

HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 6 BENEFIT, EMPLOYMENT AND SUPPORT SERVICES
DIVISION

CHAPTER 683

UNDERPAYMENT, OVERPAYMENT, AND RECOVERY

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- §17-683-40 Repealed
- §17-683-41 Repealed
- §17-683-42 Repealed
- §17-683-43 Repealed
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Historical Note: This chapter is based substantially upon chapter 17-721 [Eff 7/19/82; am 10/2/82; am 7/5/83; am 7/22/83; am 1/19/84; am 7/23/84; am 11/29/85; am 12/27/86; am 8/31/87; am 7/24/89; am 8/25/90; am 12/24/90; R 3/19/93] chapter 17-723 [Eff 7/19/82; am 7/5/83; am 10/3/83; am 1/19/84; am 12/27/86; am 4/28/88; am 8/25/90; am 12/24/90; R 3/19/93] chapter 17-753, subchapter 4 [Eff 12/21/84; R 6/29/92] §17-626-17 [Eff 7/19/82; am 12/5/83; am 4/20/85; am 6/12/90; am 10/4/90; R 3/19/93] §17-626-17.1 [Eff 4/20/85; am 10/4/90; R 3/19/93] §17-626-18 [Eff 7/19/82; am 6/6/83; R 3/19/93]

SUBCHAPTER 1

OVERVIEW

§17-683-1 Purpose. This chapter provides the guidelines for determining and processing underpayments, overpayments, and recovery actions. [Eff 3/19/93; comp 11/19/05] (Auth: HRS §346-14) (Imp: 7 C.F.R. §§273.17, 273.18; 42 U.S.C. §§601-603; HRS §§346-34, 346-35, 346-37, 346-44)

§17-683-2 Definitions. As used in this chapter:

"Administrative error" means an error attributable to the department staff such as calculating, clerical, procedural, typing, misapplication of policy, failure to take action, or using the wrong benefit amount table.

"Agency error claim" means a food stamp claim established against households for an overpayment which was caused by department action or failure to take action; or, in the case of categorical eligibility, an action by an agency of the State which resulted in the household's improper eligibility for AFDC provided a claim can be calculated based on a change in net income or household size, or both.

"Assistance unit" means persons whose needs, income, and assets are considered in determining eligibility for and the amount of financial assistance payment.

"Benefit drawdown amount" means the remaining benefit balance in the EBT account.

"Budget month" means the calendar month from which the department shall use income to compute the amount of benefit issued.

"Claim determination" means a decision made by the branch regarding the basis, the amount, and liability, if warranted, for the overpayment of food stamps.

"EBT" means Electronic Benefit Transfer.

"FNS" means the Food and Nutrition Service of the U. S. Department of Agriculture.

"Inadvertent household error claim" means a food stamp claim established against households for overpayments caused by:

- (1) a misunderstanding or unintended error on the part of the household;
- (2) 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 or household size, or both; or

- (3) social security administration 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 or household size, or both.

"Initial allotment" means the total value of food stamp coupons a household is authorized to receive from the month of application up to the month the branch authorizes the benefits.

"Misunderstanding of the program with no intent to defraud" is a situation where the participant did not understand the program provisions or where the participant's lack of education or language skills was a factor in improper reporting of eligibility factors.

"Nonsettling" means the item or dollar value of the item that is not used by the EBT contractor when reconciling the settlement process of the daily EBT transactions. The normal settling functions include, but are not limited to, settlements for third party processors, networks, and EBT only retailers; FNS drawdown and reconciliation transmission; State cash program settlement and reconciliation transmission; and EBT system reconciliation and balance processing. The nonsettling items include benefits that are expunged, applied to repay overpayments owed by the household and food stamps that are converted to cash.

"Offsetting" means the process of reducing the amount of benefits to be restored to satisfy an outstanding overpayment against the household.

"Overpayment" means the amount of benefits issued to a household in excess of the amount it was actually entitled to receive by regulation.

"Payment month" means the calendar month for which the department shall provide benefits.

"Program loss" means coupons issued to or obtained by a household to which the household was not entitled.

"Retroactive payment" means the food stamp benefit issued to a household for the month in which an application is filed when the determination of eligibility is made in a subsequent month on either a timely or untimely basis.

"Report month" means the calendar month following the budget month. "Restored benefits" means the food stamp benefit issued to a household whenever benefits for a prior period were not given or were lost because of an error by the branch.

"Underpayment" means the amount of benefits which is less by any sum the amount of benefits which the household was entitled to receive for the month. [Eff 3/19/93; am 9/26/97; am 01/22/02; am and comp 11/19/05] (Auth: HRS §346-14) (Imp: 7 C.F.R. §§273.18(a), 271.2; 42 U.S.C. §§601-603; HRS §§346-34, 346-35, 346-37, 346-44)

SUBCHAPTER 2

FINANCIAL ASSISTANCE UNDERPAYMENTS

§17-683-3 Underpayments. (a) Prompt action shall be taken to correct any underpayments to currently eligible assistance units and to assistance units which would have been eligible if an error had not occurred.

(b) If an assistance unit has both an overpayment and an underpayment, the overpayment and underpayment shall be offset one against the other in correcting the payment.

(c) Payments provided to the assistance unit to correct the underpayment shall not be counted as income or asset in determining continued eligibility and the amount of assistance in the month the corrective payment is made and the following month.

(d) Corrective payments shall be made for any underpayment due a former recipient when financial assistance is restored.

(e) The rules specified in this section are effective for underpayments which are identified subsequent to:

- (1) September 30, 1981, for the federally funded categories of assistance, regardless of when the underpayment occurred; and
- (2) July 18, 1982, for the state funded categories of assistance, regardless of when the underpayment occurred. [Eff 3/19/93; am 7/16/99; comp 11/19/05] (Auth: HRS §346-14) (Imp: 42 U.S.C. §§601-603; HRS 346-44)

§§17-683-4 to 17-683-8 (Reserved).

SUBCHAPTER 3

FOOD STAMP UNDERPAYMENTS

§17-683-9 Accounting. (a) Each branch 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 shall be restored to the household.

(b) Each branch shall at a minimum, document how the amount to be restored was calculated and the reason lost benefits shall be restored. The accounting system shall be designed to readily identify those situations where a claim against a household shall be used to offset the amount to be restored. [Eff 3/19/93; comp 11/19/05] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.17(h))

§17-683-10 Entitlement. (a) The branch shall restore to the household, benefits which were lost whenever the loss was caused by an error by the department or by an administrative disqualification for intentional program violation which was subsequently reversed as specified in section 17-683-17. Benefits shall be restored for not more than

twelve months prior to whichever of the following occurred first:

- (1) The month the branch was notified by the household or by another person or agency in writing or orally of the possible loss to that specific household;
- (2) The month the branch discovers in the course of business that a loss to a specific household has occurred; or
- (3) The date the household requested a hearing to contest the adverse action which resulted in the loss.

(b) Benefits shall be restored even if the household is currently ineligible. [Eff 3/19/93; am and comp 11/19/05] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.17(a))

§17-683-11 Required branch action. Once entitlement to restoration of lost benefits has been determined by the branch, action shall be automatically taken to restore any benefits that were lost. The branch shall notify the household of:

- (1) Its entitlement to receive lost benefits;
- (2) The amount to be restored;
- (3) Any offsetting that was done;
- (4) The method of restoration; and
- (5) The right to appeal through the hearing process if the household disagrees with any aspect of the proposed lost benefit restoration. [Eff 3/19/93; comp 11/19/05] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.17(b))

§17-683-12 Disputed benefits. (a) If the household does not agree with the amount to be restored as calculated by the branch or with any other action taken by the branch to restore lost benefits, the household may request a fair hearing within ninety days of the date the household is notified of its entitlement to restoration of lost benefits.

(b) If a fair hearing is requested prior to or during the time lost benefits are being restored, the household shall receive the lost benefits as determined by the branch pending the results of the fair hearing.

(c) If the fair hearing decision is favorable to the household, the branch shall restore the lost benefits in accordance with that decision.

(d) If a household believes it is entitled to restoration of lost benefits but the branch, after reviewing the case file, disagrees, the household shall have ninety days from the date of branch determination to request a fair hearing.

(e) The branch shall restore lost benefits to the household only if the fair hearing decision is favorable to the household.

(f) Benefits lost more than twelve months prior to the date the branch was initially informed of the household's possible entitlement to lost benefits shall not be restored. [Eff 3/19/93; comp 11/19/05] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.17(c))

§17-683-13 Computing the amount to be restored.
After correcting the loss for future months and excluding those months for which benefits may have been lost prior to the twelve month time limit described in section 17-683-10, the branch shall calculate the amount to be restored as follows:

- (1) If the error resulted in an incorrect allotment when the household was eligible, the loss of benefits shall be calculated only for the months in which the household participated. The amount to be restored shall be the difference between the allotment the household received and the correct allotment the household should have received; or
- (2) If the loss was caused by an incorrect delay, denial, or termination of benefits,

the months affected by the loss shall be calculated as follows:

- (A) If an eligible household's application was erroneously denied, the month the loss initially occurred shall be the month of application, or for an eligible household filing a timely reapplication, the month following the expiration of its certification period shall be the month the loss initially occurred; or
 - (B) If an eligible household's application was delayed, the months for which benefits may be lost shall be calculated in accordance with procedures specified in chapter 17-647 for determining whether the delay was caused by the household or by the branch; or
- (2) If a household's benefits were erroneously terminated, the month the loss initially occurred shall be the first month benefits were not received as a result of the erroneous action; and
 - (4) After computing the date the loss initially occurred, the loss shall be calculated for each month subsequent to that date until either the first month the error is corrected or until the first month the household is found ineligible. [Eff 3/19/93; comp 11/19/05] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.17(d))

§17-683-14 Determination and calculation of benefits. (a) For each month affected by the loss, the branch shall determine if the household was actually eligible. If eligibility cannot be determined by using the household's case file, the branch shall advise the household of what information must be provided to determine eligibility for these months. The household shall be considered ineligible

for any month for which eligibility cannot be established.

(b) For the months the household was eligible, the branch shall calculate the allotment the household should have received. The difference between the actual allotment received, if any, and the correct allotment shall be the amount to be restored.

(c) If a claim against a household is unpaid or is held in suspense, the amount to be restored shall be offset against the amount due on the claim before the balance, if any, is restored to the household. At the time when the household is certified and receives an initial allotment, the initial allotment shall not be reduced to offset claims, even if the initial allotment is paid retroactively. [Eff 3/19/93; comp 11/19/05] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.17(d))

§17-683-15 Method of payment. (a) Regardless of whether a household is currently eligible or ineligible, the branch 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.

(b) The branch shall honor reasonable requests by a household to restore lost benefits in monthly installments if, for example, the household fears the excess coupons may be lost or stolen or the lost amount is more than the household may use in a reasonable period of time. [Eff 3/19/93; comp 11/19/05] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.17(f))

§17-683-16 Household composition changes. Whenever lost benefits are due a household and the household's membership has changed, the branch shall restore the lost benefits to the household in which the members are a majority of the individuals who were household members at the time the loss occurred. If

the branch cannot locate or determine the household which contains a majority of the household members the branch shall restore the lost benefits to the household in which the individual who was head of the household at the time the loss occurred resides. [Eff 3/19/93; comp 11/19/05] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.17(g))

§17-683-17 Restoring of benefits to individuals disqualified for intentional program violation. (a) Individuals disqualified for intentional program violation shall be entitled to restoration of any benefits lost during the months the individuals were disqualified, not to exceed twelve months prior to the date of branch notification, if the decision which resulted in disqualification is subsequently overturned or reversed by the court. For example, an individual would not be entitled to restoration of lost benefits for the period of disqualification based solely on the fact that a criminal conviction could not be obtained unless the individual successfully challenged the disqualification period imposed by an administrative disqualification in a separate court action.

(b) For each month the individual was disqualified, not to exceed twelve months prior to branch notification, the amount to be restored, if any, shall be determined by comparing the allotment the household received with the allotment the household would have received had the disqualified member been allowed to participate. If the household received a smaller allotment than it should have received, the difference shall be equal to the amount to be restored. Participation in an administrative disqualification hearing in which the household contests the branch assertion of intentional program violation shall be considered notification that the household is requesting restored benefits. [Eff 3/19/93; am 2/07/94; am and comp 11/19/05] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.17(e))

§§17-683-18 to 17-683-22 (Reserved).

SUBCHAPTER 4

FINANCIAL ASSISTANCE OVERPAYMENTS AND RECOVERY

§17-683-23 Overpayments. (a) An overpayment made to individuals of an assistance unit receiving financial assistance, including overpayment resulting from aid paid pending hearing decisions, shall be recovered by reducing the amount of any future financial assistance payable to the individuals of the overpaid assistance unit including non-needy caretakers.

- (1) Any cash refunds shall be collected and computed in the total overpayment;
- (2) The amount of the monthly financial assistance payment payable to the assistance unit shall be reduced by ten per cent of the family's standard of assistance to recover the overpayment;
- (3) The amount of financial assistance payable to an assistance unit from the initial month of application through the month the financial assistance payment is approved shall be reduced in accordance with paragraph (2). The financial assistance payable for the initial month of eligibility shall not be reduced when the financial assistance payment is prorated.

(b) An overpayment made to individuals of an assistance unit receiving financial assistance, including overpayment resulting from aid paid pending hearing decisions, shall be recovered by appropriate action under state law against the income and assets of any individual member of the overpaid financial assistance unit including non-needy caretakers. When these individuals do not continue to receive assistance:

- (1) The department may send periodic bills requesting payment from the individuals;
- (2) Any cash refunds shall be collected and computed in the total overpayment;
- (3) Any overpayment shall be recovered through recoupment from the financial assistance grant when the individual of the assistance unit, including the non-needy caretaker, reapplies and is approved for assistance.

(c) If an individual, including a non-needy caretaker, leaves the assistance unit which was overpaid, recovery of the overpayment shall be from:

- (1) The financial assistance grant of the assistance unit which was overpaid;
- (2) Any assistance unit of which the individual has subsequently become a member; or
- (3) Any individual of the overpaid assistance unit, including the non-needy caretaker, whether or not currently a recipient.

(d) If, by reason of recovery of an overpayment, financial assistance payable to the assistance unit for the month is reduced to zero, the assistance unit shall still be considered recipients.

(e) If an assistance unit has both an overpayment and an underpayment, the overpayment and underpayment shall be offset one against the other in correcting the payment.

(f) When financial assistance is restored to a former recipient including the non-needy caretaker with an outstanding overpayment, the overpayment shall be recovered.

(g) When an overpayment has been made to an alien, during the three years after the alien's entry into the United States, due to the sponsor's failure to provide correct information, the sponsor and alien shall be held jointly liable for the overpayment. For such overpayments, the provisions of this section shall be applied. The sponsor shall not be held liable for the overpayment and recovery shall not be made from the sponsor when a sponsor is found to have good cause or be without fault for not providing correct information to the department. Good cause or

without fault shall be limited to the following situations:

- (1) Incorrect application of state policy by the department;
- (2) The alien's sponsor's whereabouts were not known to the alien;
- (3) The alien provided incorrect information regarding the sponsor's income and assets; or
- (4) The alien sponsor was unable to provide accurate information regarding assets and income because of a mental disorder.

(h) Individuals subject to recovery of overpayment shall be provided written notice by the department stating:

- (1) The reasons, dates, and the amount of the alleged overpayment;
- (2) Proposed amount to be repaid each month;
- (3) Period over which the proposed repayment shall be made;
- (4) Method by which the proposed overpayment shall be recovered; and
- (5) The right to request a fair hearing if the individual disagrees with the department's proposed action.

(i) If fraud is suspected in any overpayment situation, the department shall also pursue the investigation of suspected fraud.

(j) Subsections (a) to (h) are effective for overpayments which are identified subsequent to:

- (1) September 30, 1981, for the federally funded categories of assistance regardless of when the overpayment occurred; and
- (2) July 18, 1982, for the state funded categories of assistance, regardless of when the overpayment occurred.

(k) Effective March 1, 1990, the department shall suspend recovery of overpayments through the reduction of the monthly assistance payment as stated in subsection (a)(2) for the state funded GA and AABD programs when the individual:

- (1) Enters or resides in a domiciliary care facility; or
- (2) Receives a state loan as specified in chapter 17-681. [Eff 03/19/93; am 3/14/94; am 9/26/97; am 7/16/99; am 01/22/02; am and comp 11/19/05] (Auth: HRS §§346-14, 346-44) (Imp: 42 U.S.C. §§601-603; HRS §§346-34, 346-35, 346-37, 346-44)

§17-683-24 Overpayment recovery activities on closed cases. (a) Recovery of overpayments from individuals who are no longer receiving financial assistance shall be made by appropriate action under state law against the income and assets of any individual member of the overpaid assistance unit who was included in the financial assistance grant including non-needy caretakers.

(b) The department may send periodic bills requesting payment for overpayments from individuals no longer receiving financial assistance.

(c) In locating former recipients with overpayments, the department shall use appropriate data sources such as state automobile registration, state unemployment insurance files, and the social security administration's benefit date exchange (BENDEX).

(d) When the department determines that reasonable efforts have been made to recover an overpayment and it is no longer cost effective to continue collection activities, the department may discontinue efforts to recover the overpayment. Reasonable efforts must include notification of the amount of and reason for the overpayment and that repayment is required.

(e) Recovery activities shall not be suspended or waived by the department in cases involving fraud, or where the court has ordered an individual to repay overpayments to the department.

(f) Any overpayment shall be recovered by reducing the amount of financial assistance when the overpaid individual or a member of the overpaid unit

reapplies and is approved for financial assistance.
[Eff 03/19/93; am 3/14/94; am 9/26/97; am 7/16/99; am
and comp 11/19/05] (Auth: HRS §§346-14, 346-44) (Imp:
42 U.S.C. §§601-603; HRS §§346-34, 346-35, 346-37,
346-44)

§17-683-25 Suspending recovery of financial
assistance program overpayments. The department may
suspend collection action at any time if it has
documentation that the household cannot be located.
[Eff 9/26/97; am and comp 11/19/05] Auth: HRS §346-
14) (Imp: 42 U.S.C. §§601-603; HRS §346-44)

§17-683-26 Terminating recovery of overpayments.
A claim shall be determined uncollectible after it is
held in suspense for three years at which time the
claim shall be considered a terminated claim. [Eff
9/26/97; comp 11/19/05] (Auth: HRS §346-14) (Imp: 42
U.S.C. §§601-603; HRS §346-44)

§§17-683-27 to 17-683-29 (Reserved).

SUBCHAPTER 5

MEDICAL ASSISTANCE OVERPAYMENTS AND RECOVERY

§17-683-30 REPEALED. [R 8/01/94]

§17-683-31 REPEALED. [R 8/01/94]

§17-683-32 REPEALED. [R 8/01/94]

§17-683-33 REPEALED. [R 8/01/94]

§§17-683-34 to 17-683-39 (Reserved).

SUBCHAPTER 6

FOOD STAMP OVERPAYMENTS AND RECOVERY

§17-683-40 REPEALED. [R 11/19/05]

§17-683-41 REPEALED. [R 11/19/05]

§17-683-42 REPEALED. [R 11/19/05]

§17-683-43 REPEALED. [R 11/19/05]

§17-683-44 REPEALED. [R 11/19/05]

§17-683-45 REPEALED. [R 11/19/05]

§17-683-46 REPEALED. [R 11/19/05]

§17-683-47 REPEALED. [R 11/19/05]

§17-683-48 REPEALED. [R 11/19/05]

§17-683-49 REPEALED. [R 11/19/05]

§17-683-50 REPEALED. [R 11/19/05]

§17-683-51 REPEALED. [R 11/19/05]

§17-683-52 REPEALED. [R 11/19/05]

SUBCHAPTER 7

FOOD STAMP OVERPAYMENTS AND RECOVERY

Historical Note: Subchapter 7 is based substantially upon subchapter 6. [Eff 3/19/93; am 12/9/94; am 10/13/95; am 10/28/93; am 7/16/99; R 11/19/05]

§17-683-53 General. (a) A claim is an amount owed because of:

- (1) Benefits that are overpaid or
- (2) Benefits that are trafficked. Trafficking means:
 - (A) The buying or selling of coupons, ATP cards or other benefit instruments for cash or consideration other than eligible food; or
 - (B) The exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for coupons.

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

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

- (1) Each person who was an adult member of the household when the overpayment or trafficking occurred;
- (2) A sponsor of an alien household member if the sponsor is at fault; or
- (3) A person connected to the household, such as an authorized representative, who actually trafficks or otherwise causes an overpayment or trafficking. [Eff and comp 11/19/05]

(Auth: HRS §346-14) (Imp: 7 C.F.R. §273.18(a)(1) and (4))

§17-683-54 Types of claims. There are three types of claims: (a) An intentional program violation (IPV) claim is any claim for an overpayment or trafficking resulting from an individual committing an IPV.

(b) An inadvertent household error (IHE) claim is any claim resulting from a misunderstanding or unintended error on the part of the household.

(c) An agency error (AE) claim is any claim for an overpayment caused by an action or failure to take action by the branch. [Eff and comp 11/19/05] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.18(b))

§17-683-55 Calculating the claim amount. (a) For claims not related to trafficking:

- (1) The branch shall calculate a claim back to at least twelve months before the date the overpayment was discovered. For an IPV claim, the branch shall calculate a claim back to the month the act of IPV occurred. For all claims, the branch shall exclude any amounts that occurred more than seventy-two months before the date the overpayment was discovered.
- (2) The branch shall calculate the claim as follows:
 - (A) Determine the correct amount of benefits for each month that a household received an overpayment;
 - (B) If the claim is an IHE or IPV claim, do not apply the earned income deduction to that part of any earned income that the household failed to report in a timely manner when this act is the basis for the claim;
 - (C) Subtract the correct amount of benefits from the benefits actually received to

determine the amount of the overpayment; and

- (D) If aware of any EBT expunged benefits, reduce the overpayment amount by any EBT benefits expunged from the household's EBT benefit account. The difference is the amount of the claim.

(b) For claims arising from trafficking related offenses, the value of the trafficked benefits shall be determined by:

- (1) The individual's admission;
- (2) Adjudication; or
- (3) The documentation that forms the basis for the trafficking determination. [Eff and comp 11/19/05] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.18(c)(1) and (2))

§17-683-56 Initiating collection action and managing claims. (a) Subject to subsections (b) and (c), the branch must begin collection action on all claims.

(b) The branch shall not establish and collect on a claim:

- (1) If the claim is less than \$126; and
- (2) The household is not participating in the program.

(c) The provisions of subsection (b) shall not be applicable if the claim was previously established or the overpayment was discovered through a quality control review.

(d) The branch shall provide the household written notification to begin collection action on any claim. The claim will be considered established for tracking purposes as of the date of the initial demand letter or written notification. If the claim or the amount of the claim was not established at a hearing, the branch must provide the household with a one-time notice of adverse action. The notice of adverse action may be sent separately or as part of the demand

letter. The initial demand letter or notice of adverse action must include language stating:

- (1) The amount of the claim;
- (2) The intent to collect from all adults in the household when the overpayment occurred;
- (3) The type (IPV, IHE, or AE) and reason for the claim;
- (4) The time period associated with the claim;
- (5) How the claim was calculated;
- (6) The phone number to call for more information about the claim;
- (7) That, if the claim is not paid, it will be sent to other collection agencies that will use various collection methods to collect the claim;
- (8) The opportunity to inspect and copy records related to the claim;
- (9) Unless the amount of the claim was established at a hearing, the opportunity for a hearing on the decision related to the claim. The household will have ninety days to request a hearing;
- (10) That, if not paid, the claim will be referred to the federal government for federal collection action;
- (11) That the household can make a written agreement to repay the amount of the claim prior to it being referred for federal collection action;
- (12) That, if the claim becomes delinquent, the household may be subject to additional processing charges;
- (13) That the department may reduce any part of a claim referred to the state income tax setoff or the Treasury Offset Program (TOP) if the department believes that the household is not able to repay the claim;
- (14) A due date or time frame to either repay or make arrangements to repay the claim, unless the branch is to impose allotment reduction; and

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

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

(f) Any repayment agreement for any claim must contain due dates or time frames for the periodic submission of payments. The agreement must specify that the household will be subject to involuntary collection action(s) if payment is not received by the due date and the claim becomes delinquent.

(g) Unless specified in subsection (j), a claim must be considered delinquent if:

- (1) The claim has not been paid by the due date and a satisfactory payment arrangement has not been made; or
- (2) A payment arrangement has been established and a scheduled payment has not been made by the due date.

(h) The date of delinquency for a claim covered under subsection (g) (1) is the due date on the initial written notification or demand letter. The claim will remain delinquent until payment is received in full, a satisfactory payment agreement is negotiated, or allotment reduction is invoked.

(i) The date of delinquency for a claim covered under subsection (g) (2) is the due date of the missed installment payment. The claim will remain delinquent until payment is received in full, allotment reduction is invoked, or if the branch determines to either resume or renegotiate the repayment schedule.

(j) A claim will not be considered delinquent if another claim for the same household is currently being paid either through an installment agreement or allotment reduction and the department expects to begin collection on the claim once the prior claim(s) is settled.

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

(1) A claim awaiting a hearing decision must not be considered delinquent.

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

(2) If the hearing official determines that a claim does not exist, the claim is disposed of in accordance with subsection (n).

(m) For claims referred to the Treasury Offset Program, the department may compromise the claim or any portion of the claim if it can be reasonably determined that a household's economic circumstances dictate that the claim will not be paid in three years. The department shall use the full amount of the claim (including any amount compromised) to offset benefits. The department shall reinstate any compromised portion of a claim if the claim becomes delinquent.

(n) A claim shall be terminated and written-off when:

- (1) The branch finds that the claim is invalid
- (2) All adult household members die;
- (3) The claim balance is less than \$26 and the claim has been delinquent for ninety days or more;
- (4) The department has determined that it is not cost effective to pursue the claim any further;
- (5) The claim is delinquent for three years or more; or
- (6) The department cannot locate the household.
[Eff and comp 11/19/05] (Auth: HRS §346-14)
(Imp: 7 C.F.R. §273.18(e))

§17-683-57 Acceptable forms of payment. Payment shall be made by:

- (1) Reducing benefits before issuance. This includes allotment reduction and offsets to restored benefits;
- (2) Reducing benefits after issuance. These are benefits from food stamp EBT accounts;
- (3) Cash, checks or money orders;
- (4) Paper food stamp coupons;
- (5) Participating in the Treasury's offset program (TOP); or
- (6) Performing public service. This form of payment must be ordered by a court and specifically be in lieu of paying any claim. [Eff and comp 11/19/05] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.18(f))

§17-683-58 Collection methods. (a) The branch shall collect payments for any claim by reducing the amount of monthly benefits that a household receives unless the claim is being collected at regular intervals at a higher amount or another household is already having its allotment reduced for the same claim.

- (1) For an IPV claim, limit the amount reduced to the greater of \$20 or twenty per cent of the household's monthly entitlement unless the household agrees to a higher amount.
- (2) For an IHE or AE claim, limit the amount reduced to the greater of \$10 or ten per cent of the household's monthly allotment unless the household agrees to the higher amount.
- (3) The branch shall not reduce the initial allotment when the household is first certified unless the household agrees to the reduction.
- (4) The department shall not use additional involuntary collection methods against individuals in a household that is already

having its benefit reduced unless the additional payment is voluntary.

(b) The department shall allow a household to pay its claim using benefits from its EBT account.

- (1) For collections from active or reactivated EBT benefits, the branch shall obtain a written agreement in advance and in accordance with paragraph (4) of this subsection. For one time only reductions, an oral request shall be acceptable with the department sending the household a receipt of the transaction within ten days.
- (2) For collections from EBT benefits which have been identified for expungement, the branch shall inform the household of the department's intent to apply any amount or any portion of any amount remaining in the household's EBT account to an outstanding claim. The notification to the household shall occur any time prior to the department's action to debit the household's EBT account.
- (3) A collection from an EBT account must be nonsettling against the benefit drawdown amount.
- (4) At a minimum, any written agreement with the household to collect a claim using active EBT benefits must include:
 - (A) A statement that this collection activity is strictly voluntary;
 - (B) The amount of the payment;
 - (C) The frequency of the payments (i.e., whether monthly or one time only);
 - (D) The length (if any) of the agreement; and
 - (E) A statement that the household may revoke this agreement at any time.

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

(d) The department must accept any payment for a claim whether it represents full or partial payment. The payment may be in any of the acceptable formats.

(e) The department may accept installment payments made for a claim as part of a negotiated repayment agreement. If a household fails to submit a payment in accordance with the terms of the negotiated repayment schedule, the claim becomes delinquent and will be subject to additional collection actions.

(f) If authorized by a court, the value of a claim may be paid by the household performing public service.

(g) The department may employ any other collection actions to collect claims. These actions include, but are not limited to, referrals to collection or other similar private and public sector agencies, lottery offsets, wage garnishments, property liens and small claims court.

(h) When an unspecified joint collection is received for a combined public assistance and food stamp recipient claim, each program must receive its pro rata share of the amount collected. An unspecified joint collection is when funds are received in response to correspondence or a referral that contained both the food stamp and other program claim(s) and the debtor does not specify to which claim to apply the collection. [Eff and comp 11/19/05] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.18(g))

§17-683-59 Refunds for overpaid claims. (a) The department must provide a refund for any overpaid amount as soon as possible after the department discovers the overpayment. The department shall pay by whatever method the department deems appropriate considering the circumstances.

(b) The household is not entitled to a refund if the overpaid amount is attributed to an expunged EBT benefit. [Eff and comp 11/19/05] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.18(h))

§17-683-60 Interstate claims collection. (a) Unless a transfer occurs as outlined in subsection (b) the department shall be responsible for initiating and continuing collection action on any food stamp recipient claim regardless of whether the household remains in the state.

(b) The department may accept a claim from another state if the household with the claim moves into the state. Once the department accepts this responsibility, the department is responsible for future collection and reporting. [Eff and comp 11/19/05] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.18(i))

§17-683-61 Bankruptcy. The department may act on behalf of FNS in any bankruptcy proceeding against a bankrupt household with outstanding recipient claims. [Eff and comp 11/19/05] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.18(j))

§17-683-62 Treasury's offset program. (a) The department shall refer to the Treasury Offset Program (TOP) all recipient claims that are delinquent for 180 or more days. The department must certify that all claims to be referred to TOP are 180 days delinquent and legally enforceable. The department must refer these claims in accordance with the Food and Nutrition Service (FNS) and the Department of the Treasury's (Treasury) instructions.

(b) The department must not refer claims to TOP that:

- (1) The debtor is a member of a participating household that is having its allotment reduced to collect the claim; or
- (2) Fall into any other category designated by FNS as not referable to TOP.

(c) The department shall notify the debtor of the impending referral to TOP according to FNS instructions relating to:

- (1) What constitutes an adequate address to send the notice;
- (2) What specific language will be included in the TOP referral notice;
- (3) What will be the appropriate time frames and appeal rights; and
- (4) Any other information that FNS determines necessary to fulfill all due process and other legal requirements as well as to adequately inform the debtor of the impending action.

(d) The department shall follow FNS instructions regarding procedures connected with responding to inquiries, subsequent reviews and hearings, and any other procedures determined by FNS as necessary in the debtor notification process.

(e) The debtor whose claim has been referred to TOP may have any eligible Federal payment owed intercepted through TOP. The debtor may also be responsible for paying any collection or processing fees charged by the Federal government to intercept their payment. [Eff and comp 11/19/05] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.18(n))

§§17-683-63 to 17-683-67 (Reserved)