difficulty documenting that no debt is owed. To the same effect, the action group commented that recipients may not have evidence to rebut the intended collection action or the claim itself. They cited the example of a household member alleged to have had unreported earnings (which would have resulted in an overissuance) who is unavailable when the 60-day notice is received. The Department recognizes that recordkeeping for low-income households may be relatively difficult, especially perhaps, as the action group remarks, because low-income households may move relatively often and may have relatively limited resources to devote to household recordkeeping. The Department does not believe that shortening the 10-year period would address this difficulty. The Department believes that it must require a minimum level of documentation that a claim is not past due or is not legally enforceable and that the proposed rule states that minimum level. With respect to rebutting the claim itself, since only IHE and IPV claims which are properly established are subject to FTROP, the household has already been offered an opportunity to rebut the claim itself in fair hearings or administrative disqualification hearings.

The action group also commented that in other contexts households present evidence and the State agency has the burden of defending its actions. The Department understands that by ''other contexts'' the action group is referring to fair hearing and disqualification hearing procedures. As just discussed, those procedures are part of the process of establishing a claim. Once a claim is established, due process requires permitting the individual an opportunity to establish that the claim is not past due or legally enforceable (is not subject to collection under FTROP). Due process does not require permitting a second opportunity to challenge the substantive basis for the claim.

e. State Agency Action on Requests for Review. DEFRA requires at 31 U.S.C. 3720A(b)(3) that any evidence presented by debtors must be considered and a determination made whether the debt is past-due and legally enforceable. The IRS requires at 26 CFR 301.6402–6(d)(2) that the participating agency notify the debtor of its decision. The August 1991 General Notice required in paragraph e(1) that when a State agency examines documents or evidence submitted with a review request, it determine whether the claim is past due and legally enforceable and notify the individual of its decision in writing. Consistent with the requirements concerning State agency action on review requests already discussed, this rule proposes at § 273.18(g)(5)(v)(A) that State agencies act on all written requests for reviews received within the 60-day period for timely review requests, determine whether or not such claims are past due and legally enforceable, and notify individuals in writing of the result of such determinations.

Section 273.18(g)(5)(v)(B) of this rule proposes that the State agency determine whether or not claims are past-due and legally enforceable based on a review of its records and of documentation, and evidence or other information the individual may submit. The provision in the August 1991 General Notice at paragraph e(2) which contained examples of types of documentation or evidence has been eliminated as unnecessary.

During the test of FTROP State agencies indicated confusion about whether they were required to respond to review requests which contained inadequate or no documentation. To address this concern, this rule proposes to add at § 273.18(g)(5)(v)(C)(*1*) the requirement that the decision letter advise the individual of the reason for the State agency's decision, including the failure to provide adequate evidence or documentation that the claim was not past due and legally enforceable.

The August 1991 General Notice required in paragraph (e)(3)(i) that if the State agency decides a claim is past-due and legally enforceable, the State agency must inform the individual in its written decision that it intends to refer the claim for offset. This rule would make the same requirement at § 273.18(g)(5)(v)(C)(*2*).

Information About FCS Reviews of State Agency Decisions: The IRS regulations at 7 CFR 301.6402–6(d)(2) provide that if the review is conducted by an agent of the Federal agency, in this case the State agency, the individual must be accorded at least 30 days from the agent's determination to request a review by the Federal agency. The August 1991 General Notice required in paragraph e(3)(ii) that the State agency's notice of decision inform the individual that he or she is entitled to ask FCS to review the State agency's decision but that FCS would not review such decisions if it received a request to do so later than 30 days after the date of the State agency decision notice.

Consistent with the August 1991 General Notice, this rule proposes to require at § 273.18(g)(5)(v)(C)(*3*) that the State agency decision advise that the individual has 30 days from the date of the State agency decision to request that FCS review the State agency's decision. If FCS review is timely requested, FCS will provide the individual a written response stating its decision and the reasons for its decision. Consistent with the IRS regulation cited just above, this rule also proposes at § 273.18(g)(5)(v)(C)(*3*) that individuals be advised that the claim will not be referred for offset pending FCS review of the State agency's decision.

The 1991 General Notice required in paragraph e(iii) that the State agency decision: (1) advise the individual that a request for an FCS review must include his or her SSN; (2) be sent to an FCS regional office; and (3) provide the address of that office including a line reading ''Tax Offset Review.'' The purpose of this requirement was to help FCS obtain the correct records from the State agency, to provide individuals the address to which to send their requests for FCS reviews and to identify those requests to regional offices so that action could be taken promptly. This rule would make that same requirement at § 273.18(g)(5)(v)(C)(*4*).

The August 1991 General Notice specified in paragraph e(4) that if the State agency determines that the claim is not past-due or is not legally enforceable, in addition to notifying the individual that the claim will not be referred for offset, the State agency must take any actions required by food stamp regulations with respect to establishing claims and/or holding appropriate hearings, or other required recipient claim actions. The purpose of this requirement was to make sure that State agencies: (1) Corrected any errors in their processing of claims in question; and (2) took actions to properly establish claims and to initiate collection action. Aside from some editorial changes, this rule proposes the same requirement at § 273.18(g)(5)(v)(D).

The August 1991 General Notice specified in paragraph e(5) three groupings for timely appealed claims which could not be referred for offset. Guidance on treatment of the first group, claims which a State agency determines are not past-due or are not legally enforceable, has just been discussed. The third group is claims which FCS either determines are not past due or not legally enforceable, or for which FCS does not complete its review before State agency final files were due. State agency action on these claims is discussed later in this preamble in connection with the certification letter to FCS.

State Agency Reviews not Complete by October 31: The second of the three groups is those claims for which the State agency does not complete its review and notification to the