

rephrasing should help clarify that an individual's "appeal" right is limited. For additional clarity, the rule proposes using the word "collection" instead of "offset." Accordingly, § 273.18(g)(5)(iv)(F) would require that the 60-day notice advise individuals that they have a right to request a review of the intended collection action.

The August 1991 General Notice required in paragraphs d(4)(iii) and (iv) that the 60-day notice state that claims that have been appealed (for which timely reviews have been requested) will not be referred for offset while under review, and that individuals must provide their SSN's with their appeals (review requests). The rule would make these same requirements at § 273.18(g)(5)(iv)(F). At that same place the rule would require that the review request be written because during the test of FTROP State agencies asked whether they had to review claims based on telephone inquiries. The Department wants to make clear to debtors and State agencies that an oral request, such as an inquiry made over the telephone, does not constitute a review request.

In this regard, the action group commented that the opportunity to appeal provided by the 60-day notice was not meaningful because, whereas recipients are accustomed to working with food stamp offices, the opposing party in this instance is the IRS. Requests for review are made to State agencies and FCS, not the IRS. Only requests to protect the tax refund of a non-liable spouse should be directed to the IRS, as discussed in detail below. During the test there were few reports from the IRS that individuals were contacting IRS offices instead of State agencies about appealing the intended collection from tax refunds. Nonetheless, to help make clear that appeals are directed to the State agency, this rule proposes at § 273.18(g)(5)(iv)(F) that the 60-day notice specify that requests for review be submitted to the State agency address provided in the notice. Requests for review will generally be submitted by mail, but the rule does not propose to require this. Individuals could provide the written requests in person.

DEFRA provides that individuals must be given 60 days to show a debt is not subject to FTROP. The August 1991 General Notice required in paragraph d(4)(ii) that the 60-day notice state that the State agency will not review appeals which it receives later than 60 days after the date of the 60-day notice. The provision was intended: (1) To make as clear as possible to individuals that the 60-day appeal

period would be strictly adhered to; and (2) to relieve State agencies of the responsibility for reviewing appeals received after that period expires. This rule proposes at § 273.18(g)(5)(iv)(F) that the 60-day notice advise individuals that their request for review must be received with 60 days of the date of the 60-day notice. During the test of FTROP, after the 60-day period State agencies sometimes received documentation, for example, that the claim was paid. In such circumstances, as required by current food stamp regulations when an over collection is discovered, the State agencies were required to refund the over collection. Consistent with current food stamp regulations on refunding over collections of recipient claims, if after the 60-day notice an individual documents or otherwise demonstrates that the claim is not past due or legally enforceable, and the claim has already been collected from the individual's tax refund, the amount collected on the claim will be refunded.

**Bankruptcy:** The August 1991 General Notice required in paragraph d(5) that the 60-day notice advise individuals that they should inform the State agency if they believed that a bankruptcy prevents collection of the claim. During the test of FTROP several State agencies asked what documentation of bankruptcy was required. Bankruptcy law forbids requiring documentation of bankruptcy. This rule proposes at § 273.18(g)(5)(iv)(G) to restate the requirement that a claim is not legally enforceable if the individual indicates that a bankruptcy prevents collection of the claim.

**Tax Refunds of Non-liable Spouses:** The August 1991 General Notice required in paragraph d(6) that 60-day notices state that married individuals may want to contact the IRS in order to protect the refund in cases where spouses are not liable for the claim. This rule proposes this same requirement at § 273.18(g)(5)(iv)(H). That section would also inform the individual that his or her own liability for this claim, including any charge for administrative costs, may be collected from his or her share of a joint refund. The Department wants to make clear that the protection for a non-liable spouse's share of a tax refund against collection by tax refund offset does not extend to the liable spouse's share of the tax refund.

**Documenting a Claim is "Not Referable":** The August 1991 General Notice stated in paragraph d(4)(iv) that an appeal must provide evidence or documentation why the individual believes that the claim is not past-due or is not legally enforceable, and in paragraph d(4)(v) that an appeal is not

considered received until the State agency receives such evidence or documentation. During the test of FTROP, State agencies asked whether they were required to review requests which did not contain any pertinent documentation. The Department believes that all timely, written review requests warrant consideration and a written response, as discussed later in connection with State agency action on review requests. The Department also wants to make clear to individuals that certain documentation is necessary to show that a claim is not subject to FTROP. Accordingly, this rule proposes at § 273.18(g)(5)(iv)(I) that 60-day notices inform individuals that if they request a review of the intent to collect the claim from their income tax refund, they should provide documentation showing at least one reason why the claim is not subject to FTROP and that if they cannot, for example, provide a cancelled check, they should explain in detail why they believe that the claim is not collectible under FTROP. This should allow individuals wide latitude to explain the particular circumstances of the claim and still require that they show some basis for why the claim is not past due and legally enforceable. The 60-day notice would be required at §§ 273.18(g)(5)(iv)(J) and (K) to list the reasons the claim is subject to collection under FTROP.

In the first two weeks after mailing out 60-day notices, State agencies typically receive a large number of telephone calls from individuals asking questions about the recipient claims and the intended collection action described in the notices. Many of these callers assert that they are not liable for the claim. The Department believes that providing individuals information in the 60-day notice about why their claims are subject to collection under FTROP will allow informal inquiries to be handled quickly and may reduce the number of such inquiries. This information should also help individuals decide what information they need to provide in order to substantiate that, for example, they have paid the claim or that the claim has been discharged in bankruptcy.

The action group made several comments concerning the requirements for documenting that a claim is not past due or is not legally enforceable. The group stated that the 10-year time limit for delinquent claims to be referable for tax offset results in an undue burden for documentation on low-income households and recommended that the Department shorten that period. On this matter the action group also commented that some households may have