

CF OPERATING PROCEDURE  
NO. 165-19

STATE OF FLORIDA  
DEPARTMENT OF  
CHILDREN AND FAMILIES  
TALLAHASSEE, March 27, 2018

Economic Self-Sufficiency Services

BENEFIT RECOVERY COLLECTIONS

This operating procedure sets forth the policies governing the Benefit Recovery (BR) unit in the collection of overpayments in the Food Assistance, Temporary Cash Assistance, Refugee Assistance, and Medicaid Programs.

BY DIRECTION OF THE SECRETARY:

*(Signed original copy on file)*

JERI CULLEY  
Assistant Secretary for  
Economic Self-Sufficiency

SUMMARY OF REVISED, ADDED, OR DELETED MATERIAL

This operating procedure is created to reflect current collection policies.

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This operating procedure supersedes the collection chapters of CFOP 165-17, dated December 1, 2002.

OPR: Public Benefits Integrity

DISTRIBUTION: OSGC; OSIH; ASGO; Region/Circuit Economic Self-Sufficiency staff.

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## Chapter 1

## GENERAL

1-1. Benefit Recovery (BR) Terms and Acronyms.

a. Active Recipients. Recipients who are receiving benefits in food assistance (FA), Temporary Cash Assistance (TCA), Refugee Assistance Program (RAP), Medicaid or Supplemental Security Income Related Medicaid. Recipients may be active in more than one program simultaneously.

b. Administrative Disqualification Hearing (ADH). Hearings held by the Office of Appeal Hearings (OAH) when requested by the Department of Children and Families (DCF) through the Division of Public Assistance Fraud (DPAF) or Public Benefits Investigations (PBI). There must be documentary evidence available to substantiate that the household member intentionally violated a FA or TCA program rule.

c. Agency Compromise. All of an agency error or inadvertent household error FA overpayment is reduced to zero by the agency once specific criteria is met due to a recipient's inability to pay the debt.

d. Agency Error (AE). When the Department's action or inaction results in an overpayment of FA, TCA, or Medicaid.

e. Aid to Families with Dependent Children (AFDC). Now known as TCA and Temporary Assistance for Needy Families (TANF).

f. Allotment Reduction (AR). Automatic monthly reduction of recipient's FA and/or TCA and RAP benefits to repay the program overpayment.

g. Assistance Group (AG). Individuals who are mandatory household members at the time of overpayment; some or all of whom are responsible for paying back the overpayment.

h. Auxiliary Issuance (AUX). Method used to issue benefits for a current or previous month that were not issued at pull down or to return benefits that were overpaid by the recipient on a BR overpayment.

i. Authorized Representative. Adults who are non-household members authorized in writing by the head of household, spouse, or another responsible member if the household has difficulty completing the eligibility processes. Authorized representatives may be authorized to act on behalf of a household in the application process, obtaining benefits, and using benefits. The authorized representative authorized for using benefits receives an Electronic Benefits Transfer (EBT) card for this purpose. The authorized representative designated for application processing purposes may also carry out household responsibilities during the certification period such as reporting changes in the household's income or other household circumstances. Residents of drug or alcohol treatment centers must apply and be certified through the use of an authorized representative. Residents of group living arrangements have the option to apply and be certified through the use of authorized representatives.

j. Bankruptcy (BK). An Integrated Benefit Recovery System special action code used to identify an overpayment or person included in a bankruptcy.

k. Caretaker Relative. An adult relative within specified degree of relationship who applies for benefits on behalf of the assistance group and whose needs may or may not be included in the TCA benefit at the time of the overpayment.

l. Cash Assistance. Temporary Cash Assistance (AFDC/TANF) and Refugee Assistance (RAP) programs.

m. Claim Determination Form. The form generated by the Automated Budget Computation (ABC) module in the Integrated Benefit Recovery System that shows how the overpayment was calculated.

n. FDC. Florida Department of Corrections.

o. Disqualification Consent Agreement (DCA). A document signed by the recipient admitting to intentionally misrepresenting their circumstances causing an overpayment or agreeing to be disqualified without an admission of guilt. This document is used in cases referred to the state attorney's office.

p. Disqualification Notice (Notice of Case Action). A notice advising the recipient the length of a disqualification.

q. Division of Public Assistance Fraud (DPAF). A division of the Department of Financial Services that investigates public assistance fraud previously known as PAF.

r. Electronic Disqualification Recipient System (eDRS). A national system that identifies disqualified recipients for a FA intentional program violation by a court or ADH decision anywhere in the nation.

s. Florida On-Line Recipient Integrated Data Access (FLORIDA). The Florida public assistance computer system used to determine and track a recipient's eligibility and receipt of public assistance benefits.

t. Inactive. Case or household not currently receiving public assistance benefits.

u. IBRS. Integrated Benefit Recovery System.

v. Inadvertent Household Error (IHE). When a misunderstanding or unintentional error is made by the household which results in an overpayment of FA, TCA, or Medicaid. Also known as Client Error.

w. Intentional Program Violation (IPV). When a court of appropriate jurisdiction finds an individual guilty, or an administrative disqualification hearing, a disqualification consent agreement or signed waiver determines that the individual or household fraudulently received public assistance they were not entitled to receive which caused an overpayment.

x. Liable Individuals. An assistance group member who is either individually or jointly responsible for repayment of overpaid benefits.

y. Office of Appeal Hearings (OAH). Part of the Office of Inspector General within the Department of Children and Families. The office employs full time hearing officers to conduct hearings for cases in which an action, intended action or failure to act would adversely affect the recipient's or family's eligibility for an amount or type of FA benefits, Financial Assistance, Medical Assistance, Social Services, or where action on an overpayment for such assistance or services is unreasonably delayed. These hearings are generally referred to as "Fair Hearings" in federal regulations.

z. Overpaid Payee. The person who was the payee in the assistance group during the overpayment period.

aa. PIN. Personal Identification Number.

bb. Public Benefits Investigations (PBI). Unit within the Office of Public Benefits Integrity, formerly referred to as ACCESS Integrity or Front-end Fraud Prevention.

cc. Pull Down. The process where 10 mailing days before the end of each month the FLORIDA system closes any FA and TCA groups that have not recertified and issues the next month's benefits for all other FA groups. At benefit issuance pull-down, the amount of the benefit reduction that posts to a recipient's overpayment is based on the recoupment priority on the IBRS Recoupment Priority screen. FA benefits are issued when the benefit payments have posted to the recipient's EBT Account.

dd. Recoupment (Allotment Reduction). An automatic monthly reduction of recipient's FA and/or TCA and RAP benefits to repay the program overpayment.

ee. Relative Caregiver. A relative, other than the parent of the children in the Cash Assistance group, who receives benefits on the children's behalf when the children have been placed with the relative through court adjudication. Each child's eligibility is established separately and considered a filing unit of one. The caregiver's needs are not included and the caregiver is responsible for repaying any overpayment.

ff. Responsible Individuals. Individuals who are or were mandatory members of the standard filing unit that were unreported or not included in the assistance group but should have been. Responsible individuals are also those persons who are caretaker relatives, authorized representatives, designated representatives, protective payees or Relative Caregivers who applied for and received benefits on behalf of the assistance group, are liable, but did not participate in the assistance group. Their IBRS participation status is "No Participation – Liable."

gg. Treasury Offset Program (TOP). A federally mandated collection program that allows interception of federal payments (called offset) in order to repay established FA overpayments. Formally known as FTROP (Federal tax refund offset program).

hh. Treasury Offset Program Federal Review. Option given to a debtor when they are notified of a TOP State Review decision that the debt is past due and legally enforceable that they may request a review by the USDA's food and Nutrition Service. The Federal Review determines if the state agency accurately determined the debt to be past due and legally enforceable.

ii. Treasury Offset Program State Review. Option included in the Notice of Past Due Debt informing the debtor they have a delinquent account on an FA overpayment. This option allows the debtor to request a review of the delinquency and the legal ability to collect on the debt. The state must then verify the legality of the overpayment, its collection, and respond to the debtor.

jj. Waiver of an Administrative Disqualification Hearing. A form that allows the recipient accused of committing an intentional program violation to waive their right to an administrative disqualification hearing and accept the disqualification penalty.

1-2 Purpose. This operating procedure sets forth the policies governing the Office of Public Benefits Integrity's Benefit Recovery (BR) program in the recovery of overpaid public assistance benefits in the FA, Cash Assistance, and Medicaid programs. BR uses the Integrated Benefit Recovery System (IBRS) for collections reporting functions.

### 1-3. Responsibilities.

a. Benefit Recovery is responsible for benefit reduction activities on active cases with FA, TCA, RAP Medicaid and overpayments. The Collections staff consist of the:

- (1) Collection Supervisor;
- (2) Revenue Specialist;
- (3) TOP Specialist; and,
- (4) Compromise Specialist.

b. The private collections contractor (PCC) is responsible for collection activities for inactive TCA, RAP and FA overpayments, as well as all Medicaid, RAP Medicaid, and SSI-Related Medicaid.

### 1-4. Legal Authority.

#### a. Food Assistance (FA) Overpayment.

(1) Food assistance overpayment policies contained in this operating procedure are based on Title 7 Code of Federal Regulations 273.18, and Chapter 414 of the Florida Statutes.

(2) Title 7 Code of Federal Regulations 273.18 requires the state agency to "establish an overpayment against any household that has received more FA benefits than it is entitled to receive," and to initiate collection against households as determined by specific criteria presented in the regulations.

#### b. Temporary Cash Assistance (TCA) Overpayment.

(1) TCA overpayment policies contained in this operating procedure are based on 45 Code of Federal Regulations 233.20, Rule 65A-1.900 of the Florida Administrative Code, and Chapter 414 of the Florida Statutes. TCA policies became effective October 1996 in Florida. Overpayment for periods prior to October 1996 are based on AFDC, both state and federal, policy in effect when the overpayment occurred.

(2) Chapter 414, Florida Statutes specify uniform statewide policies for recovery of overpayments of assistance, including overpayments resulting from assistance paid pending hearings decisions.

c. Medicaid Overpayment. Medicaid overpayment policies contained in this operating procedure are based on Medicaid eligibility criteria as presented in 42 Code of Federal Regulations Part 435, or Chapter 414, Florida Statutes.

#### d. General Program Regulations.

(1) Chapter [414.39](#), Florida Statutes.

(2) Section 414.41, Florida Statutes, states that "whenever it becomes apparent that any person or provider has received any public assistance under this Chapter to which he or she is not entitled, through either simple mistake or fraud on the part of the department or on the part of the recipient or participant, the department shall take all necessary steps to recover the overpayment."

(3) Rule 65 A-1.900, Florida Administrative Code, is a compilation of those administrative rules that relate directly to overpayment and BR. An administrative rule, in part, is a

legal statement that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice requirements of an agency.

1-5. Confidentiality.

a. Confidential information is any information supplied to the Department by a program applicant/recipient or by other sources in connection with that applicant/recipient's application for, or receipt of, FA, TCA, RAP, or Medicaid. BR staff must comply with specific policies of FA, TCA, and Medicaid programs regarding confidentiality of information concerning and contained within the recipient's case file material.

b. Food assistance requirements regarding confidentiality of FA case records and their contents are found in Section 410.0100 of the ACCESS Florida Program Policy Manual (CFOP 165-22).

c. Specific policy regarding confidentiality measures to be taken concerning the TCA case file information may be found in Chapter 420.0000 beginning in Section 0420.0100 of the ACCESS Florida Program Policy Manual.

d. Medicaid program confidentiality requirements are NOT the same as those for TCA. Medicaid information may not be released to anyone, including the recipient, unless the disclosure is directly connected to the administration of the Medicaid State Plan. These requirements may be found in Section 430.0100 of the ACCESS Florida Program Policy Manual.

e. The BR case file is a confidential record of the recipient's BR activities.

f. Each state agency staff member or any contractors employed by the state, whether in an administrative, professional, or clerical support position, is expected to use all confidential information responsibly and in accordance with current program specific policy. The BR Supervisor or their designee must ensure the disclosure of case file information is in compliance with governing policies and ensure within reason the information will be safeguarded by the person to whom it is released. **NO BR FILE INFORMATION MAY BE RELEASED OUTSIDE OF THE DEPARTMENT WITHOUT PRIOR APPROVAL FROM THE BR SUPERVISOR OR HIS/HER DESIGNEE.**

(1) The nature of the information being requested, the reasons for the request and use to which it will be put must be considered prior to release of any information.

(2) **WRITTEN PERMISSION FROM THE RECIPIENT IS REQUIRED PRIOR TO THE RELEASE OF ANY INFORMATION THAT IS CONTAINED IN THEIR BR CASE FILE OR THAT IS AVAILABLE TO BR STAFF THROUGH COMPUTER SYSTEM(S), MICROFICHE, OR OTHER PROGRAM CASE FILES (i.e., FA or AFDC/TCA).**

(3) Any request for release of case file information received by BR, whether written or verbal, must be included as a permanent part of the BR file.

(4) Verbal requests for case file information must be documented by the BR Supervisor or his/her designee, and that documentation (whether the request was approved or not) must be included in the BR file.

g. Confidential information may be shared with any Department staff without the recipient's written consent when that staff member has a need to know in conjunction with the process of establishing eligibility, amount of assistance, or otherwise providing service to the recipient.



h. DPAF representatives or a state attorney may also review BR file information without the recipient's written consent, provided they are conducting an investigation of public assistance fraud that may involve that recipient's case.

i. Requests for information from a governmental authority, the courts, or law enforcement official, except for a state attorney investigating a public assistance fraud case, are governed by the same policies as requests from any other outside requester. (See EXCEPTION in paragraph j below.)

j. Exception. The name and current address of a TCA recipient, who is a fugitive felon, may be released to a properly identified law enforcement official, if the official provides the Department the recipient's Social Security number and the requester satisfactorily demonstrates the recipient is a fugitive felon. A fugitive felon is an individual who has been charged with, or convicted of, a felony offense in a court of law and who has subsequently concealed their whereabouts from court officials for the purpose of avoiding further prosecution and/or imposition of his or her sentence.

(1) If the official making the request for information comes into the office, that official must identify himself or herself as a law enforcement official by producing proper documentation that supports his or her claim. In addition, a felony warrant or other document verifying that the recipient is a fugitive felon must be presented before the recipient's name and current address can be released.

(2) If a request is made by telephone, the BR representative must request that the official making the request, leave his or her telephone number so a return call may be made to verify the requester is a law enforcement official. Inform the official that a felony warrant or other document establishing the recipient as a fugitive felon must be provided to the Department before the name and current address of the recipient can be released.

(3) If a request for information is made by letter, it must be made on the law enforcement agency's official letterhead stationary and must be accompanied by a felony warrant or other document establishing the individual is a fugitive felon. If the written request does not meet these conditions, the request will not be honored (a return response to the requester must explain why the request could not be met).

k. If a subpoena is issued for the FA or TCA case record, or for any agency representative to testify concerning an applicant or recipient (other than in child support or welfare fraud cases), the court's attention must be called to those programs' policies relating to confidentiality. CONSULT WITH REGION LEGAL STAFF UNDER THESE CIRCUMSTANCES.

l. The BR case file must not be made available in full to the applicant or recipient, their authorized representative or designated counsel, if it contains any reference to informants such as neighbors, family members, friends, acquaintances, employers, co-workers, landlords, business associates, counselors, or other agency representatives.

(1) Prior to providing the case file for review, the BR representative must ensure that all references to information sources (informants) have been redacted from the case file as provided for in section 119.07, Florida Statutes. This information MUST NOT be released to the applicant/recipient, his or her authorized representative, or their designated legal counsel.

(2) Photo copying of case file material will be done in accordance with Department rules pertaining to DCF recipient records.

(3) The BR Supervisor or his/her designee must be present while the BR case file is being inspected.

(4) A “verified” written statement from the recipient must be provided prior to providing case file information when the request to review a BR case file is made by a person claiming to represent the interests of the recipient.

(a) A “verified” written statement could include a notarized statement or a statement signed by the recipient (properly identified) at the BR office.

(b) The statement must be dated, identify the recipient as the author of the statement, provide the recipient's case number and/or social security number, specify the name of the person to whom permission to review the case file is being granted, and indicate the time limit the recipient wants to impose on that permission to review the case file (if any).

(c) The written statement permitting review of his or her BR case file must be retained as a permanent part of the recipient's BR file.

(d) In the event that the case file information must be sent through the postal service, it must be sent certified mail (return receipt requested) or through a certified courier service. This restriction does not apply to routine business correspondence such as requests for information, billing statements, and other related notices.

(e) Medicaid related information must never be released to either the recipient or any other source unless it is related to the determination of eligibility for assistance. Consultation with region legal staff is recommended before releasing Medicaid information under any other circumstances.

(f) IRS and BEER data exchange confidential tax and benefit information may be shared with other state agencies only under the condition that strict security guidelines will be followed by the agency in the storage, use, and disclosure of that information. This sensitive data is available to authorized Department employees through the data exchange process of FLORIDA. Each employee is personally liable for any willful disclosure or misuse of the data and therefore must be aware of the security procedures and penalties for improper use or disclosure. 26 USC 6103(p)(4)(D) protects the confidentiality of federal tax information. Anyone who knowingly, or by reason of negligence, discloses IRS or BEERS data is in violation of the law. An individual who discloses this information may be subject to civil action by the taxpayer in an U.S. District Court. Refer to Chapter 3000 of the ACCESS Florida Program Policy Manual for additional information regarding security of information disclosed through the Data Exchange System.

(g) Screen prints, listings, and other information containing recipient information must be shredded or placed in containers designated for secure destruction, when no longer needed.

## Chapter 2

## COMMUNICATIONS

2-1. Notice of Case Action.

a. The Notice of Case Action is sent to the recipient to request repayment of the amount of public assistance benefits that were overpaid. The recipient has 30 days from the date of the notice to return a voluntary repayment agreement and make an initial payment in order for the overpayment not to be considered delinquent.

b. If the Notice of Case Action is returned as undeliverable, the recipient has not been notified about the overpayment and all collection activities must stop. If a new address is established, a new notice will be mailed and a new timeframe for the recipient to respond will begin from the date of the new notice.

2-2. Electronic Benefits Transfer (EBT) Voluntary Repayment Agreement. This agreement allows recipients to request to have their FA or Cash Assistance benefits deducted from their EBT Account and applied to FA and/or Cash Assistance overpayments.

2-3. Division of Public Assistance Fraud (DPAF) Investigations.

a. The recipient will be notified of the DPAF investigation by form CF-ES 3093.

b. Once the overpayment is established, the DPAF 500 Form will be returned indicating the correct disqualification number for the recipient.

c. Once a decision has been made that an intentional program violation (IPV) has occurred or not occurred, a Notice of Case Action will be initiated.

d. If the recipient signs a Waiver of an Administrative Disqualification Hearing, a Disqualification Consent Agreement, or is found guilty of committing public assistance fraud, a Notice of Disqualification will be initiated.

2-4. Court Decisions. A Disqualification Consent Agreement (DCA) is used for court cases to impose disqualification penalties. It is submitted with the evidence packet given to the State Attorney. If adjudication is withheld, the DCA is required to be signed for imposition of the disqualification penalty.

2-5. Treasury Offset Program (TOP) Letter. When a food assistance overpayment meets TOP delinquency (120 days) criteria, a TOP letter is mailed to the overpaid payee informing them that their overpayment(s) is past due. The overpaid payee has 60 days to respond to the letter or the overpayment will be submitted to the Department of Treasury for Federal payment offset. If no response is received and the overpayment(s) still meets TOP criteria, it will be referred for TOP offset.

## Chapter 3

## RECOUPMENT

3-1. Recoupment Priorities.

a. The State of Florida may take collection action by automatic allotment reduction or recoupment against FA households for which there is an overpayment.

b. Recoupment may be applied to any TCA Program in which the recipient is active and the recouped amount applied to any TCA overpayment in which the recipient was overpaid (this does not include a Refugee Assistance Program overpayment).

c. IBRS is programmed with the current policy for applying payments and collection staff are responsible for setting the percentages to ensure payments are credited to each overpayment. These percentages can be manually adjusted as needed. IBRS applies recoupment using the recipients PIN rather than the case number. This allows for location of all liable individuals, even if they are in different FLORIDA cases.

d. The collection staff review the priorities for recoupment according to BR policy, once an overpayment is established. Recoupment priorities are for the FA, TCA, and RAP Programs. Recoupment does not occur for Medicaid overpayments.

e. If there is more than one overpayment, the recoupment priority is:

(1) IPV overpayments.

(2) IHE overpayments.

(3) AE overpayments.

f. Collections staff must override the recoupment priority in the following situations:

(1) When a recipient requests a fair hearing and asks that benefits continue at the original amount;

(2) When a hardship is approved;

(3) For bankruptcy action; or,

(4) When a recipient is placed on recoupment in error.

g. If the overpaid payee requests a fair hearing within 90 days of the Notice of Case Action for the overpayment or benefit reduction, the collection staff and the Private Collections Contractor must stop all collection activity until the decision has been reached by the Office of Appeal Hearings.

Chapter 4

ELECTRONIC BENEFITS TRANSFER

4-1. EBT Benefits Used as Payment on an Overpayment.

a. To apply EBT benefits to an overpayment, the recipient must give the Department written permission on the EBT Voluntary Repayment Agreement (see Chapter 2, Communications). Once the recipient has identified the amount to be applied to the overpayment, collection staff will remove the EBT benefits from the EBT account.

b. When the recipient is deceased and the only liable individual, the benefits must expunge before they can be applied to an overpayment. The EBT card may be placed into suspended status to prevent the benefits from being used by another person.

## Chapter 5

## LIABLE INDIVIDUALS

5-1. Overview.

a. Benefit Recovery is required to pursue collection against all liable/responsible adult members of a household. Household members must agree to repayment. If a household member is actively receiving food or cash assistance, their monthly benefits will be reduced. If collection actions against all liable adults are unsuccessful, collection actions cannot be taken against household members who are minors (under the age of 18) during the overpayment time period. When children are in care of a relative or responsible adult who are receiving assistance, as long as none of the original liable adults are included in the assistance group, recoupment cannot be imposed on the relative caregiver benefits being received for the child.

b. Effective October 1, 2007, persons who are or were minor children in the assistance group at the time of the overpayment are no longer liable individuals. Therefore, collection activity shall not be initiated on individuals who were minor children in the Cash Assistance group at the time of overpayment. Additionally, individuals who received benefits prior to October 1, 2007 are not responsible for repayment of agency errors for both relative caregiver and caretaker relative benefits.

c. If the whereabouts of a caretaker relative are known, even if they refuse to repay the debt, the relative is considered located. If it is determined that the caretaker, whose needs were included in the benefit, cannot be located or has disappeared after first being located or dies, the state has the obligation to recover the overpayment from any adult members of the overpaid assistance group.

d. If the caretaker relative's needs were included in the benefit at the time of the overpayment, they are liable for repayment of the overpayment.

e. If the caretaker relative's needs were not included in the benefit at the time of the overpayment, they are responsible for repayment of the overpayment.

f. If the caretaker relative is "unavailable due to death or disappearance," the state must seek recovery from the other liable or responsible members of the overpaid assistance group or their current assistance group. The benefit reduction priority is:

(1) Seek repayment from the caretaker relative.

(2) If that person cannot be located or is deceased, pursue repayment from the other liable or responsible adult.

(3) If neither person can be located or is deceased, follow write off procedures to determine if the overpayment may be written-off.

## Chapter 6

## DEPARTMENT OF CORRECTIONS/PROBATION AND PAROLE PAYMENTS

6-1. Florida Department of Corrections (FDC).

a. When a court orders a recipient to pay restitution to FDC due to an Intentional Program Violation (IPV) and/or Inadvertent Household Error (IHE), the payments are received and electronically posted to the overpayment(s).

b. If the recipient is actively receiving food or cash assistance and the benefits are being recouped, the recoupment will bypass the FDC-related overpayments and post to the non-FDC overpayments first unless the FDC overpayment it is the only overpayment owed.

c. If the recipient is no longer on probation and no longer required to pay restitution to FDC, if there is a balance owed on the overpayment, the recoupment priority must be changed to begin first with FDC (IPV) overpayment before the non-IPV overpayments. All payments from the FDC must be applied to probation overpayments to include Medicaid.

6-2. Probation and Parole.

a. Payments are applied to probation overpayments before any non-probation overpayments. The FA and TCA probation overpayments are paid first, then the Medicaid overpayment (even if there are other non-probation FA and/or cash overpayments including IPV).

b. Once all probation overpayments have been paid, including Medicaid probation overpayments, then payments will be applied to the FA and TCA overpayments equally, by error type, until paid in full. If one program is paid off before the other, future payments will be credited to the remaining program either FA or TCA. When both FA and TCA are paid in full, future payments will be applied to the Medicaid, RAP, SSI Medicaid, and RAP Medicaid overpayments.

Chapter 7

BANKRUPTCY

7-1. Overview.

a. When a bankruptcy court discharges an overpayment, the debt is discharged only for the named recipient(s) who sought protection under the bankruptcy laws of the State of Florida.

b. The state can continue collections from the other liable/responsible individuals of the overpaid assistance group, or their current assistance group that are not included in the bankruptcy filing.

c. The Department must update the person to notify of the overpayment to other liable individuals.

d. If there are no other liable individuals, the overpayment will be submitted for write off once the Bankruptcy Court discharges the overpayment.



Chapter 8

CREDIT BALANCES

8-1. Auxiliary Issuance.

a. In situations where a recipient overpays the balance of their overpayment, the overpaid amount must be returned to the recipient.

b. Staff will complete an auxiliary payment to issue the returned benefit if the payment was applied due to recoupment or EBT Voluntary Repayment.

c. If the overpayment is due to a cash payment, the private collections contractor will issue a cash payment refund.

## Chapter 9

## DISQUALIFICATIONS

9-1. Division of Public Assistance Fraud (DPAF) and Public Benefits Investigations (PBI).

a. DPAF requests Benefit Recovery to determine if an overpayment occurred in a recipient's FA, TCA, RAP, or Medicaid benefits. As the investigation progresses, DPAF will provide updates to the status of the fraud investigation through a tape match with FLORIDA that then interfaces with IBRS. The nightly interface will send the data to IBRS. Based on a review of the overpayments and circumstances, DPAF will determine if an Administrative Disqualification Hearing (ADH) is to be requested or if the recipient will be referred for criminal prosecution through the state attorney's office.

b. PBI can pursue administrative disqualifications on post-fraud investigations if DPAF declines to investigate the case. PBI will request Benefit Recovery to create an overpayment in the FA or TCA programs.

9-2. Disqualification Time Periods and History.

a. Legal basis: Rule 65A-1.900, Florida Administrative Code; s. 414.39(1), (2), and (4), Florida Statutes; 7 Code of Federal Regulations (CFR) 273.16; and, 45 CFR 235.110(A)(2).

b. Prior to April 1, 1983, FA disqualification periods were three months for the first violation, six months for the second violation, and permanently for the third violation. Effective April 1, 1983, the disqualification period was increased to six months for the first violation, 12 months for the second violation, and permanently for the third violation.

c. Prior to April 1, 1983, all disqualifications were entered into the electronic Disqualification Recipient System (eDRS). The eDRS showed only one FA IPV per recipient regardless of the actual number of intentional program violations.

d. On January 4, 1993, TCA and RAP disqualifications were implemented.

e. On September 1, 1994, two changes were implemented:

(1) Controlled Substances. If a recipient is found by a federal, state, or local court (guilty or adjudication withheld) to have used or received benefits in a transaction involving the sale of a controlled substance, they are ineligible to participate for a period of 24 months for the first violation and permanently ineligible for the second violation.

(2) Sale of Firearms, Ammunition, or Explosives. If a recipient is found by a federal, state, or local court (guilty or adjudication withheld) to have used or received benefits in a transaction involving the sale of firearms, ammunition, or explosives, they are permanently ineligible to participate.

f. Beginning February 1, 1996, the disqualification period for the recipient must be imposed regardless of the recipient's current eligibility status, active or inactive. The disqualification will no longer be postponed until the recipient is eligible to receive benefits.

g. On October 31, 1996, the penalties for FA and TCA disqualifications were changed. A recipient's disqualification from FA and TCA was for 12 months for the first violation, 24 months for the second violation, and permanently for the third violation.

h. Beginning January 1, 1999, the application and/or Rights and Responsibilities must be reviewed to determine the correct number of months the recipient is to be disqualified. Once the

disqualification period has been implemented, the period of disqualification will continue uninterrupted through the end of the disqualification period whether the recipient is actively receiving benefits or not. It is possible for the recipient to serve the Benefit Recovery disqualification and a TCA sanction at the same time.

i. The disqualification period is imposed with the disqualification length in effect at the time of the disqualification.

9-3. Disqualification Types. Only the recipients found to have committed the Intentional Program Violation are disqualified, not the entire household.

a. Trafficking, Court. Federal, state, or local courts convict recipients of having trafficked benefits for an aggregate amount of \$500 or more. For the first violation, the courts permanently disqualify recipients from FA and TCA.

b. Trafficking, ADH. When found guilty of trafficking by an administrative finding, a recipient's disqualification from the FA and TCA is for 12 months for the first violation, 24 months for the second violation, and permanently for the third violation.

c. Duplicate Participation. When found guilty, a recipient who has made fraudulent statements or misrepresentations regarding identity or residence to receive benefits from multiple states simultaneously, will serve a disqualification from FA and TCA for 10 years.

d. Identity Theft. When found guilty, a recipient who has made fraudulent statements to receive benefits using another individual's information, the recipient shall serve a disqualification from FA for 10 years. For TCA, the disqualification is 12 months for the first violation, 24 months for the second violation, and permanently for the third violation.

e. Filing a False Application. When found guilty, a recipient who has filed a false application, including non-report of changes, the recipient shall serve a disqualification from FA and TCA for 12 months for the first violation, 24 months for the second violation, and permanently for the third violation.

f. Other types of Intentional Program Violations. When found guilty, a recipient who has other intentional program violations shall serve a disqualification from FA and TCA for 12 months for the first violation, 24 months for the second violation, and permanently for the third violation.

9-4. Double Jeopardy for Habitual Offenders.

a. Splitting Prosecution between Court and ADH. More than one suspected intentional program violation may be the subject of a single hearing and/or court case; however, only one disqualification penalty may be assigned. The purpose of the habitual offender process is to deter recipients from criminal activities after having previously been found guilty of an offense. Enhanced penalties must be based on a prior hearing determination or on a waived opportunity for a hearing. A current hearing may result in an enhanced disqualification penalty only to the extent it involves offenses which occurred after the previous hearing or waived opportunity for a hearing. A second disqualification cannot be imposed if DPAF opts to take some of the overpayment period to the state attorney for court disposition and the remaining months to an ADH. The recipient can only have one disqualification imposed.

b. Imposing a Second or Third Disqualification. If a recipient has been found guilty of an IPV by either an ADH or court decision, the second overpayment period must have occurred after the decision date of the first IPV to have a second disqualification. The same is true if there is a third disqualification – the overpayment period for the third offense must be after the decision date of the second disqualification. If any of the overpayment months for the second disqualification occurred before the

recipient was notified of the first disqualification and some months were after notification of the first disqualification, the current disqualification may be considered a second disqualification.

c. Overlapping Disqualifications. It is possible to have multiple disqualification periods overlap. When the overpayment period overlaps different disqualification policies, the disqualification period will be based on what the recipient was advised of at the time of the overpayment (what was on the application or the Rights and Responsibilities).

9-5. Intentional Program Violations (IPV).

a. Both DPAF and PBI investigate referrals where no program loss (no overpayment) has occurred. These are instances where only an attempt to fraudulently receive benefits took place and no benefits were issued. In these situations, DPAF can make referrals to either the state attorney's office or the Office of Appeal Hearings. PBI can make referrals to the Office of Appeal Hearings only. If a decision of guilt is made or a waiver is signed, the recipient will be disqualified. If the recipient is not found guilty of fraud from the no program loss investigation, the referral will be cancelled.

b. When DPAF completes an investigation on a recipient(s) for suspicion of committing public assistance fraud, they submit a request to BR to compute an overpayment based on the evidence collected. When BR returns the overpayment calculation to DPAF based on their evidence, DPAF will determine if the case should be referred to the court for felony prosecution or to the Office of Appeal Hearing for an ADH.

## Chapter 10

## ELECTRONIC DISQUALIFIED RECIPIENT SYSTEM (eDRS)

10-1. Overview.

a. Florida began participating in the Electronic Disqualified Recipient System (eDRS) on April 1, 1994. This national system identifies disqualified recipients for a FA IPV by a court or ADH decision anywhere in the nation. The eDRS helps identify recipients nationwide who are currently serving or have previously served a disqualification penalty. The system enables states to identify the number of previous FA disqualifications a recipient may have had. Food assistance overpayments that have a balance may be sent to the state where the recipient currently resides and it becomes the responsibility of that state to collect the overpayment. Because states now have the ability to intercept Federal payments through TOP, this type of transfer is minimal. The State of Florida does not transfer overpayments that are eligible for TOP. There is no national file for the TCA disqualification.

b. Applications, requests for additional assistance, recertification, and requests to add a recipient trigger eDRS responses to BR staff to provide ESS with information about disqualifications in eDRS.

c. eDRS information must be verified by the other state where the original disqualification occurred before the recipient can be disqualified in the receiving state.

d. If a recipient with a FA disqualification from another state moves to Florida, the disqualification must be implemented immediately. If the recipient fails to disclose the active disqualification and receives assistance, an overpayment must be established and a determination will be made if the overpayment should be an IPV or IHE.

e. The state that made the last disqualification action entry is the state that owns the record and is the only authorized eDRS editor of the record. If a change other than to the disqualification record is needed and involves information such as identifying information (name, address, etc.), that change must be made by the state that made the last disqualification entry (the "owner" of the record). The state discovering the name change should provide the necessary documentation (marriage certificate, court approved name change, etc.) to the state of ownership.

## Chapter 11

## COURT DECISIONS

11-1. Overview.

a. A recipient may be prosecuted and not disqualified for fraud. A recipient can be referred to the state attorney's office for prosecution for FA, TCA, and Medicaid overpayments. While a recipient cannot be disqualified for Medicaid, the recipient can be prosecuted and, if found guilty, the Medicaid overpayment will be reclassified to an IPV. If the recipient is found not guilty, ordered to Pretrial Diversion or if adjudication is withheld without a signed Disqualification Consent Agreement (DCA), the recipient cannot be disqualified.

b. For Benefit Recovery purposes, a recipient referred to the state attorney's office is considered to be guilty of fraud if:

- (1) Found guilty by a judge or jury; or,
- (2) Adjudication is withheld and the recipient signs a DCA.

11-2. Court Decisions on Pending Fraud Overpayments.

a. Recipients found guilty by a court of law may be required to serve a jail term, placed on probation, ordered to complete community service and required to pay restitution for overpayment of benefits received. The court does not always order the recipient to repay the entire amount of the overpayment or may dismiss the entire restitution.

b. Court decisions may not be received in a timely manner and this necessitates expediting completion of the decision on IBRS. By entering the correct court decision date and/or DCA signed date (if there is a DCA), IBRS will accurately compute the effective date of the disqualification.

c. Notification of the court decision may come from the state attorney, DPAF, the recipient, BR accounting staff, the probation officer, BR headquarters staff, or the local court website.

d. After a court decision is made and the recipient returns to court at a later date, BR will make changes to the overpayment only if the overpayment is to be changed from an IHE to an IPV due to a signed DCA or the court ordered the individual disqualified from the program. If the original overpayment was processed as an IPV based on the original court decision, no changes are made unless the court terminated probation. The overpayment does not change from fraud to non-fraud.

(1) When the recipient is not ordered to repay the entire amount of the overpayment as originally filed and the court specifies an amount to be paid, the FA overpayment (not TCA overpayments) will be revised to the amount as ordered by the court. A non-fraud overpayment must not be created for the difference. The difference between the full amount of the FA overpayment and the amount the recipient is ordered to pay must be treated as a revision unless Community Service is ordered in lieu of restitution. The amount of the revision must be reported as such on the appropriate FNS reconciliation report.

(2) Temporary Cash Assistance, RAP, and Medicaid overpayments are reclassified to IHE, with no restitution ordered, in order to establish collections through recoupment or the PCC. The court ordered restitution will be paid through FDC or the Clerk of Court until the order is satisfied.

11-3. Types of Court Decisions.

a. Guilty. The recipient is found to have committed an IPV by a court of law. This decision does not require a DCA.

b. Not Guilty. The recipient is found not to have committed an IPV by a court of law.

c. Adjudication Withheld (no DCA). If the court defers adjudication and the recipient does not sign a DCA, the overpayment is reclassified to an IHE. The Department cannot impose a disqualification on this type of court decision without a signed DCA. If a signed DCA is not obtained, the overpayment must be reclassified from pending fraud to an IHE. The Department must obtain a signed DCA from the recipient charged with fraud to impose a disqualification period when adjudication is withheld. The signature page of the DCA document has to be signed by the recipient and a court official to be authenticated.

d. Adjudication Withheld (with DCA). The same as a guilty verdict case.

e. Pre-Plea. The recipient agrees to a repayment plan before the actual plea. The state attorney's office should be contacted for confirmation that the recipient and their attorney made a pre-plea to pay the overpayment(s) in full and to sign the DCA as part of the plea agreement. If no repayment plan is agreed on and the judge determines at a later date the recipient is destitute, the court can order "alternative means" of repayment, such as community service hours. A recipient may receive credit for community service hours for FA overpayments only and not for Cash Assistance or Medicaid.

f. Pre-Trial Intervention (PTI). PTI is a program available to first time offenders (no prior criminal history). While in this program, the recipient agrees to fulfill certain obligations. If fulfilled, the offense will not appear on the criminal record. Some court jurisdictions refer to this as an "Alternative Program" rather than PTI. The state attorney's office may or may not consult with BR as to whether a recipient should be placed in PTI; however, it is preferred that they do contact BR. If the state attorney's office asks if BR has any objections to placing the recipient in PTI, a DCA may be signed as a term of BR's agreement in allowing the recipient to be placed in PTI.

(1) PTI with a DCA. The recipient is disqualified and the overpayment is reclassified to an IPV.

(2) PTI without a DCA. The recipient is not disqualified. The overpayment is reclassified to an IHE.

g. Nol Prossed. The state attorney's office makes a decision not to prosecute the recipient (the case is dropped). The overpayment is reclassified to an IHE unless DPAF refers it to an ADH.

h. Capias Issued. A capias is a warrant for arrest. The state attorney files the suspected fraud case and the recipient is not located. The sheriff's office issues an arrest warrant and the warrant remains outstanding until the recipient is located and the warrant served.

i. Acquitted. The recipient was found innocent of committing fraud; however, an overpayment still exists. The overpayment is reclassified to an IHE.

j. Nolo Contender. The recipient pleads no contest and neither admits to being guilty or not guilty. The court makes a determination whether to impose guilt or withhold adjudication.

#### 11-4. Probation and Parole.

a. When a recipient attends criminal court and is charged with public assistance fraud, the judge may order probation for a specific time. During this time, the recipient will report to a probation officer and may be required to make restitution to Department for the overpayment and/or serve community service. The recipient makes restitution payments to the probation officer.

b. Recipients may be ordered to perform community service hours. Community service hours may only be applied to FA fraud overpayments. All TCA, RAP, or Medicaid overpayments must be repaid either in cash or through benefit reduction. The court order must place a monetary value on the community service hours to be performed. The recipient cannot receive credit for the repayment if the probation officer or state attorney order the community service. If the court does not order restitution or only partial restitution, BR can file a civil lawsuit for the balance owed.

11-5. Case Dropped by the Division of Public Assistance Fraud or the State Attorney. If a case does not proceed to prosecution (dropped) by the state attorney or DPAF, the overpayment is reclassified to an IHE.

11-6. Court Action Complete. When the court reaches a decision, the FA claim determination form is mailed to the recipient. Based on the court decision entered, IBRS will automatically send the appropriate Notice of Case Action and repayment agreement. It also will reclassify the overpayment, initiate recoupment, and, if a disqualification is required, send the disqualification notice, alert eligibility staff to take action, and initiate a data exchange to the national FA disqualification list – eDRS.



## Chapter 12

### ADMINISTRATIVE DISQUALIFICATION HEARINGS (ADH)

#### 12-1. Overview.

a. The Office of Appeal Hearings (OSIH) conducts the administrative disqualification hearing (ADH) when DPAF or PBI requests it for a recipient suspected of committing an IPV.

b. An evidence packet is sent to each recipient charged with suspected fraud prior to scheduling an ADH. The evidence packet includes a cover letter, the Notification of Intent to Disqualify, a Waiver of Administrative Disqualification Hearing form, and an information sheet.

c. The Waiver of Administrative Disqualification Hearing form provides the recipient with the following three choices:

(1) To admit to the facts and agree to a disqualification period and a reduction in benefits;

(2) Not to admit to the facts, but to agree to a disqualification period and a reduction in benefits; or

(3) To exercise the right to have an administrative hearing.

d. For BR purposes, a recipient referred to an ADH is found to have committed an IPV if:

(1) The recipient is found guilty by the Hearings Officer; or,

(2) The recipient signs a waiver choosing option one or two, which is an agreement to waive the hearing and accept the disqualification penalty. Benefit Recovery will impose the disqualification without a decision by OSIH.

Chapter 13  
TRANSFERS

13-1. Overview. There are three types of transfers for BR overpayments. FA overpayments with a balance into or out of state. Temporary Cash Assistance, RAP, and Medicaid overpayments are not transferred state to state.

a. Transfers from Another State with a Disqualification Only. When a recipient with a FA disqualification from another state applies in Florida, the eDRS system will provide information about the disqualification from the other state. The information must be verified by the other state.

b. Transfers from Another State with Overpayments, with or without a Disqualification. Another state can request to transfer an overpayment to Florida.

c. Transfers Out of State. When a request is received to transfer overpayments to another state, only FA overpayments with a balance have the potential to be transferred. Florida's BR units retain these overpayments in anticipation of TOP interceptions. If the BR unit determines that a TOP interception is not likely or there are overpayments that are exempt from TOP, the overpayments may be transferred.

## Chapter 14

## TREASURY OFFSET PROGRAM (TOP)

14-1. Overview. The Treasury Offset Program (TOP) is a federally mandated program for collecting delinquent FA overpayments (called offsets) from federal payments such as income tax refunds, federal salaries, and social security payments. This is a cooperative program with state government agencies, U.S. Department of Treasury, USDA Food and Nutrition Service (FNS), Internal Revenue Service (IRS), and other federal government agencies.

14-2. TOP Requirements. TOP applies only if the case meets the following requirements:

- a. Only applies to FA overpayments;
- b. The overpayment must be at least 120 days' delinquent;
- c. The liable/responsible recipient has not provided a written repayment agreement within 30 days from the date on the Notice of Case Action/Post Fair Hearing Notice, or is not making a payment equal to or greater than the amount on the written agreement, or is not participating in the FA Program and making payments through recoupment;
- d. The overpayment balance must be equal to or greater than \$25;
- e. The recipient must have been notified of the overpayment and potential offset;
- f. All processes must have been completed according to Federal guidelines; and,
- g. Any requests for TOP exclusion must have been approved by the TOP Unit.

14-3. Types of Funds Subject to TOP.

- a. Federal funds subject to Treasury Offset are:
  - (1) Income tax refunds;
  - (2) Federal retirement;
  - (3) Federal salaries; and,
  - (4) Any Social Security benefits.
- b. Recipient income tax refunds are offset up to the amount the recipient owes or the entire amount, if the recipient owes more than the income tax refund. Other federal payments are offset on a percentage basis. The percentages differ based on the payment being offset. TOP offsets also include a service charge retained by the federal government and not credited as payment on the recipient's overpayment.

#### 14-4. TOP Notice.

a. When an overpayment meets the TOP delinquency criteria, an address request is sent to FNS. All overpayments matching the Federal data will be subject to a TOP notification. A notice will be sent for each overpayment to the liable/responsible recipient. The recipient has 60 days from the date on the notice to respond. If the recipient responds to the TOP 60 day notice they have the following options:

- (1) Set up a written repayment agreement and initiate repayment of the overpayment;
- (2) Request an exclusion or waiver of the offset process;
- (3) Request a TOP State Review; or,
- (4) Take no action and have the overpayment sent for TOP offset.

b. A recipient must be notified one time per each overpayment submitted for TOP. If a new overpayment meets TOP criteria, then a new letter based on the new overpayment must be sent. States are required to notify only one of the liable/responsible recipients. It is that recipient's responsibility to inform all other liable/responsible individuals.

#### 14-5. Excluding Overpayments from TOP (exclusions may only be approved by the TOP unit).

a. Overpayments may be excluded from TOP in the following situations:

- (1) Recipients who have filed for bankruptcy; (EXCEPTION: If a recipient is found guilty of welfare fraud in a court of law, the Department can request, through bankruptcy court, that the debt not be discharged in the bankruptcy. If the court agrees, overpayments may be subject to TOP.)
- (2) Recipients who make and keep written repayment agreements; or,
- (3) Recipients with an active probation case.

b. Overpayments can be permanently excluded. If an overpayment is permanently excluded, it will not be subject to TOP. If the overpayment no longer meets the exclusion, the exclusion will be removed by the TOP unit.

#### 14-6. TOP State Review.

a. Recipients are entitled to a review of the intended TOP collection action. The request must be submitted in writing by the date in the TOP notice to avoid having the debt sent to TOP. The review is a review of the record and the recipient is not entitled to a face to face review.

b. The review will determine if the overpayment debt is past due and legally enforceable.

c. If the review finds the debt is not past due and legally enforceable, a decision notice is mailed. The Department will take any necessary corrective action.

d. If the review finds that the debt is past due and legally enforceable, a decision notice is mailed to the recipient and the overpayment debt is eligible for TOP.

#### 14-7. TOP Federal Review.

a. At the time the recipient is notified that the TOP State Review determined that the overpayment debt is past due and legally enforceable, the recipient is also notified that they may

request a review by FNS. FNS reviews are conducted in the Regional Office and the recipient is not entitled to a face to face review.

b. If FNS finds that the state agency incorrectly determined that the overpayment debt is past due and legally enforceable, FNS will notify the state agency and recipient of its decision. FNS will also notify the state agency of any corrective action that must be taken with respect to the overpayment and related procedures.

c. If FNS finds that the state agency correctly determined the overpayment is past due and legally enforceable, FNS will notify the state agency and the recipient of the decision. The notice will also include a statement that the recipient has exhausted their administrative appeal rights and that the overpayment debt is eligible for TOP.

#### 14-8. Role of the Private Collections Contractor.

a. The state's private collections contractor processes all inquiries relating to the TOP notice. They are responsible for setting up written repayment agreements for these recipients during the 60-day TOP notice period.

b. Once an overpayment has been sent to TOP, no repayment agreement with the state may be made.

## Chapter 15

## REPORTS

15-1. General. All collection reports use a rotation assignment process. The reports support data collection, analysis, and reporting on a quarterly basis. This quarterly reports process complies with the Collections Monitoring and Management Evaluations.

15-2. Report Types.

a. Administrative Disqualification Hearing (ADH) Report. This report provides a list of ADH decisions made during the month by the Office of Appeal Hearings.

b. IBRS305L1 Report (active cases that should be placed on Recoupment). Lists active FLORIDA cases that have an account on IBRS with a positive balance and are not currently on benefit reduction.

c. IBRS947L1 Report (all pending fraud cases between 12 and 24 months old). Monthly report that identifies all accounts that have been classified as pending fraud between 12 and 24 months old.

d. IBRS947L2 Report (all pending fraud cases over 24 months old). Monthly report that identifies all overpayments that have been in suspected fraud status for more than 24 months from the signature date of the overpayment.

e. Probation and Parole (P&P) Report. Each month Benefit Recovery receives the Welfare Fraud Offenders P&P report from FDC. This report lists welfare fraud offenders who are currently in active or suspended probation status.

f. IGBV532RA Pre-Expungement. Monthly report that identifies inactive or state EBT recipient benefit amounts that can be applied to FA for Cash Assistance overpayments.

Chapter 16

FOOD ASSISTANCE AGENCY COMPROMISE

16-1. General.

a. State agencies may compromise a claim or any portion of a claim if it can be reasonably determined that a household's economic circumstances dictate that the claim will not be paid in three years per Title 7 Code of Federal Regulations 273.18.

b. The Agency Compromise may only be applied to FA overpayments, and may not be applied to Intentional Program Violation overpayments or to overpayments having court ordered restitution.

16-2. Compromise Requirements.

a. The option for the recipient to request a compromise is a part of the Notice of Case Action.

b. The compromise requests are evaluated by a Compromise Specialist.

c. The Compromise Specialist will inform the recipient of the decision to approve or deny the request.

d. If approved, the balance of the overpayment will be reduced to zero.

e. If denied, and the recipient disagrees with the decision, the recipient has the right to request a Fair Hearing with the Office of Appeal Hearings.