

the household received a smaller allotment than it should have received, the difference equals the amount to be restored. Participation in an administrative disqualification hearing in which the household contests the State agency assertion of intentional Program violation shall be considered notification that the household is requesting restored benefits.

(f) *Method of restoration.* Regardless of whether a household is currently eligible or ineligible, the State agency shall restore lost benefits to a household by issuing an allotment equal to the amount of benefits that were lost. The amount restored shall be issued in addition to the allotment currently eligible households are entitled to receive. The State agency shall honor reasonable requests by households to restore lost benefits in monthly installments if, for example, the household fears the excess coupons may be stolen, or that the amount to be restored is more than it can use in a reasonable period of time.

(g) *Changes in household composition.* Whenever lost benefits are due a household and the household's membership has changed, the State agency shall restore the lost benefits to the household containing a majority of the individuals who were household members at the time the loss occurred. If the State agency cannot locate or determine the household which contains a majority of household members the State agency shall restore the lost benefits to the household containing the head of the household at the time the loss occurred.

(h) *Accounting procedures.* Each State agency shall be responsible for maintaining an accounting system for documenting a household's entitlement to restoration of lost benefits and for recording the balance of lost benefits that must be restored to the household. Each State agency shall at a minimum, document how the amount to be restored was calculated and the reason lost benefits must be restored. The accounting system shall be designed to readily identify those situations where a claim against a household can be

used to offset the amount to be restored.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978, as amended by Amdt. 225, 48 FR 16831, Apr. 19, 1983; Amdt. 314, 54 FR 24518, June 7, 1989; Amdt. 356, 59 FR 29713, June 9, 1994]

§ 273.18 Claims against households.

(a) *Establishing claims against households.* All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive or any household which contains an adult member who was an adult member of another household that received more food stamp benefits than it was entitled to receive.

(1) *Inadvertent household error claims.* A claim shall be handled as an inadvertent household error claim if the overissuance was caused by:

(i) A misunderstanding or unintended error on the part of the household;

(ii) A misunderstanding or unintended error on the part of a categorically eligible household provided a claim can be calculated based on a change in net income and/or household size amount;

(iii) SSA action of failure to take action which resulted in the household's categorical eligibility provided a claim can be calculated based on a change in net income and/or household size.

(2) *Administrative error claims.* A claim shall be handled as an administrative error claim if the overissuance was caused by State agency action or failure to take action or, in the case of categorical eligibility, an action by an agency of the State or local government which resulted in the household's improper eligibility for public assistance or general assistance provided a claim can be calculated based on a change in net income and/or household size.

(3) *Intentional Program violation claims.* A claim shall be handled as an intentional Program violation claim only if an administrative disqualification hearing official or a court of appropriate jurisdiction has determined that a household member committed

intentional Program violation as defined in §273.16(c), or an individual is disqualified as a result of signing either a waiver of his/her disqualification hearing as discussed in §273.16(f) or a disqualification consent agreement in cases referred for prosecution as discussed in §273.16(h). Prior to the determination of intentional Program violation or the signing of either a waiver of right to a disqualification hearing or a disqualification consent agreement in cases of deferred adjudication, the claim against the household shall be handled as an inadvertent household error claim.

(b) *Criteria for establishing inadvertent household and administrative error claims.* The State agency shall take action to establish a claim against any household that received an overissuance due to an inadvertent household or administrative error if the criteria specified in this paragraph have been met. At a minimum, the State agency shall take action on those claims for which 12 months or less have elapsed between the month an overissuance occurred and the month the State agency discovered a specific case involving an overissuance. The State agency may choose to take action on those claims for which more than 12 months have elapsed. However, the State agency shall not take action on claims for which more than six years have elapsed between the month an overissuance occurred and the month the State agency discovered a specific case involving an overissuance.

(1) Instances of inadvertent household error which may result in a claim include, but are not limited to, the following:

(i) The household unintentionally failed to provide the State agency with correct or complete information;

(ii) The household unintentionally failed to report to the State agency changes in its household circumstances; or

(iii) The household unintentionally received benefits or more benefits than it was entitled to receive pending a fair hearing decision because the household requested a continuation of benefits based on the mistaken belief that it was entitled to such benefits.

(iv) The household was receiving food stamps solely because of categorical eligibility and the household was subsequently determined ineligible for PA, or GA and/or SSI at the time they received it.

(v) The SSA took an action or failed to take the appropriate action, which resulted in the household improperly receiving SSI.

(2) Instances of administrative error which may result in a claim include, but are not limited to, the following:

(i) A State agency failed to take prompt action on a change reported by the household;

(ii) A State agency incorrectly computed the household's income or deductions, or otherwise assigned an incorrect allotment;

(iii) A State agency incorrectly issued duplicate ATP's to a household which were subsequently transacted;

(iv) The State agency continued to provide household food stamp allotments after its certification period had expired without benefit of a reapplication determination; or

(v) The State agency failed to provide a household a reduced level of food stamp benefits because its public assistance grant changed.

(vi) An agency of the State or local government took an action or failed to take an appropriate action, which resulted in the household improperly receiving PA or GA.

(3) Neither an administrative error claim nor an inadvertent household error claim shall be established if an overissuance occurred as a result of the following:

(i) A State agency failed to insure that a household fulfilled the following procedural requirements:

(A) Signed the application form,
(B) Completed a current work registration form, or

(C) Was certified in the correct project area;

(ii) The household transacted an expired ATP, unless the household altered its ATP.

(c) *Calculating the amount of claims—*

(1) *Inadvertent household and administrative error claims.* (i) For each month that a household received an overissuance due to an inadvertent household or administrative error, the

State agency shall determine the correct amount of food stamp benefits the household was entitled to receive. The amount of the inadvertent household or administrative error claim shall be calculated based, at a minimum, on the amount of overissuance which occurred during the 12 months preceding the date the overissuance was discovered. The State agency may choose to calculate the amount of the claim back to the month the inadvertent household or administrative error occurred, regardless of the length of time that elapsed until the inadvertent household or administrative error was discovered. However, the State agency shall not include in its calculation any amount of the overissuance which occurred in a month more than six years from the date the overissuance was discovered. In cases involving reported changes, the State agency shall determine the month the overissuance initially occurred as follows:

(A) If, due to an inadvertent error on the part of the household, the household failed to report a change in its circumstances within the required timeframes, the first month affected by the household's failure to report shall be the first month in which the change would have been effective had it been timely reported. However, in no event shall the State agency determine as the first month in which the change would have been effective any month later than two months from the month in which the change in household circumstances occurred.

(B) If the household timely reported a change, but the State agency did not act on the change within the required timeframes, the first month affected by the State's failure to act shall be the first month the State agency would have made the change effective had it timely acted. However, in no event shall the State agency determine as the first month in which the change would have been effective any month later than two months from the month in which the change in household circumstances occurred. If a notice of adverse action was required but was not provided, the State agency shall assume for the purpose of calculating the claim that the maximum advance notice period as provided in §273.13(a)(1)

would have expired without the household requesting a fair hearing.

(ii) If the household received a larger allotment than it was entitled to receive, the State agency shall establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received. For categorically eligible households, a claim will only be determined when it can be computed on the basis of changed household net income and/or household size. A claim shall not be established if there was not a change in net income and/or household size.

(iii) After calculating the amount of the inadvertent household or administrative error claim, the State agency shall offset the amount of the claim against any amounts which have not yet been restored to the household in accordance with §273.17. The State agency shall then initiate collection action for the remaining balance, if any.

(2) *Intentional Program violation claims.* (i) For each month that a household received an overissuance due to an act of intentional Program violation, the State agency shall determine the correct amount of food stamp benefits, if any, the household was entitled to receive. The amount of the intentional Program violation claim shall be calculated back to the month the act of intentional Program violation occurred, regardless of the length of time that elapsed until the determination of intentional Program violation was made. However, the State agency shall not include in its calculation any amount of the overissuance which occurred in a month more than six years from the date the overissuance was discovered. If the household member is determined to have committed intentional Program violation by intentionally failing to report a change in its household's circumstances, the first month affected by the household's failure to report shall be the first month in which the change would have been effective had it been reported. However, in no event shall the State agency determine as the first month in which the change would have been effective any month later than two

months from the month in which the change in household circumstances occurred.

(ii) If the household received a larger allotment than it was entitled to receive, the State agency shall establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received. In calculating IPV claims involving unreported earned income, the State agency shall not apply the earned income deduction specified in § 273.9(d)(2) to that part of any earned income which a household willfully or fraudulently failed to report in a timely manner as determined by one of the disqualification procedures specified in § 273.16, which are: an administrative disqualification hearing; a waiver to such a hearing; a court order; or a deferred adjudication.

(iii) Once the amount of the intentional Program violation claim is established, the State agency shall offset the claim against any amount of lost benefits that have not yet been restored to the household in accordance with § 273.17.

(d) *Collecting claims against households—(1) Criteria for initiating collection action on inadvertent household and administrative error claims.*

(i) State agencies shall initiate collection action against the household on all inadvertent household or administrative error claims unless the claim is collected through offset or one of the following conditions apply:

(A) The total amount of the claim is less than \$35, and the claim cannot be recovered by reducing the household's allotment. However, any State agency shall have the option to initiate collection action for other claims under \$35 at such time that multiple overissuances for a household total \$35 or more. If the State agency chooses this option, households shall be informed of this policy.

(B) The State agency has documentation which shows that the household cannot be located.

(ii) The State agency may postpone collection action on inadvertent household error claims in cases where an overissuance is being referred for possible prosecution or for administrative

disqualification, and the State agency determines that collection action will prejudice the case.

(2) *Criteria for initiating collection action on intentional Program violation claims.* If a household member is found to have committed intentional Program violation (by an administrative disqualification hearing official or a court of appropriate jurisdiction) or has signed either a waiver as discussed in § 273.16(f) or a consent agreement as discussed in § 273.16(h), the State agency shall initiate collection action against the individual's household. In addition, a personal contact with the household shall be made, if possible. The State agency shall initiate such collection unless the household has repaid the overissuance already, the State agency has documentation which shows the household cannot be located, or the State agency determines that collection action will prejudice the case against a household member referred for prosecution. The State agency shall initiate collection action for an unpaid or partially paid claim even if collection action was previously initiated against the household while the claim was being handled as an inadvertent household error claim. In cases where a household member was found guilty of misrepresentation or fraud by a court or signed a disqualification consent agreement in cases referred for prosecution, the State agency shall request that the matter of restitution be brought before the court or addressed in the agreement reached between the prosecutor and accused individual.

(3) *Initiating collection on claims.* Each State agency shall develop a written demand letter for initiating collection action on claims which contains the information required by this paragraph. A model letter is available from FNS. If the claim was not established by a fair hearing, the State agency shall provide a notice of adverse action as part of or along with the demand letter, as specified in § 273.13. The notice of adverse action shall be sent on all claims established after March 26, 1990 and on any preexisting claims if at any time after the effective date of these provisions a follow-up demand letter is sent on that claim. A one-time adverse

action notice accompanying the original demand letter, or incorporated into it, which informs recipients they have 90 days to appeal the claim, satisfies the notice provisions.

(i) The demand letter shall inform the household of the amount owed, the reason for the claim, the period of time the claim covers, any offset which reduces the claim and how the household may pay the claim. If the amount of the claim was not established at a fair hearing, including one consolidated with an administrative disqualification hearing, the latter shall notify the household that it may request a fair hearing on the amount of the claim.

(ii) The demand letter shall advise the household of the availability of any individual or organization which provides households free legal representation.

(iii) For inadvertent household error claims, the first demand letter to a participating household shall inform the household:

(A) That unless it elects a method of repayment and informs the State agency of its election within the time specified in paragraph (d)(4)(i) of this section, or timely requests a fair hearing and continued benefits, its allotment will be reduced;

(B) How allotment reduction will affect household benefits, if the State agency has not otherwise informed the household about this matter;

(C) That if the household timely elects allotment reduction, such reduction will begin with the first allotment issued after such election, as provided in § 273.12(c)(2) of this part; and

(D) That if the household fails to make a timely election, or to timely request a fair hearing and continued benefits, the reduction will begin with the first allotment issued after timely notice of such election or request is due to the State agency, as provided in § 273.12(c)(2) of this part.

(iv) For inadvertent household error claims, a demand letter provided to a participating household subsequent to a fair hearing which sustains the claim shall inform the household:

(A) That unless it elects a method of repayment and informs the State agency of its election within the time speci-

fied in paragraph (d)(4)(i) of this section, its allotment will be reduced;

(B) How allotment reduction will affect household benefits, if the State agency has not otherwise informed the household about this matter;

(C) That if the household timely elects allotment reduction, such reduction will begin with the first allotment issued after such election, as provided in § 273.12(c)(2) of this part; and

(D) That if the household fails to make a timely election, the reduction will begin with the first allotment issued after timely notice of such election is due to the State agency, as provided in § 273.12(c)(2) of this part.

(v) For intentional Program violation claims, the first demand letter provided a participating household following the action which establishes the claim, as required in § 237.16 of this part, shall inform the household:

(A) That it must elect a method of repayment and inform the State agency of its election within the time specified in paragraph (d)(4)(ii) of this section, or its allotment will be reduced;

(B) How allotment reduction will affect household benefits, if the State agency has not otherwise informed the household;

(C) That if the household timely elects allotment reduction, such reduction will begin with the first allotment issued after such election, as provided in § 273.12(c)(2) of this part; and

(D) That if the household fails to make a timely election, the reduction will begin with the first allotment issued 10 days after the date of the demand letter, as provided in § 273.12(c)(2) of this part.

(vi) If the State agency has implemented the intercept of unemployment compensation benefits as provided in paragraph (g)(3) of this section, the demand letter shall inform the household of this voluntary method of repayment of claims for intentional program violations.

(vii) If the State agency is required to use other means of collecting claims for intentional Program violations as specified in paragraph (d)(4)(iii) of this section, the letter shall inform the household of those other means and the circumstances in which they may be used by the State agency.

(viii) The demand letter shall inform the household of the availability of allotment reduction as a voluntary method of repayment of administrative error claims.

(ix) The demand letter shall inform a household against which the State agency has initiated collection action of its right to request renegotiation of any repayment schedule to which the household has agreed in accordance with paragraph (g)(2) of this section in the event the household's economic circumstances change.

(x) The demand letter shall provide space for the household to indicate its preferred method of repayment and for the signature of a household member.

(4) *Further collection actions.* (i) *Inadvertent household error claims.* Participating households which are liable for inadvertent household error claims shall be deemed to have elected allotment reduction unless they notify the State agency of their choice of repayment method within 20 days of the date an initial demand letter, or a demand letter for payment following a fair hearing which sustains the claim, is mailed or otherwise delivered to them.

(ii) *Intentional Program violation claims.* Participating households which are liable for intentional Program violation claims shall elect a method of repayment on the date of receipt of the demand letter required in § 273.16(e)(9) and (g)(3) of this part (or if the date of receipt is not a business day, on the next business day) or be deemed to have elected allotment reduction. Each State agency shall determine a deadline for receipt of such elections for them to be considered timely. In no event shall that deadline exceed 10 days from the date the demand letter is mailed or otherwise delivered to liable households.

(iii) If any nonparticipating household or if any currently participating household against which collection action has been initiated for repayment of an administrative error claim does not respond to the first demand letter, additional demand letters shall be sent at reasonable intervals, such as 30 days, until the household has responded by paying or agreeing to pay the claim, until the criteria for suspending collection action specified in

paragraph (e) of this section have been met, or until the State agency initiates other collection actions.

(iv) The State agency shall pursue other means of collection actions, as appropriate, to obtain restitution of a claim against any household which fails to respond to a written demand letter for repayment of any intentional program violation claim unless the State agency can determine that such other means are generally not cost effective. The State agency may also pursue other collection actions, as appropriate, to obtain restitution of a claim against any household which fails to respond to a written demand letter for repayment of any inadvertent household error or administrative error claim. If the State agency chooses to pursue other collection actions and the household pays the claim, payments shall be submitted to FNS in accordance with the procedures outlined in paragraph (h) of this section and the State agency's retention shall be based on the actual amount collected from the household through such collection actions.

(e) *Suspending and terminating collection of claims—(1) Suspending collection of inadvertent household and administrative error claims.* An inadvertent household or administrative error claim may be suspended if no collection action was initiated because of conditions specified in paragraph (d)(1)(i) of this section. If collection action was initiated, and at least one demand letter has been sent, further collection action of an inadvertent household error claim against a nonparticipating household or of any administrative error claim may be suspended when:

(i) The household cannot be located; or

(ii) The cost of further collection action is likely to exceed the amount that can be recovered.

(2) *Suspending collection of intentional Program violation claims.* The State agency may suspend collection action on intentional Program violation claims at any time if it has documentation that the household cannot be located. If the State agency has sent at least one demand letter for claims under \$100, at least two demand letters for claims between \$100 and \$400, and at

least three demand letters for claims of more than \$400, further collection action of any intentional Program violation claim against a nonparticipating household may be suspended when the cost of further collection action is likely to exceed the amount that can be recovered.

(3) *Terminating collection of claims.* A claim may be determined uncollectible after it is held in suspense for 3 years. The State agency may use a suspended or terminated claim to offset benefits in accordance with §273.17.

(f) *Change in household composition.* State agencies shall initiate collection action against any or all of the adult members of a household at the time an overissuance occurred. Therefore, if a change in household composition occurs, State agencies may pursue collection action against any household which has a member who was an adult member of the household that received the overissuance. The State agency may also offset the amount of the claim against restored benefits owed to any household which contains a member who was an adult member of the original household at the time the overissuance occurred. Under no circumstances may a State agency collect more than the amount of the claim. In pursuing claims, the State agency may use any of the appropriate methods of collecting payments in §273.18(g).

(g) *Method of collecting payments.* As specified in paragraph (d) of this section, State agencies shall collect payments for claims against households as follows:

(1) *Lump sum.* (i) If the household is financially able to pay the claim at one time, the State agency shall collect a lump sum cash payment. However, the household shall not be required to liquidate all of its resources to make this one lump sum payment.

(ii) If the household is financially unable to pay the entire amount of the claim at one time and prefers to make a lump sum cash payment as partial payment of the claim, the State agency shall accept this method of payment.

(iii) If the household chooses to make a lump sum payment of food stamp coupons as full or partial payment of the claim, the State agency shall accept this method of repayment.

(2) *Installments.* (i) The State agency shall negotiate a payment schedule with the household for repayment of any amounts of the claim not repaid through a lump sum payment. Payments shall be accepted by the State agency in regular installments. The household may use food stamp coupons as full or partial payment of any installment. If the full claim or remaining amount of the claim cannot be liquidated in 3 years, the State agency may compromise the claim by reducing it to an amount that will allow the household to pay the claim in 3 years. A State agency may use the full amount of the claim (including any amount compromised) to offset benefits in accordance with §273.17.

(ii) If the household fails to make a payment in accordance with the established repayment schedule (either a lesser amount or no payment), the State agency shall send the household a notice explaining that no payment or an insufficient payment was received. The notice shall inform the household that it may contact the State agency to discuss renegotiation of the payment schedule. The notice shall also inform the household that unless the overdue payments are made or the State agency is contacted to discuss renegotiation of the payment schedule, the allotment of a currently participating household against which an inadvertent household error or intentional Program violation claim has been established may be reduced without a notice of adverse action.

(iii) If the household responds to the notice, the State agency shall take one of the following actions as appropriate:

(A) If the household makes the overdue payments and wishes to continue payments based on the previous schedule, permit the household to do so;

(B) If the household requests renegotiation, and if the State agency concurs with the request, negotiate a new payment schedule;

(C) If the household requests renegotiation of the amount of its repayment schedule but the State agency believes that the household's economic circumstances have not changed enough to warrant the requested settlement, the State agency may continue renegotiation until a settlement can be

reached. The State agency shall have the option to invoke allotment reduction against a currently participating household for repayment of an inadvertent household error or intentional Program violation claim if a settlement cannot be reached.

(iv) If a currently participating household against which an inadvertent household error or intentional Program violation claim has been established fails to respond to the notice, the State agency shall invoke allotment reduction. The State agency may also invoke allotment reduction if such a household responds by requesting renegotiation of the amount of its repayment schedule but the State agency believes that the household's economic circumstances have not changed enough to warrant the requested settlement. If allotment reduction is invoked, no notice of adverse action is required.

(v) In cases where the household is currently participating in the program and a payment schedule is negotiated for repayment of an inadvertent household error or intentional Program violation claim, the State agency shall ensure that the negotiated amount to be repaid each month through installment payments is not less than the amount which could be recovered through allotment reduction. Once negotiated, the amount to be repaid each month through installment payments shall remain unchanged regardless of subsequent changes in the household's monthly allotment. However, both the State agency and the household shall have the option to initiate renegotiation of the payment schedule if they believe that the household's economic circumstances have changed enough to warrant such action.

(3) *Intercept of unemployment compensation benefits.* State agencies which have an approved attachment to their Plan of Operation permitting the intercept of unemployment compensation benefits for the collection of claims for intentional program violations may arrange for such intercept as provided in § 272.12. Collections made by such intercepts shall be treated as lump sum or installment payments as discussed in paragraph (g) (1) and (2) of this section.

(4) *Reduction in food stamp allotment.* State agencies shall collect payments for inadvertent household error claims and intentional Program violation claims from households currently participating in the program by reducing the household's food stamp allotments. State agencies shall collect payments for administrative error claims from households currently participating in the program by reducing the household's food stamp allotments if the household prefers to use this method of repayment. Prior to reduction, the State agency shall inform the household of the appropriate formula for determining the amount of food stamps to be recovered each month and the effect of that formula on the household's allotment (i.e., the amount of food stamps the State agency expects will be recovered each month), and of the availability of other methods of repayment. If the household requests to make a lump sum cash and/or food stamp coupon payment as full or partial payment of the claim, the State agency shall accept this method of payment. The State agency shall reduce the household's allotment to recover any amounts of an inadvertent household error or intentional Program violation claim not repaid through a lump sum cash and/or food stamp coupon payment, unless a payment schedule has been negotiated with the household. The provision for the minimum benefit for households with one and two members only, as described in § 273.10(e)(2)(ii)(C), shall apply to the allotment prior to reduction in accordance with this paragraph. If the full or remaining amount of the claim cannot be liquidated in 3 years, the State agency may compromise the claim by reducing it to an amount that will allow the household to make restitution within 3 years. A State agency may use the full amount of the claim (including any amount compromised) to offset benefits in accordance with § 273.17. The amount of food stamps to be recovered each month through allotment reduction shall be determined as follows:

(i) *Inadvertent household error claims.* For inadvertent household error claims, the amount of food stamps shall be the greater of 10 percent of the

household's monthly allotment *or* \$10 per month.

(ii) *Administrative error claims.* For administrative error claims, the amount of food stamps to be recovered each month from a household choosing to use this method shall be negotiated with the household. Choice of this option is entirely up to the household and no household shall have its allotment reduced by an amount with which it does not agree for payment of an administrative error claim.

(iii) *Intentional Program violation claims.* For intentional Program violation claims, the amount of food stamps shall be the greater of 20 percent of the household's monthly entitlement *or* \$10 per month.

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

(A) Submit an amendment to their Plan of Operation as specified in Section 272.2(d)(1)(xii) of this chapter stating that they will comply with the requirements for FTROP and with the requirements for the Federal Salary Offset Program (salary offset). Such amendments shall be submitted to the appropriate FNS regional office no later than twelve months before the beginning of a State agency's first offset year.

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

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

(A) Such claims must be:

(1) Only inadvertent household error claims or intentional Program violation claims. These claims shall be properly established according to the requirements of this section (which pertains to claims against households) and the requirements of section 273.16 (which pertains to disqualification for intentional Program violations). In addition, these claims shall be properly

established no later than the date the State transmits its final request for IRS addresses for the particular offset year. Furthermore, the State agency shall have electronic records and/or paper documents showing that the claim was properly established. These records and documents include such items as claim demand letters, results of fair hearings, advance notices of disqualification hearings, results of such hearings, and records of payments.

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

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

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

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

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

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

(B) In addition:

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

(2) If a claim to be submitted for collection under FTROP is a combination of two or more recipient claims, the date of the initial demand letter for each claim combined shall be within

the 10-year range specified in paragraph (g)(5)(ii)(A)(4) of this section. Claims reduced to judgment shall not be combined with claims which are not reduced to judgment.

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

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

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

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

(D) The State agency shall mail 60-day notices using the address information provided by the IRS unless the State agency receives clear and concise notification from the taxpayer that notices from the State agency are to be sent to an address different from the address obtained from the IRS. Such clear and concise notification shall mean that the taxpayer has provided the State agency with written notification

including the taxpayer's name and identifying number (which is generally the taxpayer's SSN), the taxpayer's new address, and the taxpayer's intent to have notices from the State agency sent to the new address. Claims for which 60-day notices addressed as required in this paragraph are returned as undeliverable may be referred for collection under FTROP.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The claim was determined past due and legally enforceable, and the reason for that determination. Acceptable reasons for such a determination

include the individual's failure to provide adequate documentation that the claim is not past due or legally enforceable;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) Annually and no later than the tenth of October of the year prior to the offset year report in writing to the FNS regional office the number of 60-day notices mailed and the total dollar

value of the claims associated with those notices.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) The advance notice shall state that:

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

payments have reduced the amount of the original claim;

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

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

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

(ii) The first installment payment for the claim. Claims of more than \$50, if not paid in full within 30 days, must be paid in installments of at least \$50 a month. Debtors may pay more than \$50 on any installment payment. The advance notice shall state the monthly due date of installment payments and that if a monthly installment payment of at least \$50 is not received by the due date, the claim will be referred to FNS for offset from the individual's Federal salary with no further opportunity to enter a voluntary repayment agreement;

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

(5) Debtors may submit documentation to State agencies showing such things as payments of claims or other circumstances which would prevent collection of claims. Unless the State agency receives such documentation within 30 calendar days of the date of the advance notice and the documentation clearly shows that the claim has been paid or is not legally collectible, the State agency shall refer the claim to FNS for collection from the debtor's salary. The State agency shall notify debtors in writing when claims for which an advance notice was issued

will not be referred for collection from salaries. Debtors have the right to a formal appeal to FNS. Notification about how to make such appeals is required and will be provided to debtors before any collection action from salaries is taken.

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

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

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

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

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

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

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

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

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

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

(h) *Retention rates.* The following retention rates shall apply for claims collected by the State agency, including the value of allotment reductions for the purpose of collecting claims but not allotment reductions due to disqualification:

(1) For amounts collected prior to October 1, 1990, the State agency shall retain 25 percent of the value of inadvertent household error claims collected and 50 percent of the value of intentional Program violation claims collected;

(2) For amounts collected during the period October 1, 1990 through September 30, 1995, the State agency shall retain 10 percent of the value of inadvertent household error claims collected and 25 percent of the value of intentional Program violation claims collected;

(3) For amounts collected on or after October 1, 1995, the State agency shall retain 25 percent of the value of inadvertent household error claims collected and 50 percent of the value of intentional Program Violation claims collected;

(4) The State agency shall not retain any percentage of the value of administrative error claims collected.

(i) *Submission of payments.* (1) The State agency shall retain the value of

funds collected for inadvertent household error, intentional Program violation, or administrative error claims rather than forwarding the payments to FNS. This amount includes the total value of allotment reductions to collect claims, but does not include the value of benefits not issued as a result of a household member being disqualified. The State's grant and letter of credit will be established or amended on a quarterly basis to reflect the State agency's retention of the value of claims collected as specified in paragraph (h) of this section unless the State agency requests or has requested that payment be by check. The State agency may request that FNS accept checks from the State for FNS-209 amounts due FNS, or that FNS pay the State by check for FNS-209 amounts due the State. If the State agency fails to pay FNS the amount due as reported on the FNS-209, FNS shall offset the amount due from the State's letter of credit. For FNS-209 reporting purposes, State agencies shall calculate the retention amount using the appropriate rate specified in paragraph (h) of this section which is in effect during the reporting period for the report. For those claims collected in Fiscal Year 1990 or earlier for which adjustments are made and reported in Fiscal Year 1991 or 1992, States may request a correction to reflect the difference between the old, higher rate (paragraph (h)(1) of this section) which is applicable to those claims, and the new, lower rate (paragraph (h)(2) of this section) at which the adjustments to those claims were reported on the FNS-209. One request for correction for each of fiscal years 1991 and 1992 may be filed with FNS after the fiscal year, but no later than November 30, 1991, for Fiscal Year 1991 reporting and no later than November 30, 1992, for Fiscal Year 1992 reporting. The request must be in writing, must include appropriate verifying documentation, and must reflect the net effect of all increases and decreases resulting from the application of the old retention rate.

(2) Each State agency shall submit quarterly a Form FNS-209, Status of Claims Against Households, to detail the State's activities relating to claims against households. This report

is due no later than 30 days after the end of each calendar year quarter and shall be submitted to FNS even if the State agency has not collected any payments. In addition to reporting the amount of funds recovered from inadvertent household error and intentional Program violation claims each quarter on Form FNS-209, the State agency shall also report these amounts on other letter of credit documents as required. In accounting for inadvertent household error and intentional Program violation claims collections, the State agency shall include cash or coupon repayments and the value of allotments recovered or offset by restoration of lost benefits. However, the value of benefits not issued during periods of disqualification shall not be considered recovered allotments and shall not be used to offset an intentional Program violation claim. In addition, each State agency shall establish controls to ensure that officials responsible for intentional Program violation determinations will not benefit from the State share of recoveries.

(3) The State agency may retain any amounts recovered on a claim being handled as an inadvertent household error claim prior to obtaining a determination by an administrative disqualification hearing official or a court of appropriate jurisdiction that intentional Program violation was committed, or receiving from an individual either a signed waiver or consent agreement, at the rate applicable to intentional Program violation claims, once the determination or signed document is obtained. In such cases, the State agency shall include a note in an attachment to the quarterly reporting form specified in paragraph (h)(2) of this section which shows the additional amounts being retained on amounts already recovered as a result of the change in status of the claim.

(4) If a household has overpaid a claim, the State agency shall pay the household any amounts overpaid as soon as possible after the overpayment becomes known. The household shall be paid by whatever method the State agency deems appropriate considering the household's circumstances. Overpaid amounts of a claim which have previously been reported as collected

via the FNS-209 and which have been repaid to the household shall be reported in the appropriate column on the FNS-209 for the quarter in which the repayment occurred. The amount of the repayment shall be subtracted from the total amount collected. The appropriate retention rate shall be applied to the reduced collection total.

(5) In cases where FNS has billed a State agency for negligence, any amounts collected from households which were caused by the State's negligence will be credited by FNS. When submitting these payments, the State agency shall include a note as an attachment to the quarterly reporting form specified in paragraph (h)(2) of this section which shows the amount that should be credited against the State's bill.

(j) *Returned coupons.* If coupon books collected from households as payment for claims are returned intact and in usable form, the State agency may return them to coupon inventory. The State agency shall destroy any coupons or coupon books which are not returned to inventory in accordance with the procedures outlined in §274.7(f).

(k) *Claims discharged through bankruptcy.* State agencies shall act on behalf of, and as, FNS in any bankruptcy proceeding against bankrupt households owing food stamp claims. State agencies shall possess any rights, priorities, interests, liens or privileges, and shall participate in any distribution of assets, to the same extent as FNS. Acting as FNS, State agencies shall have the power and authority to file objections to discharge, proofs of claims, exceptions to discharge, petitions for revocation of discharge, and any other documents, motions or objections which FNS might have filed. Any amounts collected under this authority shall be transmitted to FNS as provided in paragraph (h) of this section.

(l) *Accounting procedures.* Each State agency shall be responsible for maintaining an accounting system for monitoring claims against households. At a minimum, the accounting system shall be designed to readily accomplish the following:

(1) Document the circumstances which resulted in a claim, the procedures used to calculate the claim, the

methods, used to collect the claim and, if applicable, the circumstances which resulted in suspension or termination of collection action.

(2) Identify those situations in which an amount not yet restored to a household can be used to offset a claim owed by the household.

(3) Identify those households that have failed to make installment payments on their claims.

(4) Document how much money was collected in payment of a claim and how much was submitted to FNS.

(5) Identify at certification household that owe outstanding payments on a previously issued claim determination. At the time the household is certified and receives an initial allotment (as specified at §273.17(d)(4)), the initial allotment, whether paid retroactively or prospectively, shall not be reduced to offset claims.

(m) *Interstate claims collection.* In cases where a household moves out of the area under a State agency's jurisdiction, the State agency should initiate or continue collection action against the household for any overissuance to the household which occurred while it was under the State agency's jurisdiction. The State agency which overissued benefits to the household shall have the first opportunity to collect any overissuance. However, if the State agency which overissued benefits to the household does not take prompt action to collect, then the State agency which administers the area into which the household moves should initiate action to collect the overissuance. Prior to initiating action to collect such overissuances, the State agency which administers the area into which the household moves shall contact the State agency which overissued benefits to ascertain that it does not intend to pursue prompt collection. The State share of any collected claims, as provided in §273.18(h), shall be retained by the State agency which collects the overissuance.

[Amdt. 242, 48 FR 6861, Feb. 15, 1983]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §273.18, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 273.19 [Reserved]

§ 273.20 SSI cash-out.

(a) *Ineligibility.* No individual who receives supplemental security income (SSI) benefits and/or State supplementary payments as a resident of California is eligible to receive food stamp benefits. The Secretary of the Department of Health and Human Services has determined that the SSI payments in California have been specifically increased to include the value of the food stamp allotment.

(b) *Receipt of SSI benefits.* In California, an individual must actually receive, not merely have applied for, SSI benefits to be determined ineligible for the food stamp program. If the State agency provides payments at least equal to the level of SSI benefits to individuals who have applied for but are awaiting an SSI eligibility determination, receipt of these substitute payments will terminate the individual's eligibility for food stamp benefits. Once SSI benefits are received, the individual will remain ineligible for food stamp benefits, even during months in which receipt of the SSI benefits is interrupted, or suspended, until the individual is terminated from the SSI program.

(c) *Income and resources.* In California, the income and resources of the SSI recipient living in a household shall not be considered in determining eligibility or level of benefits of the household, as specified in §273.11(d).

[Amdt. 132, 43 FR 47889, Oct. 17, 1978, as amended by Amdt. 132, 44 FR 33383, June 8, 1979. Redesignated at 45 FR 7217, Jan. 31, 1980, and amended by Amdt. 237, 47 FR 57669, Dec. 28, 1982; Amdt. 269, 51 FR 10793, Mar. 28, 1986; Amdt. 356, 59 FR 29713, June 9, 1994; Amdt. 364, 61 FR 54320, Oct. 17, 1996]

§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB).

(a) *System design.* This section provides for an MRRB system for determining household eligibility and benefits. For included households, this system replaces the prospective budgeting system provided in the preceding sections of this part. The MRRB system provides for the use of retrospective information in calculating household