested will remain in the final rule.

Delinquency

Referring appropriate claims for TOP and other Treasury reporting requirements make it necessary for us to determine when a claim initially becomes delinquent. In the proposed rule, a claim becomes delinquent if no response or payment is received by the due date in either the demand letter or repayment agreement. A claim remains delinquent until payment is received in full, a satisfactory payment agreement is negotiated, or allotment reduction is invoked. We received six comments specifically supporting this definition. We received an additional four comments concerning the applicability of this definition.

Can claims handled through the court ever be considered delinquent?

The proposed rule stated that a claim may not be considered delinquent if collection is coordinated through the court system and the State agency has limited control over the collection action. One State agency commented that we should not make an exception for claims paid through the court. We are not making an overall exception in this case. Our intent is simply to accommodate situations that are unique to some States. In these situations, the State agency has limited contact with the court and is not always able to accurately determine the status of the claim. As a result, the State agency is unable to determine if the claim is delinquent. This policy only pertains to these situations. (See § 273.18(e)(5)(v)).

Is the claim still considered delinquent if the household is making a good faith effort to pay the claim?

The existing rules provide for a comprehensive notice and an opportunity to have a payment plan reinstated if an installment payment is missed.

The proposed rule eliminated this provision. Three recipient interest groups commented that this provision should be reinstated. They contend that there may be many reasons why a payment may be missed, and those who are making a good faith effort to repay the claim should be protected. We agree with the commenters that a single missed or partial payment should not automatically subject the household to the involuntary collection actions brought about by TOP. When a good faith effort is being made to pay the claim, circumstances do exist where it may be appropriate to reinstall or re-negotiate the repayment schedule. However, even though the provision providing for this opportunity is removed, the effect of the provision is still the same. Under both the existing rules and Section 13(b)(4) of the amended FSA (7 U.S.C. 2022(b)(4)), State agencies already determine whether to accept a proposed reinstatement or re-negotiation plan. This final rule in no way prohibits households that are making a good faith effort from requesting reinstatement or re-negotiation of its payment plan and we strongly encourage State agencies to consider such requests on a case-by-case basis. In addition, if hardship exists, a State agency may compromise a claim and/or adjust the installment payment to lower amount.

Should delinquency be pushed back to at least 90 days after the demand letter?

We defined delinquency as when payment is not made by the due date. This due date is not to be more than 30 days after the date of the initial demand letter (see § 273.18(e)(3)(v)). Three recipient interest groups suggested that the delinquency time frame should be at least 90 days. This 90 day period corresponds to the time period when the claim may be appealed as well as providing households with adequate time to determine how to address the claim. The commenters also contend that State agencies will incur unnecessary administrative expenses because they would need to reverse any collection process in place when the claim is appealed.

We disagree with the commenters that 90 days would be more appropriate. The delinquency date is primarily used to determine whether a claim is to be referred for TOP. As specified in this final rule at § 273.18(n)(1)(i), a claim must be delinquent for 180 days before being referred for TOP. Combined with a 30-day delinquency time frame, this already provides the household with up to 210 days after the initial demand letter to adequately address its claim. In addition, relatively few households request fair hearings on claims. State agencies have indicated that those households that do request a fair hearing usually make the request shortly after receiving the notice. Therefore, extending the delinquency time frame to accommodate the fair hearing time frame serves no practical purpose for either the household or the State agency. This proposal is carried over into the final rule. (See § 273.18(e)(5)).

Household Cooperation Waiver Authority

The ''Calculating Overissuance Claims'' section on page 29307 of the preamble to the proposed rule discussed allowing a State agency to waive up to 20 percent of the claim if the household cooperates with the establishment of its claim. However, we did not include this in the proposed regulatory text. Three commenters supported including this incentive in the final rule. However, eight commenters disagreed with this incentive stating that household cooperation should not be a basis for reducing an overissuance. We concur with the eight commenters and did not include this incentive in this final rule.

Terminating and Writing-Off Claims

A terminated claim is a claim for which all collection action has stopped. A written-off claim is a claim that is no longer subject to our reporting and collection requirements. We proposed that a terminated claim must be immediately written off. The table below summarizes our proposed policy for State agencies on terminating and writing-off claims:

PROPOSED TERMINATION POLICY

If . . .	Then you . . .	Unless . . .
(1) a hearing or court finds the claim to be invalid.	must terminate and write-off the claim or determine if an IHE or AE claim still exists.	
(2) all adult household members die	must terminate and write-off the claim	you plan to pursue the claim against the estate.
(3) the claim balance is $25 or less and the claim has been delinquent for 90 days or more.	must terminate and write-off the claim	
(4) you determine it is not cost effective to pursue the claim any further.	must terminate and write-off the claim if we previously approved your cost-effectiveness criteria.	we have not previously approved your overall cost-effectiveness criteria.
(5) the claim is delinquent for three years or more.	must terminate and write-off the claim	you have received prior collections through the Federal Offset Program, state tax refund offset or any similar collection mechanism.
(6) a new collection method is introduced or an event (such as winning the lottery) occurs to substantially increase the likelihood of further collections.	may reinstate a terminated and written-off claim.	

The public submitted 19 comments regarding this proposal. Four State agencies supported this proposal as written. The other commenters had concerns primarily focusing on accounting treatment, the three year termination time frame, and claim reinstatement.

Can a claim be found to be invalid (and subsequently terminated under the first criterion) only as a result of a hearing?

Two commenters pointed out that terminating an invalid claim should not be limited to hearing decisions. Occasionally, a State agency becomes aware of factual information that negates an already established claim. In these instances, the commenters believe that the State agency should have the authority to terminate the claim. We agree. The final rule at § 273.18(e)(8)(ii)(A) reflects this change by not limiting this termination criterion to hearing and court decisions.

Is writing-off an invalid claim considered proper accounting?

One commenter stated that a claim found to be invalid (see criterion (1) above) should not be written-off but disposed of in another manner. The reason is that only ''bad debts'' should be written-off. An invalid claim is not a bad debt but rather a debt that never should have existed in the first place. We agree with the commenter. Therefore, in the final rule, we will reflect that all debts terminated because they are invalid will be considered a balance adjustment rather than a write-off. (See § 273.18(e)(8)(ii)(A)).

Why is the time frame for terminating delinquent claims only three years?

Six commenters expressed concern that three years are not long enough to pursue collection before terminating and writing-off the claim. According to the commenters, experience has shown that the nature of the Treasury Offset Program (TOP) is such that significant collections often take place after the claim is delinquent for three years.

The purpose of proposing the three year time frame is to dispose of receivables that are laying idle and the likelihood of further collection action is relatively low. Recent audits and management reviews indicated a need to dispose of these claims. However, after considering these comments, we are going to modify this proposal. The final rule still allows State agencies to terminate claims that have been delinquent for three years. However, a State agency is not required to terminate the claim if it believes it is cost effective to retain the claim in TOP beyond the three years. In this manner, claims will either be terminated or actively pursued in TOP. No claim will be allowed to simply remain idle. (See § 273.18(e)(8)(ii)(E)).

How does the cost-effectiveness criteria for terminating claims (the fourth criterion) differ from the cost-effectiveness criteria for the threshold for establishing and collecting claims?

Clarification is needed in this area. The cost-effectiveness determination for terminating claims applies only to claims that are already established and are delinquent. These claims are relatively low dollar amount claims that are not actively being collected, the regular avenues of collection have been exhausted, and are simply not worth further collection pursuit. This criterion may not be used for claims that are current or are being paid. Claims are not to be automatically terminated when an outstanding receivable drops below a certain dollar amount. State agencies should contact us if they need further guidance in this area.

Why do we allow reinstating terminated and written-off claims?

Five commenters expressed concerns about the proposed policy to reinstate terminated and written-off claims. The commenters generally opposed making this proposal a requirement. Concerns focused around this proposal imposing an unnecessary burden on State agencies for storage and record maintenance for a very small percentage of cases.

We want to stress that this was proposed as an option and is not mandatory. A number of State agencies indicated a great desire to have this ability. This was proposed simply to enhance State agency flexibility. In the final rule, this ability will remain as an option. Only those State agencies that wish to pursue this course need to store and maintain records of terminated claims.

Why don't we establish a termination policy based on dollar amounts?

One State agency commented that it would like to have the latitude to set different time schedules for termination and write-off based upon the amount and the cause of a claim. The commenter stated that notable differences exist between a $200 AE claim and a $10,000 claim caused by an IPV and these differences ought to be recognized when establishing administrative offsetting polices for writing-off delinquent claims. This is a valid point. We believe that the final rule at § 273.18(e)(8)(ii)(E) provides for this flexibility. First, any claim that is delinquent for six months, be it for $200 or $10,000, should be referred for TOP. There will be no requirement to remove either claim from TOP for termination after three years. Second, under § 273.18(e)(8)(ii)(D) in the final rule, the State agency has the authority to create its own cost effectiveness termination criteria. We do not object to any State agency treating IPVs differently from other claims when determining these criteria.

Should the termination policy be expanded to include other situations?

One commenter stated that the termination policy should include bankruptcy cases and in instances where the responsible party is in a nursing home. We recognize that the possibility of collection diminishes in these situations. However, we do authorize State agencies in § 273.18(j) of this final rule to pursue claims that file for bankruptcy. For the nursing home situation and in other instances where household circumstances negate further collection, the State agency can compromise the remaining balance of the claim (see § 273.18(e)(7)), thereby gaining the same result as a termination and write-off. No change in the rule is necessary based on this comment.

What changes regarding this proposal are incorporated into the final rule?

In addition to the changes discussed above, State agencies may also terminate a claim if the household cannot be located. We discuss this in the *Notification of Claim* section of this preamble. All of the changes are reflected in the table at § 273.18(e)(8)(ii) in the final rule.

Compromising Claims

Reducing a claim because a household is unable to pay is known as ''compromising'' a claim. We proposed two changes in our policy on compromising claims. The first proposed change limits the State agency's authority to compromise claims to under $20,000. The second proposed change reinstates the compromised portion of a claim if the remaining claim balance subsequently becomes delinquent. We received 12 comments on compromised claims. Ten of these comments dealt directly with these two proposed revisions. The remaining two comments addressed other aspects of our policy on compromising claims.

Why propose a $20,000 limit for compromising claims?

Five commenters opposed establishing the $20,000 limit for compromising claims on the basis that the limit was too restrictive. One of the commenters added that attorneys should be allowed to compromise these larger claims through civil or criminal prosecution.

We took the $20,000 limit in the proposed rule directly from Treasury's Federal Claims Collection Standards, 4 CFR 103.1, (FCCS). OMB Circular A–129 increased this limit to $100,000. One of the goals of this rule is to conform, wherever feasible, with the FCCS and other Federal debt collection guidelines. However, we must take into account that recipient claims are unique in that they are State-administered Federal claims. The comments show that there are instances, such as during prosecutions, where it is appropriate to allow States to retain the right to compromise any claim. Past practices by State agencies show that the current compromise policy (that has no dollar limit) is not being abused. Considering this, we have decided to delete this proposal and allow State agencies to continue to compromise any claim. (See § 273.18(e)(7)).

Why mandate reinstatement of compromised amounts if the remaining balance becomes delinquent?

As stated above, a second proposed change reinstates the compromised portion of a claim if the remaining claim balance subsequently becomes delinquent. This proposal provides an added deterrent against a debt becoming delinquent. Five commenters objected to this proposed mandate. The reasons given were: (a) Mandatory reinstatement is too harsh given the household's economic circumstances; (b) reinstating the compromised amount may go against a court order; (c) the proposal is too complex to administer; and (d) costly system changes are needed to implement the proposal.

Considering these comments, we recognize that mandating reinstatement of compromised claims places an added burden on State agencies. This burden goes beyond what we believe is necessary for efficient and effective claims management. Therefore, we are revising this proposal to give State agencies latitude in this area. In the final rule, reinstatement is a State agency option rather than a mandate. (See § 273.18(e)(7)).

Should we even allow State agencies to compromise claims?

One commenter believed that no claims should be compromised. We disagree. Compromising claims is a proven effective claims management tool widely used in both the public and private sectors. With compromising authority, State agencies can manage their outstanding receivables better by pursuing amounts that they can expect to collect.

Accepting Payments

Are State agencies required to accept credit and debit card payments?

The proposed rule allows State agencies to accept payments from credit and debit cards if the agency has the capability to accept such payments. One State agency expressed a concern that claims may need to be waived if agencies do not accept a credit or debit card when it is authorized by us. This is not the case. We only authorize this collection method. We do not require it. No change is needed in the final rule.

Will we reimburse State agencies for credit card processing fees?

One State agency asked whether we will reimburse State agencies for credit card processing fees. Credit card processing fees will be reimbursed at the same rate as all other allowable administrative costs. This rate is currently 50 percent. Since this is consistent with the reimbursement rules at 7 CFR 277.4, no change is needed in this rule.

What about debts that are to be paid for with community service?

One State agency commented that we need to add provisions to accommodate debts being paid through community service. The agency further states that some judges in its State are ordering community service at an hourly rate ranging from $15 to $100. The commenter believes that this rate should not exceed minimum wage.

We concur that a provision is needed to recognize that debts may be settled by community service. This addition can be found in § 273.18(g)(7) of the final rule. Since community service activity varies greatly, we are reluctant to set a specific hourly rate for such work.

Therefore, we leave it up to the State agency, in conjunction with the court, to determine this rate.

Is requiring the pro-rata distribution of non-specified payments now required?

We proposed that each affected assistance program with a claim receive its fair share when the State agency receives an unspecified collection for a combined public assistance/food stamp recipient claim. An unspecified collection is a general payment received in response to a notice or referral in which the food stamp claim is combined with another claim(s). Our primary concern is that, on occasion, State agencies give PA/TANF claims first priority in unspecified collections. The reason for this is because the State agency retains 100 percent of PA/TANF collections. On the other hand, the State agency retains an aggregate of only about 22 percent of FSP claim collections. The remaining 78 percent (consisting of 65 percent of IPV collections, 80 percent of IHE collections and 100 percent of AE collections) is returned to us.

Nine State and local agencies objected to this proposal. One objection is that this proposal will require large-scale system changes. Two State and one local agency believed that the State should be able to assess collections to where they believe it would be most beneficial. Other State agencies commented that prior agreements with households should take precedence.

Our goal with this proposal is to ensure that State agencies are not routinely assigning all unspecified claims collections to non-FSP programs. This provision does not pertain to any existing or future agreements with households or collection methods targeting a payment to a certain program. Only unspecified payments are included and we strongly believe that these collections should be distributed fairly. We do not believe that this places an undue burden on State agencies. Therefore, we have retained this proposal in the final rule at § 273.18(g)(9). Any State that has an alternative distribution system that is equitable or believes that it will take large-scale system changes to comply with this provision can submit a waiver request for our consideration.

Collection of Agency Error Claims

Prior to the enactment of PRWORA, AE claims could only be collected on a voluntary basis. PRWORA amended section 13 of the FSA (7 U.S.C. 2022) to subject all claims—including AE claims—to involuntary collection methods. This change was reflected in the proposed rule. We received a wide range of comments in this area.

Is holding households responsible for an error that was not their fault considered good public policy?

Three State agencies commented that using involuntary collection methods to recoup these claims is not good public policy since the households may not even have been aware of the error prior to the implementation of the involuntary collection actions. One commenter stated that the follow-up work necessary for the State agency to answer inquiries as well as conduct hearings takes up a disproportionate amount of time. In addition, the same commenter believed that the focus of the new provisions affecting AE claims should not be on the household but on the food stamp agency that caused the error.

We recognize the commenters' concerns and are working with State agencies to reduce these types of errors. However, a household with an AE claim did, in fact, obtain more benefits than it was entitled to receive. But most importantly, section 13 of the FSA (7 U.S.C. 2022), as amended by PRWORA, is clear that all overpayments are to be collected. Any stipulations in the law to make special allowances for overpayments caused by agency errors were removed by PRWORA. Therefore, we believe that we are following the intent of Congress by having State agencies vigorously pursue these overpayments.

Why aren't AE claims subject to equitable estoppel?

Equitable estoppel is a legal concept adopted by a number of States that provides that individuals should not be held responsible for errors that were not their fault. The preamble of the proposed rule at 63 FR 29307 clarified that, since food stamps are Federal benefits, Federal law does not allow for an exception for equitable estoppel in AE claims. We received three comments regarding this issue.

Two recipient interest groups disagreed with our position on AE claims and equitable estoppel. They believe that the FSA does not specifically prohibit equitable estoppel, especially since this activity is delegated to State agencies. We disagree. Section 13(a)(2) of the FSA clearly states that a household '' . . . shall be . . . liable for the value of any overissuance of coupons.'' This language establishes that a household must be held accountable for any claim, including those caused by agency errors.

One State agency commented that we need to strengthen the fact that equitable estoppel does not apply to food stamp AE claims. The commenter suggested that we add specific language to the regulations indicating this position. We do not believe that this is necessary. The discussion above and in the preamble of the proposed rule should suffice and no change is needed in the final rule.

Should we have the same rule for dropping AE claims that exists in the Supplemental Security Income Program (SSI)?

We received four comments recommending that we establish a policy similar to SSI for waiving AE claims. In SSI, a claim may be waived if:

(a) The overpaid individual was without fault in connection with the overpayment, and

(b) Adjustment or recovery of the overpayment would either:

(1) Defeat the purpose of the SSI program, or

(2) Be against equity and good conscience, or

(3) Impede efficient or effective administration of the SSI program due to the small amount involved.

The commenters are particularly interested in waiving AE claims that fit criteria (b)(1) and (b)(2) above. We recognize that this recommendation does have some merit. However, we believe that State agencies already have similar authority. State agencies are currently authorized to compromise claims when households are unable to pay because of hardship or similar reasons. Therefore, we do not believe that this change is necessary.

Allotment Reduction

The proposed rule introduced a number of changes in allotment reduction as a means of claims collection. We received a number of comments on these changes and allotment reduction in general.

Is allotment reduction now required for participating households with claims?

The proposed rule states that a State agency must use allotment reduction to collect claims against participating households. Five commenters believe that State agencies should be able to choose whether to invoke allotment reduction against a particular household. Four of the commenters point out that that section 13(b)(4) of the FSA (7 U.S.C. 2022(b)(4)) was amended by PRWORA to specify that claims are to be collected in accordance with ''. . . requirements established by the State

agency for . . . electing a means of payment. . . .''

We recognize this passage in the FSA. However, section 4(c) of the FSA (7 U.S.C. 2013(c)) states that we must issue regulations necessary for the effective and efficient administration of the FSP. As discussed earlier in this preamble, allotment reduction is the most efficient collection method. Therefore, we believe that it is within our authority to mandate allotment reduction. However, to maintain the spirit of this rule, we do not object if a State agency wishes to use an alternative collection method. The only requirement is that the household will be paying off the claim at least at the same level as the amount that would have been collected through allotment reduction. This is reflected in § 273.18(g)(1)(i) of this rule.

Doesn't allowing involuntary allotment reduction for AE claims established before PRWORA violate due process?

Section 844 of PRWORA amended section 13 of the FSA (7 U.S.C. 2022) by removing the provision prohibiting State agencies from using involuntary allotment reduction against households with AE claims. The proposed rule allows this type of collection and does not exclude those AE claims that were established prior to the enactment of PRWORA. Four recipient interest groups submitted comments stating that this change should not apply to pre-PRWORA AE claims. The specific concerns of the group are that: (1) The law makes no provision to apply the allotment reduction retroactively and (2) to do so would violate the household's due process rights.

We recognize that PRWORA is silent on the question of whether this provision applies to claims established before the passage of PRWORA. However, we believe that recoupment of all claims regardless of the date of establishment is consistent with and implied by the FSA. Prior to PRWORA, households were still obligated to pay AE claims. By allowing allotment reduction for pre-PRWORA AE claims, we are simply introducing an additional collection procedure. We are not altering the status of the claim.

The commenters were also concerned that this action would violate due process rights. We shared this concern. For this reason, when PRWORA was originally enacted, we instructed State agencies to re-notice households that would be affected by this change in the law. Since this procedure affects a limited number of cases and State agencies have already been notified, we do not believe that this needs to be specified in the final rule.

Why can't State agencies reduce benefits for the first month that a household receives benefits?

The proposed rule carried over our longstanding policy not to reduce an initial allotment to pay off a claim. The reason for this is because the allotment is frequently reduced based on when the household's application was filed. Three State agencies disagreed with this policy. The commenters recommended that a pro-rated reduction be done based on the reduced allotment. The State agencies saw no reason why it should lose this month in which the claim could be collected.

While the commenters do raise valid points, we hesitate to change this longstanding policy. First, as stated above, the household's allotment is already reduced. Second, there was no discussion to change this policy in the proposed rule. The final rule remains unchanged.

As a State agency, why can't I collect a claim from the same household by using TOP in addition to allotment reduction?

The proposed rule does not allow a State agency using allotment reduction to also collect the claim from members of the same household using TOP. One State agency commented that it should be able to use both methods simultaneously. We disagree. TOP is for non-participating household members. We do not believe members in households that are currently receiving benefits should, at the same time, be subjected to the delinquent processing charges imposed by TOP. The final rule remains as proposed.

Can State agencies use additional collection methods against a household at the same time while they are collecting through allotment reduction?

Four commenters believed that State agencies should be able to use additional non-TOP collection methods against a household that is having its allotment reduced. Conversely, five commenters supported not allowing additional collections in this circumstance. State agencies regularly employ their own methods to collect food stamp recipient claims. These methods include but are not limited to lump sum and installment payments, wage garnishments, UCB intercept, and State tax refund and lottery winnings offsets. Although we provide the State agency broad authority in this area, we do not believe that it is fair to the household for the State agency to employ most of these additional collection methods when the household is already having its allotment reduced. This is reflected in this final rule. There are two exceptions to this rule: (1) When the additional payment is voluntary; or (2) when the source of the payment is irregular and unexpected such as a State tax refund or lottery winnings offset. (See § 273.18(g)(1)).

Why did we increase the minimum allotment reduction amount for IPV claims to $20 per month?

Current regulations at 7 CFR 273.18(g)(4)(iii) limit the reduction amount for an IPV claim to the greater of 20 percent of a household's monthly entitlement or $10 per month. The proposed rule increased the $10 to $20. One recipient interest group objected to this increase. The commenter believed that this is unnecessarily punitive to households and adds little increase in collection receipts to State agencies. We disagree. We do not believe that the additional $10 per month, especially when a household member was involved in such a serious infraction, would create a significant household burden. In addition, little additional work is needed by the State agency to collect the additional amounts. The final rule remains unchanged. (See § 273.18(g)(1)).

Can State agencies ever reduce an allotment at a rate greater than the prescribed limits?

The proposed rule set limits for the maximum rate of allotment reduction. For IPV claims, the proposed rate is $20 or 20 percent (whichever is greater) of the entitlement or allotment. For IHE and AE claims, the rate is $10 or 10 percent of the allotment, whichever is greater. Two State agencies recommended that they be given authority to reduce allotments at rates higher than what we proposed. The commenters believe that households with additional income and resources should be able to have their benefits reduced at a greater percentage.

We want to make it clear that, with the household's permission, State agencies are able to reduce an allotment at a rate higher than the prescribed limit. This is carried over into the final rule. We are not, however, allowing State agencies to collect at higher rates without this permission. Section 13(b)(3) of the FSA (7 U.S.C. 2022(b)(3)) establishes these limits (the greater of 10 percent or $10) for IHE and AE claims. This rate cannot be changed. We believe that the doubling of this rate (to the greater of 20 percent or $20) is fair for IPV claims. The final rule remains unchanged. (See § 273.18(g)(1)).

Why allow State agencies to use benefit entitlement rather than the actual allotment for determining how much of a monthly payment to use for IPV allotment reductions?

The current regulations at 7 CFR 273.18(g)(4)(iii) required State agencies to base IPV allotment reduction on entitlement rather than the actual allotment. Entitlement is what the household would have received if the individual who received the IPV was still participating. In the proposed rule, we gave State agencies the option to use the actual allotment as the base. Three recipient interest groups recommended that we just have State agencies use the allotment rather than entitlement. The commenters believe that basing the reduction on entitlement places too much of a burden on households.

As discussed above, State agencies are currently required to base IPV allotment reduction on entitlement. In the final rule, we are allowing State agencies to use the allotment as the basis. This, in itself, would provide relief to some households. Requiring all State agencies to base IPV benefit reductions on allotment at this time would go against the spirit of this rule by reducing the amount of flexibility afforded to State agencies. In addition, some State agencies would incur significant costs for system changes. The final rule remains unchanged.

Can State agencies now use benefit allotment as the basis for reducing allotments against households that are already getting their benefits reduced based on the entitlement?

One State agency asked if it can apply this rule change to households that are already getting their benefits reduced based on the entitlement. We do not place any limits on the applicability of this provision in the final rule and have no objection to the State agency's request.

Collecting a Claim From Individuals in Separate Households

All adults who were members of the household when the overpayment occurred are responsible for repaying the claim. The proposed rule allows the State agency to pursue additional collection activity against any individual liable for the claim who is not currently a member of a participating household that is undergoing allotment reduction. Several commenters supported this provision. One State agency had the following question:

Are State agencies required to reduce the allotments of all affected households when two or more individuals responsible for the claim are now receiving benefits in different households?

The State agency is concerned because many State systems are not set up to accommodate this type of simultaneous collection. The commenter believes that the State agency should have the option to collect from only one of the participating households. While there is a definite benefit to having simultaneous allotment reductions, we recognize and share the State agency's concern. Therefore, to maintain the spirit of this final rule, we are allowing, but not requiring, this type of collection. (See § 273.18(g)(1)).

Using EBT Benefits To Collect a Claim

The current regulations are silent on using EBT benefits to collect a claim. We proposed the following policy in the May 28, 1998 rule:

PROPOSED EBT BENEFITS CLAIMS COLLECTION POLICY FOR STATE AGENCIES

You must . . .	and . . .	and . . .
(1) allow a household to pay its claim using benefits from its active food stamp EBT benefit account.	the household must give you written permission.	the retention rules apply to this collection.
(2) allow payments from stale EBT benefit accounts once the account is reactivated.	the household must give you written permission.	the retention rules apply to this collection.
(3) adjust the amount of the claim by subtracting any amount expunged from the claim balance.	this can be done either when establishing the claim or anytime after.	the retention rules do not apply to this adjustment.

An active EBT account, as referred to in the first row of the table, is one where the household readily has access to the account. Generally, provided the household accesses its benefit account each month, the account remains active. If the account is not accessed for three months or longer, the account is considered dormant or stale. To activate a stale account, the household must first contact the State agency. An expunged account, as referred to in the third row of the table, is when the State agency erases the value of the benefits from the household's account and reports to us the total amount expunged so that we may deobligate the funding. No funds are ever paid. This is usually after no benefits have been accessed from the account for one year. The household permanently loses these benefits.

We received 53 comments on this comprehensive proposal. Six of these comments supported some aspect of this proposal. The remaining 47 comments had specific concerns. Because of the nature of the comments, we are dividing this discussion into two parts: *Collecting Claims Using Active and Stale EBT Benefits* and *Adjusting Claims using Expunged EBT Benefits.*

Collecting Claims Using Active and Stale EBT Benefits

We proposed that State agencies be able to collect claims from active or stale EBT benefit accounts with the household's permission. State agencies would retain the usual amounts for this method of collection. We received a number of comments on the use of collection method:

How can State agencies obtain funding to implement this procedure?

Two State agencies expressed concern about obtaining funding to implement this provision. The commenters noted that some State agencies will need to purchase equipment to access EBT accounts and conduct these transactions. However, the commenters provided no information that these costs are prohibitive. Funding is available in the usual manner with State agencies being compensated according to the reimbursement provisions for administrative costs in section 16(a) of the FSA (7 U.S.C. 2025(a)). In addition, State agencies will also receive the regular retention amounts for these collections.

What procedures must be used when State agencies access households' EBT benefit accounts to collect claims?

State agencies are to develop their own procedures for accessing EBT benefit accounts. One recipient interest group expressed a concern about the security of EBT accounts. We agree with the commenter that security procedures must be in place to ensure that only those workers that are authorized actually gain access to a household's EBT benefit account. To address this, we already have EBT system security regulations in place at 7 CFR 274.12(h)(3). The EBT security regulations include dual controls and access controls such as passwords for those authorized to perform this activity. Therefore, there is no need to duplicate this regulation in § 273.18 of this rule.

Why are these payments treated as non-cash payments?

The proposed rule specifies that a collection using EBT benefits is considered a non-cash collection and corresponding funds are not to be drawn from the Federal EBT account by the State agency. Two State agencies are concerned that this policy will create discrepancies in their account receivable systems. The commenters believe that since this non-settling transaction will not be handled as a cash transaction, the amount drawn from the Federal EBT account will not equal the withdrawals from the households' accounts.

We see no reason why a State agency needs to draw down Federal funds only to return them at a later date. Current EBT systems accommodate this transaction as non-settling without difficulty. The original scheme for EBT repayment of claims was designed to fit within the current reporting and retention processes State agencies have in place for coupons. Payment via coupons has always been considered a non-cash transaction for retention and reporting purposes. The rule remains unchanged. (See § 273.18(g)(2)(iii)). We are available to provide technical assistance if State agencies still believe that they are unable to do this procedure.

Should we provide model household permission forms for State agencies to use for gaining household permission for EBT collections?

In the proposed rule, we require that collections from active EBT benefit accounts be transacted only with the written permission of the household. One recipient interest group recommended that we provide State agencies with model authorization forms to ensure that the household's consent is informed and voluntary. We agree with the commenter that additional guidance is needed in this area. However, in lieu of providing a model form (which stifles State agency flexibility), we are providing a clear listing of the minimum requirements for a household permission form. This listing serves the same purpose as a model form and is found in § 273.18(g)(2)(iv) of this final rule.

Should written permission be for an indefinite period?

The preamble for the proposed rule stated that a signed document is not necessary for each EBT collection if the transaction was provided in accordance with a signed agreement. We received five comments regarding this issue. Two commenters recommended that we place a limit on the length of these agreements. We believe that State agencies should be able to limit the length of these agreements as they wish. However, we do not believe that it would be within the spirit of this rule to mandate that these agreements be limited.

Three commenters recommended that a household be allowed to revoke prior authorizations. Since this type of collection is strictly voluntary, we agree with the commenters. This change is found in § 273.18(g)(2)(iv)(E) of this final rule.

Does permission to collect through EBT benefit accounts always need to be in writing?

One commenter recommended that State agencies be able to use documented verbal authorization on a limited basis. According to the commenter, it is practical and less burdensome for both the household and the State agency to be able to conduct a single transaction while obtaining authorization from the household over the telephone. The household would then be sent a receipt documenting the transaction.

We concur with this recommendation and are including it in the final rule at § 273.18(g)(2). This procedure streamlines the process without sacrificing the rights of the household. In the case of a misunderstanding, the household can always request the return of the benefit in a fair hearing.

Is there any way that State agencies can collect on a stale EBT benefit account without receiving prior authorization?

One commenter recommended that State agencies be able to collect without prior written authorization from stale EBT accounts. They believe that with this authority State agencies could recover, and possibly, close many outstanding claims. We share the commenter's concern and belief. Therefore, we have devised a procedure to allow this type of collection while safeguarding the rights of the household.

In the final rule, State agencies may reduce benefits from stale EBT accounts to collect claims using the following procedure:

(1) The State agency mails or otherwise delivers to the affected household notification that the agency intends to reduce the household's stale EBT benefit to pay off an outstanding claim. (2) The notification specifies a time period for the household to respond if it does not want its benefits to be used to pay off the claim. This time period, which is to be established by the State agency, must be at least 10 days. (3) If the household does not respond by the established time period, the State agency then may reduce the EBT benefit account to pay off the claim.

We believe that this procedure strikes an appropriate balance between efficient claims collection and household rights. With this procedure, households can easily pay off and State agencies dispose of claims. In addition, any household that does not want its benefits to be reduced can simply prevent this by notifying the State agency. (See § 273.18(g)(2)).

Why can't State agencies involuntarily collect from an EBT account when the household was at fault?

Two State agencies believe that permission should not be needed at all to collect IPV or IHE claims through EBT benefit accounts. We disagree. These households are already undergoing allotment reduction. Allowing further involuntary benefit reductions against these households undermines the intent of section 13(b)(3) of the FSA (7 U.S.C. 2022(b)(3)). This section places a limit on the amount that a household's allotment can be reduced to pay a non-fraud claim. We firmly believe that an eligible household actively participating in the program should not have additional benefits involuntarily taken away. The EBT benefit collection methods and procedures discussed above strike a balance between efficient and effective claim collection from EBT benefits while ensuring household rights and access to those benefits.

Collecting Claims using Expunged EBT Benefits

An expunged EBT benefit is a benefit that has been removed from a household's account because the account is not being used. Benefits are expunged when the account is not accessed for one year. Since these benefits were never used, we proposed that they be subtracted from the claim amount and recorded as an adjustment. Also, because this is not considered a collection, there would be no retention. We received a number of comments on the use of expunged benefits to adjust claims.

Should State agencies receive retention when using expunged benefits for claims?

State agencies generally retain 35 percent of IPV collections and 20 percent of IHE collections. In the proposed rule, we do not allow State agencies any retention for reducing claim balances with expunged benefits. We received 15 comments recommending that State agencies receive the retention amount for these transactions. The commenters believe the retention for collecting claims should be a reward for a State agency's comprehensive effort to establish and pursue the claim. The fact that the claim is reduced because it is an expunged (rather than an active or stale) benefit should not matter.

We recognize that establishing and pursuing a claim is labor-intensive and costly. Requesting retention for expunged benefit adjustments is not unreasonable. However, we are unable to comply with this request because we cannot provide retention for ''collecting'' an amount that no longer exists. This provision remains as proposed. (See § 273.18(g)(2)(ii)(C)).

Is proposing not allowing retention for expunged benefits the first step towards classifying all non-cash payments as non-retention eligible?

Three commenters considered it a dangerous trend to propose not allowing retention for expunged benefits. They believe that this is the first step towards classifying all non-cash payments as non-retention eligible. Non-cash payments currently include payments made from active and stale EBT benefit accounts, allotment reduction, and food coupons.

We proposed not allowing retention for expunged benefits because this is an adjustment rather than a collection. Since the benefits have already been returned to the Federal government, there is no net gain by applying the expunged amount against a claim. This is not the case with non-cash claims collections. As such, State agencies need not be concerned about us classifying non-cash payments as non-retention eligible. Unless we receive a legislative mandate, we cannot foresee us changing this policy. We strongly believe that retention should remain an inherent part of the claims collection process.

Doesn't using expunged benefits to adjust a claim adversely impact basic accounting procedures?

Two commenters are concerned that allowing State agencies to reduce a claim using expunged benefits would adversely impact accounting treatment and procedures. When benefits are expunged, obligations and issuances are reduced. In effect, the benefits no longer exist as if they were never issued. Therefore, according to one of the commenters, it is not logical to reduce a claim balance by benefit amounts that no longer exist.

We agree with the commenters that the benefit amounts no longer exist. However, we do believe that we have the authority and that it is appropriate to allow balance adjustments based on expunged benefits. This ability is based on section 13(a)(1) of the FSA (7 U.S.C. 2022(a)(1)) which clearly provides us with broad authority to adjust any claim. The appropriateness is based on the fact that the funds were available to the household and never actually used.

Are State agencies required to reduce claim balances with expunged benefits?

Six commenters, mostly recipient interest groups, supported making this procedure a requirement. We received 13 comments, mostly from State agencies, that do not want this procedure to be a requirement. These State agencies stated that requiring this procedure for all claims would be burdensome, costly, and require significant system changes. State agencies would need to track benefits issued and subsequently expunged for an extended period.

While we believe that there are definite benefits for using expunged benefits to reduce claims, we recognize that this change may, in fact, create a burden for some State agencies. We also recognize that current system limitations and general household dynamics may make this requirement somewhat difficult for State agencies to implement. Therefore, we are modifying this requirement to include only those expunged benefits for which State agencies become aware. State agencies are to develop their own procedures regarding applicability, limits and use. We are not requiring State agencies to overhaul their EBT systems to conform to this new procedure. (See § 273.18(g)(2)(ii)(C)).

Can State agencies reduce IPV claims by using expunged EBT benefits?

One State agency commented that we should not allow expunged EBT benefits to be used to reduce IPV claims. The commenter believes that this allows violators to avoid their liability. We disagree. Expunged benefits are benefits that a recipient was once entitled to use. By not using the benefits, the household did experience a loss. Therefore, we do not believe that a liability is being avoided by allowing this type of collection for EBT benefits. The final rule allows State agencies to offset all claims with expunged benefits.

Can State agencies reduce trafficking claims by using expunged EBT benefits?

Three recipient interest groups believed that expunged benefits should also be used to reduce trafficking claims. We agree. We believe that it is important to maintain a consistent policy in the application of expunged EBT benefits against claims. Therefore, the final rule reflects that expunged EBT benefits can be applied to any claim. (See § 273.18(g)(2)(ii)(C)).

Do the expunged benefits need to be for the same month of the overissuance to be applied to a claim?

Six comments were received requesting clarification regarding whether the expunged benefits needed to be for the month of the overissuance. Some commenters believed that the expunged benefits should be only for the month of issuance. Other commenters expressed concern about not always being able to match up the expunged benefit with the overpayment. We recognize that for some State agencies matching up the benefits with the overpayment may be difficult and burdensome. For this reason, we are providing latitude in this area by allowing States to apply expunged benefits to any overissuance. (See § 273.18(g)(2)(ii)(C)).

Where in this rule is the final policy on using EBT benefits to collect claims?

The final policy, including changes based on the comments addressed above, is at § 273.18(g)(2).

Intercept of Unemployment Compensation Benefits

The proposed rule gives State agencies the option to reduce a person's unemployment compensation benefit

(UCB) to pay off a claim. Section 13(c)(3) of the FSA (7 U.S.C. 2022(c)(3)), however, requires that the State agency first obtain a court order or authorization from the individual prior to reducing the UCB. One State agency objected to this requirement. We recognize that this requirement makes it more difficult for State agencies to use this method effectively. However, we cannot change this requirement, since it is specified in the FSA. As a result, this requirement remains in the final rule. (See § 273.18(g)(6)).

Offsetting Restored Benefits

The proposed rule continued our longstanding policy that State agencies are to offset restored benefits owed to a household by the amount of any outstanding claim. A restored benefit is a benefit from a prior month that the household was entitled to but never received. Five recipient interest groups objected to this provision. The commenters believe that a households should receive the full amount of any benefits that are restored. They cite a recent court ruling, *Lopez* v. *Espy*, 83 F.3d 1095 (9th Cir. 1996), in which the court made this ruling.

We are aware of this ruling. However, there is another court ruling, *Dunn* v. *Secretary of U.S. Department of Agriculture*, 921 F.2d 365 (1st Cir, 1990), in which our policy was upheld. We continue to believe that it is within our authority to have State agencies offset benefits prior to restoration. The final rule remains unchanged. (See § 273.18(g)(3)).

Collection Limits

The proposed rule did not place a limit on how much can be collected from a household during any given year. Three recipient interest groups recommended that a household should not be subject to collection amounts that total over 15 percent of the household's annual income. The commenters believe that the proposals allowing simultaneous collection methods against the same households will result in some households being subject to onerous collection burdens. We do not believe that this limitation is necessary. State agencies have the ability to compromise the claim if paying off the claim is too much of a burden on the household. In addition, the average claim established in fiscal year 1999 is $427. We do not believe that collecting this claim, especially in installments, is a severe burden. Finally, involuntary allotment reduction is already capped at 20 percent or $20 for IPV claims and 10 percent or $10 for IHE and AE claims. Based on the above, the final rule remains unchanged.

Interstate Claims

The proposed rule at § 273.18(k) required that State agencies accept transfers of claims from other State agencies if it is discovered that the household is receiving food stamp benefits within the receiving State. A total of 17 comments were received regarding this proposal. While all commenters agreed with retaining this proposal (at least) as an option, 15 of the commenters did not support making this proposal a requirement. Six commenters stated that frequent moves by recipients and the absence of a national recipient database make this proposal difficult to manage. In addition, seven commenters expressed concerns with problems associated with fair hearing procedures and coordination involving interstate claims.

We recognize that differences among State agencies and the absence of a national recipient database does make this proposal difficult to manage. In addition, we also recognize that the advent of the Treasury Offset Program has made the collection of interstate claims for the originating State agency much easier. Therefore, we are dropping this proposal from the final rule. Transferring claims between States will remain an option. Even though this will remain an option, we strongly encourage State agencies to work together to utilize this procedure as much as possible.

Providing Refunds for Overpaid Claims

In the proposed rule, a State agency is to provide a refund to the household for an overpaid claim as soon as possible after the State agency becomes aware of the overpayment. Four commenters recommended that ''as soon as possible'' be defined as 30 days. We agree with the commenters that a refund needs to be prompt. However, the existing language already requires the State agency to do everything within its control to provide a prompt refund. Therefore, the final rule remains unchanged. (See § 273.18(h)).

Retention Rates

Prior to PRWORA, the retention rates for collections by a State agency were 50 percent for IPV claims and 25 percent for IHE claims. Section 844 of the PRWORA changed these rates by amending section 16(a) of the FSA (7 U.S.C. 2025(a)). The new rates are 35 percent for IPVs and 25 percent for IHEs. The proposed rule reflected this change.

Eight State agencies opposed this reduction to the retention rates. In addition, one State agency recommended a 10 percent retention for AE claims. We recognize the effects of the lower retention rates on State agencies. However, since these percentages are set by legislation, we cannot change the rates. As a result, the final rule contains the lower rates mandated by Congress. (See § 273.18(k)).

The proposed rule also authorized 35 percent retention for IHE collections via UCB offset. One State agency recommended that State agencies have an option to retain either 35 percent or 20 percent for these collections. Programming costs to separately track these collections, according to the State agency, outweigh the additional revenue generated by the higher retention rate. We understand the State agency's concern. However, since this percentage is set by legislation, we cannot change this rate. The final rule remains unchanged.

Bankruptcy

The current regulations at 7 CFR 273.18(k) authorize State agencies to act on our behalf when households file for bankruptcy. We did not propose any changes to this policy. Two State agencies did, however, submit comments on bankruptcy.

Can IPV claims be discharged because of bankruptcy?

On March 24, 1998, the Supreme Court in *Cohen* v. *de la Cruz*, 523 U.S. 213 (1998), ruled that a fraud debt cannot discharged in bankruptcy. One State agency asked whether this ruling applies to IPV claims.

The answer to this inquiry depends on how the IPV was initially determined. As discussed earlier in this preamble, there are four ways that State agencies determine IPVs: (1) An ADH, (2) a court hearing, (3) a signed waiver to an ADH and (4) a disqualification consent agreement (DCA). If the IPV was determined through a court hearing or an ADH then we believe that this is a finding of actual fraud and the Cohen decision would apply. Whether this finding of actual fraud applies to the signed ADH waiver or the DCA depends on whether the affected individual is admitting to committing fraud or guilt when he or she signs the document. Our current regulations at 7 CFR 273.16 allow for individuals to accept disqualifications without admitting guilt. In these instances, we believe that, since there is no actual fraud determination, the resulting IPV claim may potentially be dischargeable in a

bankruptcy proceeding. Since this determination must be made on a claim-by-claim basis, being dependent on State-developed notices, we are not specifying any set policy in this final rule.

Why can't food stamp recipient claims be routinely excluded from bankruptcy?

One State agency asked why recipient claims cannot be routinely excluded from bankruptcy like other Federal debts. In view of the complexities involved, we will be examining this issue more closely and address it in a future rulemaking.

Accounting Procedures

Accounting procedures for State agencies to follow for recipient claims were outlined in § 273.18(o) of the proposed rule (63 FR 29329). States use these procedures to obtain the summarized data to be reported on the *Status of Claims Against Households* (FNS–209) report. We received one comment on reporting this data.

How will these new procedures affect the FNS–209 report?

One State agency objects to any additional reporting requirements. The commenter also believes that the FNS–209 needs to be modified to capture the appropriate data and there should be no redundant reporting of data.

The FNS–209 is being revised to reflect the changes brought about by this rule. We will publish a 60-day notice on the new form to provide you with an opportunity to comment. The new FNS–209 will contain only that information that we absolutely need for Federal program management. In addition, there will be no redundancy with any of our other forms or reporting requirements.

Delinquency and Processing Charges

The proposed rule allows for delinquency and processing charges to be charged against households with delinquent claims. We received a number of comments on this issue.

What authority do we have to impose these charges?

One recipient interest group questioned whether imposing these charges on households is authorized by the FSA. The FSA is silent on this issue. The Debt Collection Act of 1982, 31 U.S.C. 3717, as amended, (DCA) allows for a charge to cover the cost of processing or handling a delinquent claim. Since these charges are authorized in the DCA and are not expressly prohibited in the FSA, we are able to include these charges in the final rule.

What do we mean by imposing processing charges on households?

Three commenters questioned the appropriateness of this provision. The commenters believed that imposing these charges is an unfair and unnecessary burden on recipients. Two of the commenters stated that imposing processing charges on recipients was not cost effective and placed an additional burden on State agencies.

We want to clarify that the only charges authorized by this final rule are the processing charges that are imposed by Treasury for activity connected with the TOP. Since these charges are automatically imposed by Treasury, we have no choice but to accept the existence of these charges. As far as passing these charges onto the household, this provision only affects delinquent claims that are submitted to Treasury. Therefore, any household whose claim remains current will not be affected by additional charges. (See § 273.18(n)(3)).

Treasury's Offset Programs

In the proposed rule, we referred to Treasury's methods of collecting delinquent debts as the ''Federal Claims Collection Methods.'' We are now referring to these methods as Treasury's Offset Programs (TOP), which is consistent with the name used by Treasury. TOP is authorized by the section 3701 of the DCA, as amended by the Debt Collection Improvement Act of 1996, Public Law 104–134, (DCIA).

TOP encompasses several collection methods and approaches. These methods and approaches currently include offsetting Federal payments such as Federal income tax refunds, Federal salary, retirement benefits and other payments. TOP also includes a broad-scope collection effort called cross-servicing.

We began offsetting Federal tax refunds (referred to as FTROP) as a two-State demonstration project in 1992. The program has grown exponentially since that time and FTROP became a permanent collection method in 1995. In calendar year 1998, FTROP collections surpassed $65 million. Like FTROP, Federal salary offset became permanent in 1995. Both FTROP and Federal salary offset were incorporated under TOP with the implementation of DCIA.

The proposed rule introduced administrative offset and cross-servicing into the mix of Federal collection programs under TOP that will affect households and individuals with food stamp recipient claims. Administrative offset is an umbrella name for offsets conducted against Federal payments due to individuals with delinquent debts. An agency in Treasury, the Financial Management Service (FMS), is currently phasing in the implementation of administrative offset. These payments come from a variety of sources, including, with some restrictions, social security and black lung benefits. FMS published a final rule (63 FR 71204) on December 23, 1998, describing what the restrictions will be and how this program will work.

Cross-servicing is a comprehensive collection approach mandated by the DCIA and currently being implemented by Treasury. This approach encompasses administrative offsets as well as vigorously pursuing claims by using other collection actions such as contacting the individual directly and employing collection agencies. Since the best way to implement this provision of the amended DCA is still being determined, we do not include specific instructions or procedures for cross-servicing in this proposed or final rule. However, the specific collection actions used in cross servicing are already authorized by existing agency, Departmental, and Treasury rules. Therefore, we do not believe that any further regulations are necessary to implement cross-servicing.

Changes in Procedures and Inclusion in this Final Rule

TOP has proved to be a dynamic program. Both Treasury's and our procedures are regularly being updated to increase efficiency as well as adapt to the logistics and demands of the program. We did not foresee this degree of change when we originally drafted the proposed rule. We now realize that, because of the dynamic nature of TOP and cross-servicing, any regulation containing prescriptive procedural language on TOP and cross-servicing will soon become obsolete. For this reason, we are taking a different approach in this final rule.

Many of the procedural aspects found in the proposed rule and in the existing regulation at 7 CFR 273.18(g)(5) and (g)(6) are removed from the final rule. The final rule only includes the language necessary to:

(1) Mandate TOP participation;

(2) Follow procedures required by law;

(3) Follow procedures dictated by us and Treasury; and

(4) Protect the rights of households and individuals.

However, this does not mean that State agencies no longer need to follow these procedures. We will be providing these procedures (with any revisions) to

State agencies via memo and similar formats that can be revised as necessary. These procedures will also be available on the Internet, and we welcome the public's comments, questions, and suggestions regarding the procedures. Our Internet address is http://www.usda.gov/fns.

We received a total of 43 comments on TOP. We address all of the comments, including those dealing with the prescriptive procedures that we are not including in this final rule.

Is requiring that State agencies refer all delinquent claims to TOP inconsistent with section 13 of the FSA?

The proposed rule states that a State agency must refer to TOP all claims that are delinquent for at least six months. One commenter believes that this is inconsistent with the FSA. Section 13(b)(1)(C) of the FSA (7 U.S.C. 2022(b)(4)) was amended by PRWORA to provide Federal salary offset and FTROP (now rolled into TOP) as collection methodologies that State agencies may use. Section 13(b)(4) of the FSA (7 U.S.C. 2022(b)(4)) was amended by PRWORA to specify that claims are to be collected in accordance with ''. . . requirements established by the State agency for . . . electing a means of payment. . . .'' The commenter believes that it should be left up to the State agency to determine what claims should be submitted to TOP.

We recognize this language exists in the FSA. However, only delinquent claims are submitted to TOP. The claim would not become delinquent if the State agency was regularly collecting the claim through the other methods. We are tasked by section 4(c) of the FSA (7 U.S.C. 2013(c)) to issue regulations necessary for the effective and efficient administration of the FSP. TOP has proved to be a highly effective and efficient method for collecting delinquent debts. Therefore, we believe that it is within our authority to require that State agencies use TOP for delinquent claims. The final rule remains unchanged. (See § 273.18(n)(1)).

Why do we need to refer AE claims for TOP?

In the proposed rule, claims delinquent for six months or more, including AE claims, must be referred for TOP. One commenter objected to this requirement. According to the commenter, we should not penalize persons who are working and trying to become self-sufficient by taking their tax return and other Federal payments to pay a claim that was the fault of the State agency.

Even though the State agency made the mistake, the household still received more benefits than it was entitled to receive. Section 13(a)(2) of the FSA (7 U.S.C. 2022(a)(2)) clearly states that any overpayment should be pursued. This includes overpayments caused by agency errors. PRWORA amended section 13(b) of the FSA (7 U.S.C. 2022(b)) by removing any restrictions against what involuntary collection methods can be used against AE claims. Since only delinquent claims are referred for TOP, the household has ample opportunity to make arrangements to repay the overpayment prior to the claim becoming delinquent. Therefore, State agencies must refer AE claims for TOP.

When must a State agency remove a debt from the TOP?

Clarification is needed as to when a debt needs to be removed from the TOP. We combine the proposed rule with current policy to reach the following procedure that is reflected in the final rule:

You must remove a debt from TOP if any of the following occurs:

(1) you discover that the debtor is a member of a food stamp household undergoing allotment reduction;

(2) the claim is paid up or the claim is disposed of through a hearing, termination, compromise or any other means;

(3) we or Treasury instruct you to remove the debt;

(4) you discover that the claim was referred in error; or

(5) you make arrangements with the household to resume payments.

We strongly believe that it is improper to keep a debtor in TOP while simultaneously reducing the household's allotment. This is discussed in the *Allotment Reduction* section of this preamble and reflected in § 273.18(n)(4) of this final rule.

Can State agencies submit claims for TOP that are delinquent for less than 180 days?

The proposed rule requires State agencies to refer all claims that are delinquent for 180 days or more to TOP. One State agency proposed that State agencies be allowed to submit claims that are delinquent for less than 180 days.

While this recommendation does have merit, we are hesitant to allow States to submit claims less than 180 days delinquent at this time. The reason for this is that claims referred to TOP incur various processing and collection charges that are passed on to the individual. The six month time frame provides the household and individuals with ample opportunity to pay off the claim without incurring these additional processing and collection charges. The rule remains unchanged. (See § 273.18(n)(1)).

Doesn't TOP remove the ability for State agencies to work with individuals to persuade them to pay regularly?

One State agency commented that requiring claims to be referred to TOP based on our definition of delinquency would impair its ability to persuade clients to pay their claim. We disagree. We believe that, in fact, this will enhance the State agency's ability to secure payment. The threat of referral to TOP will spur, rather than hamper, additional collections. In addition, the State agency is to remove an individual from TOP if it makes arrangements for that person resumes repaying the claim. This is reflected in the final rule at § 273.18(n)(4).

How often are State agencies to submit delinquent claims for TOP?

Section 3716(c)(6) of the DCA requires that State agencies refer to Treasury all claims that are delinquent for more than 180 days. Currently, State agencies submit all delinquent claims at the same time each year to TOP. The proposed rule does not provide specific time frames for this referral. One State agency asked for flexibility in the time frame for submitting claims for TOP. The commenter said that it may be burdensome to submit these claims all at once.

We are currently working with Treasury and State agencies to determine the optimal time frame for all agencies involved in this endeavor. We share the State agency's concern and will try to develop flexible procedures. Our intention is to balance this referral requirement with a State agency's ability to do more frequent submissions. Since this is a procedural rather than a regulatory issue, it is not included in this final rule.

Why can't State agencies combine judgment with non-judgment claims when referring claims to TOP?

A claim reduced to judgment is a claim that is part of a court order. State agencies routinely combine claims for the same individual into one claim for submittal to TOP. In the proposed rule, we do not allow State agencies to combine a claim reduced to judgment with a claim not reduced to judgment. The reason for that is the 10-year limit for referring non-judgment cases.

Since this issue is procedural in nature, we are not including this in the final rule. However, we are currently working with Treasury and State agencies to find a way to accommodate this request.

Do State agencies really need to identify the type of claim when submitting the claim for TOP?

We proposed that State identify the type of claim (IPV, IHE, or AE) when it is referred to TOP. State agencies need to identify the type of claim for retention purposes. Four State agencies responded by stating that this would be a burden and, in some cases, system changes would be needed to comply with this proposal.

We recognize that this may be a problem for some State agencies and, therefore, will not include this as a requirement for TOP referral. Also, since this is procedural rather than regulatory, any further actions regarding this issue will take place outside the realm of these regulations.

Are additional review procedures really needed for salary offset?

In the proposed rule, State agencies must review the records of individuals identified as Federal employees to ensure that the debt is eligible for salary offset. One State agency did not believe that this additional review is necessary. The commenter stated that this activity is already covered when these claims are referred for TOP.

The Office of Personnel Management (OPM) requires that we provide for a hearing upon request of the employee to determine whether Federal salary offset is an appropriate collection method for this individual. We are currently working towards streamlining these procedures as much as possible. However, since this issue is procedural rather than regulatory, the specific procedures will not be included in these regulations.

How does a request for review affect the referral process?

The proposed rule allows for a debtor to request a review before referral of the debt to TOP. One State agency commented that the referral process should not be suspended if the debtor's responses are simply complaints or requests for information. Another State agency stated that stopping the referral is a concern because individuals use this process to circumvent the offset process.

We recognize the commenters' concerns and are in the process of developing a procedure to minimize the effect that a review request will have on TOP referrals. Since this is procedural rather than regulatory, the specific procedure will not be included in these regulations.

Why is the 10-year limit for referral based on the date of the original demand letter rather than on when the claim becomes delinquent?

Currently, the 10-year limit for TOP referral is based on the date of the original demand letter. One State agency recommended that we change this to 10 years from the date of last payment. The 10-year limit for referral is to be based on when the ''right to take action'' for the claim began. This limit is a requirement set forth by Federal law. The first identifiable ''right to take action'' for food stamp recipient claims is the demand letter. Since this is a TOP requirement, we have no choice but to use the limit imposed by Treasury. Also, since this is a procedural issue, we will not be addressing it in this final rule.

Do State agencies really need to use the address provided by Treasury when notifying debtors of their TOP referral?

The proposed rule requires that State agencies use a Treasury-provided address to notice debtors of the intention to refer a claim to TOP. Without such an address and notice, the claim cannot be referred. Currently, Treasury provides addresses for about two-thirds of the potential TOP referrals. Three commenters believe that this is too restrictive. They believe that State agencies should be able to access and use valid addresses from any reliable source.

Since this issue is procedural, we are not including it as part of the final rule. The issue, however, must be resolved. While we share the commenters' concern, overriding due process standards must prevail. Using an accurate address ensures these due process standards are met with respect to being properly delivered. We will work with State agencies and Treasury to develop a standard for addresses that will maximize the number of notices sent while ensuring that the addresses are valid.

Since TOP combines FTROP and Federal salary offset, how do we combine and reconcile the difference between the 60-day FTROP notice and the 30-day Federal salary offset notice?

Currently, we have two different appeal procedures in place for TOP. For most of TOP, the debtor receives one notice and has 60 days to request a review of the claim. For Federal salary offset, on the other hand, the debtor receives a different notice and has 30 days to request a Federal hearing. In the proposed rule, these two notices are being combined. Two State agencies asked how we could resolve the conflict between the two types of hearings as well as between the two time frames (60 versus 30 days) allotted for the debtor to respond.

We recognize this conflict and we are working to develop procedures to resolve this situation. These procedures will be addressed separate from this final rule. However, the final rule will safeguard individual rights by specifying that State agencies must follow our procedures regarding reviews and hearings for TOP. (See § 273.18(n)(2)(ii)).

What happens when a debtor who is about to be referred to TOP alleges to have never received the initial demand letter?

One recipient interest group believes that, in cases where a debtor contacts the State agency and claims he or she never received the initial demand letter, the claim should no longer be considered delinquent. The commenter also recommends that the individual be given another opportunity to request a fair hearing on the merits of the claim.

While we recognize the commenter's concern, a competing concern is that making this a requirement will invite abuse by some debtors to delay the process without good cause. Therefore, we are not including this requirement in the final rule. However, a State agency should provide this opportunity for a debtor where the State agency believes the debtor's assertion is justified.

Are we unjustly imposing a burden of proof on debtors when asking for documentation to dispute the claim?

One recipient interest group felt that the proposed rule at § 273.18(p)(2)(iv)(C)(*3*) unjustly places the burden of proof during a request for review on the debtor to show that the claim is not past due or legally enforceable on the household. That is not our intention. The request for review procedure begins with the State agency initially making the past due and legally enforceable determination based on its own records. Once this is done, the State agency then examines what the debtor submits for the request for review. If what the debtor submits does not show how or why the State agency's original determination is wrong, then the claim is still considered past due and legally enforceable. We do not believe that this in any way places an unreasonable burden on the debtor. We will, however, revise this language in our procedures to make this clearer.

What should be included in the TOP notice?

The proposed rule contains the requirements for the TOP notice. We received 18 comments, mostly from recipient interest groups, on the contents of the proposed notice. These comments are summarized in the following table:

Comments on TOP notice	Number of commenters
1. Citing the legal authorities serves no purpose	1
2. Inform debtor to contact State agency if the debtor is participating and can have the claim collected via allotment reduction	1
3. Include the right and opportunity to review applicable records	5
4. List all TOP exemptions and restrictions	4
5. Include rights of spouse for joint tax return	3
6. Retain information of what is needed when the debtor requests a review	1
7. Retain language providing information on the nature of the claim	3

In view of the procedural changes inherent to TOP, we are not including in this final rule an actual listing of exactly what is to be included in the TOP referral notice. The specific language will be provided to State agencies and will also be included on our aforementioned web page. We will take all of these comments into consideration when developing these procedures. In addition, we encourage feedback suggestions from State agencies, debtors and recipient interest groups once the procedures are released.

What are the changes in transmitting TOP collections to State agencies?

The proposed rule does not describe how we are to transmit collections to State agencies. Two State agencies disagree with a procedural change that has recently been implemented. Under the old method of transferring collections to State agencies, we forwarded all TOP collections. At the end of the quarter, State agencies then returned about 78 percent of these collections back to us. (The remaining 22 percent is what the State agencies collectively retained for collecting the claim.)

Under the new method, we would transmit only 35 percent of TOP collections to the State agency. The 35 percent is the maximum percentage of collections that can be retained. At the end of the reporting quarter, the State agency would then return the remainder (about one-third of the 35 percent) of our funds back to us. The remaining amount, about 22 percent of the total collection, would be the State retention. The only change in procedure is in the actual cash flow. Nothing is changing as far as the actual retention amounts received by the State agencies.

The reason for this procedural change is that the old method for transferring collections is poor cash management. It is simply inappropriate to use Federal funds to provide the State agency with TOP collections, allow the agency to float these funds, and then have the State agency return the same funds to us at the end of the quarter.

Since this is procedural rather than regulatory, this procedure is not included in the regulations.

Doesn't the new transmission procedure affect our ability to timely provide refunds?

Two commenters believed that this new policy would affect their ability to timely process refunds. We disagree. Under the new policy, State agencies will immediately receive 35 percent of the amount collected. Refunds reported to us on the FNS–209 report are only about 1 percent of collections. Therefore, we do not believe that this will affect the State agency's ability to provide refunds.

Implementation

PRWORA set August 22, 1996 as the effective date for the provisions of law relating to recipient claims. We proposed that State agencies implement the discretionary aspects of these regulations no later than the first day of the month 180 days after the publication of the final rule. We received the following comment on the 180-day implementation deadline:

Can the implementation deadline be extended to account for all of the necessary changes in this rule?

One State agency had a suggestion that State agencies be given one year to implement the discretionary changes. The commenter said that one year would be needed to make all of the necessary system changes.

We recognize that the automation resources of many State agencies are stretched because of year 2000 considerations. Therefore, we agree with the State agency. The final rule will extend the deadline for implementation of the discretionary changes to the first day of the month, one year after the publication of this rule.

List of Subjects

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, Reporting and recordkeeping requirements, Social security, Students.

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

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

Authority: 7 U.S.C. 2011–2036.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, add a new paragraph (g)(160) to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) * * *

(160) Amendment 389. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, (PRWORA) set the date of enactment, August 22, 1996, as the effective date for the provisions of the law relating to recipient claims. These non-discretionary provisions of this rule are at § 273.18(c)(1)(ii)(B), § 273.18(f) and § 273.18(g) and are effective retroactive to August 22, 1996. The remaining amendments of this rule are effective and must be implemented no later than August 1, 2000.

§ 272.2 [Amended]

3. In § 272.2:

a. Remove the last sentence of paragraph (a)(2); and

b. Remove paragraph (d)(1)(xii).

§ 272.12 [Removed]

4. Remove § 272.12.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. In § 273.2, add paragraph (b)(4) to read as follows:

§ 273.2 Application processing.

* * * * *

(b) *Food Stamp application form.*

* * *

(4) *Privacy Act statement.* As a State agency, you must notify all households applying and being recertified for food stamp benefits of the following:

(i) The collection of this information, including the social security number (SSN) of each household member, is authorized under the Food Stamp Act of 1977, as amended, 7 U.S.C. 2011–2036. The information will be used to determine whether your household is eligible or continues to be eligible to participate in the Food Stamp Program. We will verify this information through computer matching programs. This information will also be used to monitor compliance with program regulations and for program management.

(ii) This information may be disclosed to other Federal and State agencies for official examination, and to law enforcement officials for the purpose of apprehending persons fleeing to avoid the law.

(iii) If a food stamp claim arises against your household, the information on this application, including all SSNs, may be referred to Federal and State agencies, as well as private claims collection agencies, for claims collection action.

(iv) The providing of the requested information, including the SSN of each household member, is voluntary. However, failure to provide this information will result in the denial of food stamp benefits to your household.

* * * * *

5. Revise § 273.18 to read as follows:

§ 273.18 Claims against households.

(a) *General.* (1) A recipient claim is an amount owed because of:

(i) Benefits that are overpaid or

(ii) Benefits that are trafficked. Trafficking is defined in 7 CFR 271.2.

(2) This claim is a Federal debt subject to this and other regulations governing Federal debts. The State agency must establish and collect any claim by following these regulations.

(3) As a State agency, you must develop a plan for establishing and collecting claims that provides orderly claims processing and results in claims collections similar to recent national rates of collection. If you do not meet these standards, you must take corrective action to correct any deficiencies in the plan.

(4) The following are responsible for paying a claim:

(i) Each person who was an adult member of the household when the overpayment or trafficking occurred;

(ii) A sponsor of an alien household member if the sponsor is at fault; or

(iii) A person connected to the household, such as an authorized representative, who actually trafficks or otherwise causes an overpayment or trafficking.

(b) *Types of claims.* There are three types of claims:

An . . .	is . . .
(1) Intentional Program violation (IPV) claim	any claim for an overpayment or trafficking resulting from an individual committing an IPV. An IPV is defined in § 273.16.
(2) Inadvertent household error (IHE) claim	any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.
(3) Agency error (AE) claim	any claim for an overpayment caused by an action or failure to take action by the State agency. The only exception is an overpayment caused by a household transacting an untampered expired Authorization to Participate (ATP) card.

(c) *Calculating the claim amount*—(1) *Claims not related to trafficking.*

(i) As a State agency, you		
must calculate a claim . . .	and . . .	and . . .
back to at least twelve months prior to when you become aware of the overpayment.	for an IPV claim, the claim must be calculated back to the month the act of IPV first occurred.	for all claims, don't include any amounts that occurred more than six years before you became aware of the overpayment.

(ii) The actual steps for calculating a claim are		
you . . .	unless . . .	then . . .
(A) determine the correct amount of benefits for each month that a household received an overpayment.		
(B) do not apply the earned income deduction to that part of any earned income that the household failed to report in a timely manner when this act is the basis for the claim.	the claim is an AE claim	apply the earned income deduction.
(C) subtract the correct amount of benefits from the benefits actually received. The answer is the amount of the overpayment.	this answer is zero or negative	dispose of the claim referral.
(D) reduce the overpayment amount by any EBT benefits expunged from the household's EBT benefit account in accordance with your own procedures. The difference is the amount of the claim.	you are not aware of any expunged benefits ..	the amount of the overpayment calculated in paragraph (e)(1)(ii)(C) of this section is the amount of the claim.

(2) *Trafficking-related claims.* Claims arising from trafficking-related offenses will be the value of the trafficked benefits as determined by:

(i) The individual's admission;

(ii) Adjudication; or

(iii) The documentation that forms the basis for the trafficking determination.

(d) *Claim referral management.*

(1) As a State agency, you		
must . . .	and you . . .	unless . . .
establish a claim before the last day of the quarter following the quarter in which the overpayment or trafficking incident was discovered.	will ensure that no less than 90 percent of all claim referrals are either established or disposed of according to this time frame.	you develop and use your own standards and procedures that have been approved by us (see paragraph (d)(2) of this section).

(2) Instead of using the standard in paragraph (d)(1) of this section, you may opt to develop and follow your own plan for the efficient and effective management of claim referrals.

(i) This plan must be approved by us.

(ii) At a minimum, this plan must include:

(A) Justification as to why your standards and procedures will be more efficient and effective than our claim referral standard;

(B) Procedures for the detection and referral of potential overpayments or trafficking violations;

(C) Time frames and procedures for tracking claim referrals through date of discovery to date of establishment;

(D) A description of the process to ensure that these time frames are being met;

(E) Any special procedures and time frames for IPV referrals; and

(F) A procedure to track and follow-up on IPV claim referrals when these referrals are referred for prosecutorial or similar action.

(e) *Initiating collection action and managing claims*—(1) *Applicability.* State agencies must begin collection action on all claims unless the conditions under paragraph (g)(2) of this section apply.

(2) *Pre-establishment cost effectiveness determination.* A State agency may opt not to establish and subsequently collect an overpayment that is not cost effective. The following is our cost-effectiveness policy for State agencies:

(i) You may follow your own cost effectiveness plan and		
opt not to establish any claim if . . .	unless . . .	or . . .
you determine that the claim referral is not cost effective to pursue.	you do not have a cost-effectiveness plan approved by us.	you already established the claim or discovered the overpayment in a quality control review.
(ii) Or you may follow the FNS threshold and		
opt not to establish any claim if . . .	unless . . .	or . . .
you determine that the claim referral is $125 or less.	the household is currently participating in the Program.	you already established the claim or discovered the overpayment in a quality control review.

(3) *Notification of claim.* (i) Each State agency must develop and mail or otherwise deliver to the household written notification to begin collection action on any claim.

(ii) The claim will be considered established for tracking purposes as of the date of the initial demand letter or written notification.

(iii) If the claim or the amount of the claim was not established at a hearing, the State agency must provide the household with a one-time notice of adverse action. The notice of adverse action may either be sent separately or as part of the demand letter.

(iv) The initial demand letter or notice of adverse action must include language stating . . .

(A) The amount of the claim.

(B) The intent to collect from all adults in the household when the overpayment occurred.

(C) The type (IPV, IHE, AE or similar language) and reason for the claim.

(D) The time period associated with the claim.

(E) How the claim was calculated.

(F) The phone number to call for more information about the claim.

(G) That, if the claim is not paid, it will be sent to other collection agencies, who will use various collection methods to collect the claim.

(H) The opportunity to inspect and copy records related to the claim.

(I) Unless the amount of the claim was established at a hearing, the opportunity for a fair hearing on the decision related to the claim. The household will have 90 days to request a fair hearing.

(J) That, if not paid, the claim will be referred to the Federal government for federal collection action.

(K) That the household can make a written agreement to repay the amount of the claim prior to it being referred for Federal collection action.

(L) That, if the claim becomes delinquent, the household may be subject to additional processing charges.

(M) That the State agency may reduce any part of the claim if the agency believes that the household is not able to repay the claim.

(N) A due date or time frame to either repay or make arrangements to repay the claim, unless the State agency is to impose allotment reduction.

(O) If allotment reduction is to be imposed, the percentage to be used and the effective date.

(v) The due date or time frame for repayment must be not later than 30 days after the date of the initial written notification or demand letter.

(vi) Subsequent demand letters or notices may be sent at the discretion of the State agency. The language to be used and content of these letters is left up to the State agency.

(4) *Repayment agreements.* (i) Any repayment agreement for any claim must contain due dates or time frames for the periodic submission of payments.

(ii) The agreement must specify that the household will be subject to involuntary collection action(s) if payment is not received by the due date and the claim becomes delinquent.

(5) *Determining Delinquency.* (i) Unless specified in paragraph (e)(5)(iv) of this section, a claim must be considered delinquent if:

(A) The claim has not been paid by the due date and a satisfactory payment arrangement has not been made; or

(B) A payment arrangement has been established and a scheduled payment has not been made by the due date.

(ii) The date of delinquency for a claim covered under paragraph (e)(5)(i)(A) of this section is the due date on the initial written notification/demand letter. The claim will remain delinquent until payment is received in full, a satisfactory payment agreement is negotiated, or allotment reduction is invoked.

(iii) The date of delinquency for a claim covered under paragraph (e)(5)(i)(B) of this section is the due date of the missed installment payment. The claim will remain delinquent until payment is received in full, allotment reduction is invoked, or if the State agency determines to either resume or re-negotiate the repayment schedule.

(iv) A claim will not be considered delinquent if another claim for the same household is currently being paid either through an installment agreement or allotment reduction and you, as a State agency, expect to begin collection on the claim once the prior claim(s) is settled.

(v) A claim is not subject to the requirements for delinquent debts if the State agency is unable to determine delinquency status because collection is coordinated through the court system.

(6) *Fair hearings and claims.* (i) A claim awaiting a fair hearing decision must not be considered delinquent.

(ii) If the hearing official determines that a claim does, in fact, exist against the household, the household must be re-notified of the claim. The language to be used in this notice is left up to the State agency. The demand for payment may be combined with the notice of the hearing decision. Delinquency must be based on the due date of this subsequent notice and not on the initial pre-hearing demand letter sent to the household.

(iii) If the hearing official determines that a claim does not exist, the claim is disposed of in accordance with paragraph (e)(8) of this section.

(7) *Compromising claims.* (i) As a State agency, you may compromise a claim or any portion of a claim if it can be reasonably determined that a household's economic circumstances dictate that the claim will not be paid in three years.

(ii) You may use the full amount of the claim (including any amount compromised) to offset benefits in accordance with § 273.17.

(iii) You may reinstate any compromised portion of a claim if the claim becomes delinquent.

(8) *Terminating and writing-off claims*–(i) *A terminated claim* is a claim in which all collection action has ceased. A *written-off claim* is no longer considered a receivable subject to continued Federal and State agency collection and reporting requirements.

(ii) The following is our claim termination policy:

As a State agency, if . . .	Then you . . .	Unless . . .
(A) you find that the claim is invalid	must discharge the claim and reflect the event as a balance adjustment rather than a termination.	it is appropriate to pursue the overpayment as a different type of claim (e.g., as an IHE rather than an IPV claim).
(B) all adult household members die	must terminate and write-off the claim	you plan to pursue the claim against the estate.
(C) the claim balance is $25 or less and the claim has been delinquent for 90 days or more.	must terminate and write-off the claim	other claims exist against this household resulting in an aggregate claim total of greater than $25.
(D) you determine it is not cost effective to pursue the claim any further.	must terminate and write-off the claim	we have not approved your overall cost-effectiveness criteria.
(E) the claim is delinquent for three years or more.	must terminate and write-off the claim	you plan to continue to pursue the claim through Treasury's Offset Program.
(F) you cannot locate the household	may terminate and write-off the claim.	
(G) a new collection method or a specific event (such as winning the lottery) substantially increases the likelihood of further collections.	may reinstate a terminated and written-off claim.	you decide not to pursue this option.

(f) *Acceptable forms of payment.*

You may collect a claim by:	However . . .
(1) Reducing benefits prior to issuance. This includes allotment reduction and offsets to restored benefits.	You must follow the instructions and limits found in paragraphs (g)(1) and (g)(3) of this section.
(2) Reducing benefits after issuance. These are benefits from electronic benefit transfer (EBT) accounts.	You must follow the instructions and limits found in paragraph (g)(2) of this section.
(3) Accepting cash or any of its generally accepted equivalents. These equivalents include check, money order, and credit or debit cards.	You do not have to accept credit or debit cards if you do not have the capability to accept these payments.
(4) Accepting paper food coupons	You must destroy any coupons or coupon books that are not returned to inventory and document as appropriate.
(5) Conducting your own offsets and intercepts. This includes but is not limited to wage garnishments and intercepts of various State payments. These collections are considered ''cash'' for FNS claim accounting and reporting purposes.	You must follow any limits that may apply in paragraph (g) of this section.
(6) Requiring the household to perform public service	This form of payment must be ordered by a court and specifically be in lieu of paying any claim.
(7) Participating in the Treasury collection programs	You must follow the procedures found in paragraph (n) of this section.

(g) *Collection methods.*

(1) *Allotment reduction.* The following is our allotment reduction policy:

As a State agency, you must . . .	Unless . . .
(i) Automatically collect payments for any claim by reducing the amount of monthly benefits that a household receives.	the claim is being collected at regular intervals at a higher amount or another household is already having its allotment reduced for the same claim (see paragraph (g)(1)(vi) of this section).
(ii) For an IPV claim, limit the amount reduced to the greater of $20 per month or 20 percent of the household's monthly allotment or entitlement.	the household agrees to a higher amount.
(iii) For an IHE or AE claim, limit the amount reduced to the greater of $10 per month or 10 percent of the household's monthly allotment.	the household agrees to a higher amount.
(iv) Not reduce the initial allotment when the household is first certified	the household agrees to this reduction.
(v) Not use additional involuntary collection methods against individuals in a household that is already having its benefit reduced.	the additional payment is voluntary; or the source of the payment is irregular and unexpected such as a State tax refund or lottery winnings offset.
You may . . .	
(vi) Collect using allotment reduction from two separate households for the same claim. However, you are not required to perform this simultaneous reduction.	
(vii) Continue to use any other collection method against any individual who is not a current member of the household that is undergoing allotment reduction.	

(2) *Benefits from EBT accounts.* (i) As a State agency, you must allow a household to pay its claim using benefits from its EBT benefit account.

(ii) You must comply with the following EBT benefit claims collection and adjustment requirements:

You . . .	or . . .	and . . .
(A) For collecting from active (or reactivated) EBT benefits . . .		
need written permission which may be obtained in advance and done in accordance with paragraph (g)(2)(iv) of this section;.	oral permission for one time reductions with you sending the household a receipt of the transaction within 10 days.	the retention rules do apply to this collection.
(B) For collecting from stale EBT benefits . . .		
must mail or otherwise deliver to the household written notification that you intend to apply the benefits to the outstanding claim.	and . . . give the household at least 10 days to notify you that it doesn't want to use these benefits to pay the claim.	and . . . the retention rules apply to this collection.
(C) For making an adjustment with expunged EBT benefits . . .		
must adjust the amount of any claim by subtracting any expunged amount from the EBT benefit account for which you become aware.	and . . . this can be done anytime	and . . . the retention rules do not apply to this adjustment.

(iii) A collection from an EBT account must be non-settling against the benefit drawdown account.

(iv) At a minimum, any written agreement with the household to collect a claim using active EBT benefits must include:

(A) A statement that this collection activity is strictly voluntary;

(B) The amount of the payment;

(C) The frequency of the payments (i.e., whether monthly or one time only);

(D) The length (if any) of the agreement; and

(E) A statement that the household may revoke this agreement at any time.

(3) *Offsets to restored benefits.* You must reduce any restored benefits owed to a household by the amount of any outstanding claim. This may be done at any time during the claim establishment and collection process.

(4) *Lump sum payments.* You must accept any payment for a claim whether it represents full or partial payment. The payment may be in any of the acceptable formats.

(5) *Installment payments.* (i) You may accept installment payments made for a claim as part of a negotiated repayment agreement.

(ii) As a household, if you fail to submit a payment in accordance with the terms of your negotiated repayment schedule, your claim becomes delinquent and it will be subject to additional collection actions.

(6) *Intercept of unemployment compensation benefits.* (i) As a State agency, you may arrange with a liable individual to intercept his or her unemployment compensation benefits for the collection of any claim. This collection option may be included as part of a repayment agreement.

(ii) You may also intercept an individual's unemployment compensation benefits by obtaining a court order.

(iii) You must report any intercept of unemployment compensation benefits

as ''cash'' payments when they are reported to us.

(7) *Public service.* If authorized by a court, the value of a claim may be paid by the household performing public service. As a State agency, you will report these amounts in accordance with our instructions.

(8) *Other collection actions.* You may employ any other collection actions to collect claims. These actions include, but are not limited to, referrals to collection and/or other similar private and public sector agencies, state tax refund and lottery offsets, wage garnishments, property liens and small claims court.

(9) *Unspecified joint collections.* When an unspecified joint collection is received for a combined public assistance/food stamp recipient claim, each program must receive its pro rata share of the amount collected. An unspecified joint collection is when funds are received in response to correspondence or a referral that contained both the food stamp and other program claim(s) and the debtor does not specify to which claim to apply the collection.

(h) *Refunds for overpaid claims.* (1) As a household, if you overpay a claim, the State agency must provide a refund for the overpaid amount as soon as possible after the State agency finds out about the overpayment. You will be paid by whatever method the State agency deems appropriate considering the circumstances.

(2) You are not entitled to a refund if the overpaid amount is attributed to an expunged EBT benefit.

(i) *Interstate claims collection.* (1) Unless a transfer occurs as outlined in paragraph (i)(2) of this section, as a State agency, you are responsible for initiating and continuing collection action on any food stamp recipient claim regardless of whether the household remains in your State.

(2) You may accept a claim from another State agency if the household with the claim moves into your State. Once you accept this responsibility, the claim is yours for future collection and reporting. You will report interstate transfers to us in accordance with our instructions.

(j) *Bankruptcy.* A State agency may act on our behalf in any bankruptcy proceeding against a bankrupt household with outstanding recipient claims.

(k) *Retention rates.* (1) The retention rates for State agencies are as follows:

If you collect an . . .	then the retention rate is . . .
(i) IPV claim	35 percent.
(ii) IHE claim	20 percent.
(iii) IHE claim by reducing a person's unemployment compensation benefit	35 percent.
(iv) AE claim	nothing.

(2) These rates do not apply to any reduction in benefits when you disqualify someone for an IPV.

(l) *Submission of payments to us.* A State agency must send us the value of funds collected for IHE, IPV or AE claims according to our instructions. We must pay you for claims collection retention by electronic funds transfer.

(m) *Accounting procedures.* (1) As a State agency, you must maintain an accounting system for monitoring recipient claims against households. This accounting system shall consist of both the system of records maintained for individual debtors and the accounts receivable summary data maintained for these debts.

(2) At a minimum, the accounting system must document the following for each claim:

(i) The date of discovery;

(ii) The reason for the claim;

(iii) The calculation of the claim;

(iv) The date you established the claim;

(v) The methods used to collect the claim;

(vi) The amount and incidence of any claim processing charges;

(vii) The reason for the final disposition of the claim;

(viii) Any collections made on the claim;

(ix) Any correspondence, including follow-up letters, sent to the household.

(3) At a minimum, your accounting or certification system must also identify the following for each claim:

(i) Those households whose claims have become delinquent;

(ii) Those situations in which an amount not yet restored to a household can be used to offset a claim owed by the household; and

(iii) Those households with outstanding claims that are applying for benefits.

(4) When requested and at intervals determined by us, your accounting system must also produce:

(i) Accurate and supported outstanding balances and collections for established claims; and

(ii) Summary reports of the funds collected, the amount submitted to FNS, the claims established and terminated, any delinquent claims processing charges, the uncollected balance and the delinquency of the unpaid debt.

(5) On a quarterly basis, unless otherwise directed by us, your accounting system must reconcile summary balances reported to individual supporting records.

(n) *Treasury's Offset Programs (TOP).*

(1) *Referring debts to TOP.* (i) As a State agency, you must refer to TOP all recipient claims that are delinquent for 180 or more days.

(ii) You must certify that all of these claims to be referred to TOP are 180 days delinquent and legally enforceable.

(iii) You must refer these claims in accordance with our and the Department of the Treasury's (Treasury) instructions.

(iv) You must not refer claims to TOP that:

(A) You become aware that the debtor is a member of a participating household that is having its allotment reduced to collect the claim; or

(B) Fall into any other category designated by us as non-referable to TOP.

(2) *Notifying debtors of referral to TOP.* (i) As a State agency, you must notify the debtor of the impending referral to TOP according to our instructions relating to:

(A) What constitutes an adequate address to send the notice;

(B) What specific language will be included in the TOP referral notice;

(C) What will be the appropriate time frames and appeal rights; and

(D) Any other information that we determine necessary to fulfill all due process and other legal requirements as well as to adequately inform the debtor of the impending action.

(ii) You must also follow our instructions regarding procedures connected with responding to inquiries, subsequent reviews and hearings, and any other procedures determined by us as necessary in the debtor notification process.

(3) *Effect on debtors.* (i) If you, as a debtor, have your claim referred to TOP,

any eligible Federal payment that you are owed may be intercepted through TOP.

(ii) You may also be responsible for paying any collection or processing fees charged by the Federal government to intercept your payment.

(4) *Procedures when a claim is in TOP.* (i) As a State agency, you must follow FNS and Treasury procedures when the claim is in TOP.

(ii) You must remove a claim from TOP if:

(A) FNS or Treasury instruct you to remove the debt; or

(B) You discover that:

(*1*) The debtor is a member of a food stamp household undergoing allotment reduction;

(*2*) The claim is paid up;

(*3*) The claim is disposed of through a hearing, termination, compromise or any other means;

(*4*) The claim was referred to TOP in error; or

(*5*) You make an arrangement with the debtor to resume payments.

(5) *Receiving and reporting.* As a State agency, you must follow our procedures on receiving and reporting TOP payments.

(6) *Security or confidentiality agreements.* As a State agency, you must follow our procedures regarding any security or confidentiality agreements or processes necessary for TOP participation.

Dated: June 21, 2000.

Shirley R. Watkins,

Under Secretary, Food, Nutrition and Consumer Services.

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