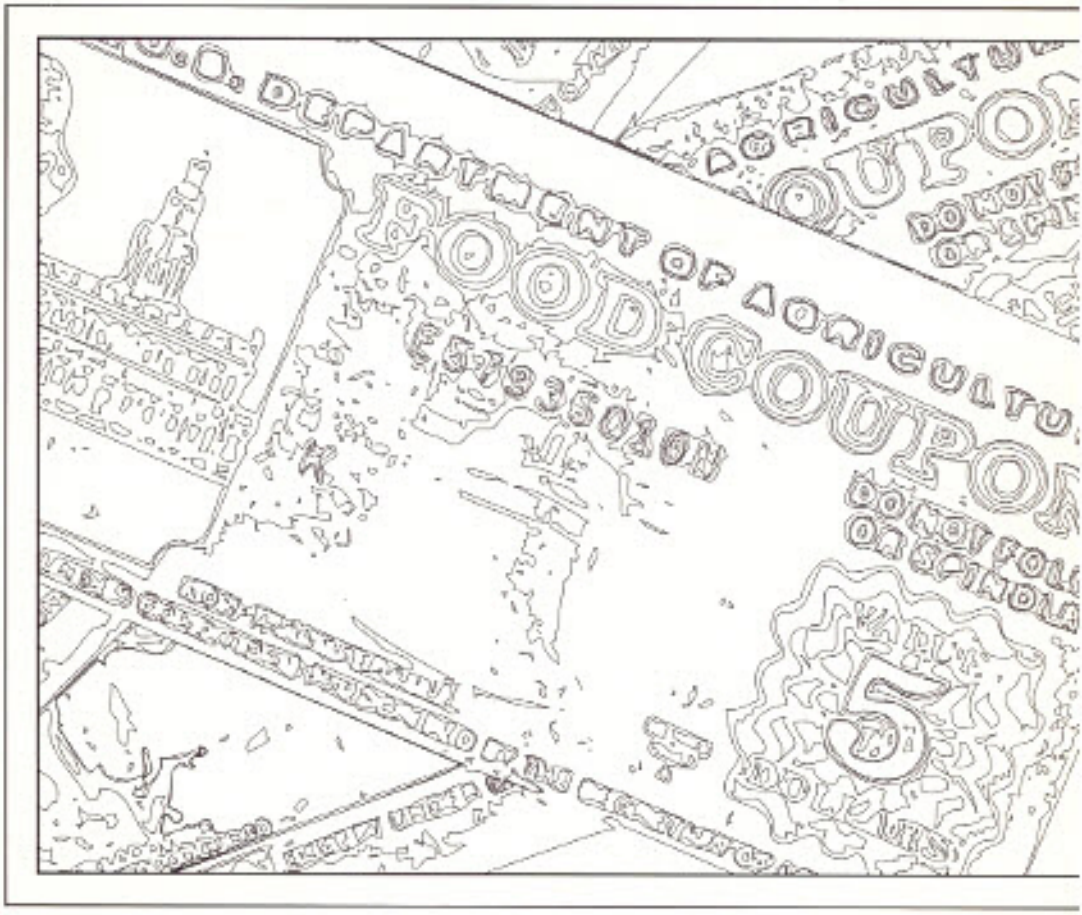
MARCH 1996
VOL. 29 ▪ NO. 11

CLEARINGHOUSE REVIEW

JOURNAL OF POVERTY LAW

INSIDE



Recent Developments in Food Stamp Program Law

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By Deborah L. Stein

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I. Introduction

This article reviews legislative and regulatory developments in the Food Stamp Program in 1994 and 1995, as well as some recent significant cases. Few legislative changes were made during this period; the bulk of legal developments were new regulations issued by the Department of Agriculture (USDA). Some of the most important legal developments include the freezing of the standard deduction at fiscal year 1995 levels, implementation of the child support payment deduction, the collection of claims through interception of federal income tax refunds and deductions from federal salaries, new procedures for medical expense deductions, and the new definition of an "inaccessible resource." Legislative changes that were proposed in Congress last year, and that may be on the table again this year, could significantly change the structure of the Food Stamp Program. Additional major changes have taken place through the waiver process in some states, and more waiver proposals are pending. Nevertheless, all current legislative and waiver proposals retain a federal structure for the Food Stamp Program. The developments reviewed here will continue to be of significance.

II. Legislative Changes in 1994 and 1995

A. Freezing of the Standard Deduction

The only legislative change in the Food Stamp Program in 1995 was the freezing of the standard deduction. The Food Stamp Act provides for annual increases in the maximum gross and net income limits, maximum benefits levels, the cap on the shelter deduction, the homeless shelter deduction, the standard deduction, and the excluded value of a vehicle to reflect increases in the cost of living. /1/ The Agricultural Appropriations Act froze the standard deduction at fiscal year 1995 levels. /2/

All the other statutory increases became effective October 1, 1995. The current levels for maximum food stamp allotments, deductions, gross and net income limits, and resource limits are shown in the charts following this article.

B. Implementation of the Child Support Payment Deduction

Starting October 1, 1995, all food stamp recipients became entitled to a full deduction for any legally obligated child support payments made to or on behalf of individuals outside the household. /3/ Advocates should ensure that their local agency has begun to provide this deduction and that clients are being informed of their right to take this deduction.

Unfortunately, USDA has not yet issued final regulations implementing this provision. However, USDA issued a policy letter to guide state agencies in implementing the law before the final regulations are issued. /4/ That policy differs in several respects from the proposed regulations USDA issued in 1994. /5/

The policy letter explicitly requires that any payments on arrears be allowed as deductions. The proposed regulations would permit payments on arrears to be deductible only for individuals with a record of payment of at least three months. In the policy letter, USDA also indicated its intention "to give State agencies flexibility in developing their own child support reporting and budgeting procedures which will not be burdensome on households or State agencies but which will prevent households from receiving a deduction for several months without regularly making child support payments." /6/ The proposed regulations spelled out different reporting and budgeting requirements for households with and without histories of regular child support payments.

The policy provides that "only child support payments that are 'legally obligated' can be allowed as a deduction." The proposed regulations would limit deductions to those required by court order, administrative order, or legally binding separation agreement. /7/ Advocates should consider what constitutes a legal obligation to pay child support under their state law; if a payment is required by state law, then it should be deductible.

The policy indicates that payments made to a third party as child support (e.g., payments of rent or health insurance premiums) should also be deductible.

C. Monthly Reporting and Retrospective Budgeting for Households on Indian Reservations

States are now prohibited from establishing monthly reporting requirements for households residing on Indian reservations if no such monthly reporting requirement was imposed on March 25, 1994. /8/ These households may, however, be retrospectively budgeted. State agencies that were using monthly reporting systems for households residing on Indian reservations on March 25, 1994, may continue to do so.

III. Regulatory Changes

A. Changes in Eligibility Requirements

1. Student Eligibility

In 1995, USDA issued regulations implementing the 1990 statutory changes in student eligibility. The statutory provisions /9/ were already required to be in effect, and USDA had issued a policy directive on implementation but no interim regulations. The final regulations /10/ exempt the following categories of students from the special, more onerous, student eligibility requirements: students over age 50; /11/ students being trained by an employer in an on-the-job training program; students in state work-study programs; /12/ students for the entire term during which they are approved for work-study, even if work-study funds later run out; /13/ students placed in the educational program in compliance with a state or local employment and training program at least equivalent to the food stamp employment and training program; students participating in a work incentive program under Part IV-A of the Social Security Act or its successor program (currently the Job Opportunities and Basic Skills Training Program); and single-parent students enrolled full-time who are responsible for a child under age 12. /14/

2. Categorical Eligibility for General Assistance Recipients

USDA has issued regulations revising the categorical eligibility of general assistance recipients. /15/ Recipients of general assistance are now categorically eligible for food stamps, regardless of other income or resources, if the general assistance program has income limits at least as restrictive as the Food Stamp Program's gross income limit of 130 percent of the poverty level; if the program provides benefits as defined at 7 C.F.R. Sec. 271.2; /16/ and if the assistance is not limited to onetime emergency payments that cannot be provided for more than one month. /17/

B. Changes in Treatment of Income

1. Estimation of Medical Expense Deductions

Revised regulations implementing legislation passed in 1988 /18/ and 1990 /19/ allow elderly and disabled individuals to estimate their medical expenses at each certification. Previously, recipients had to report actual expenses each month. These regulations replace interim regulations issued in 1994, with some important changes. /20/

Under the new regulations, elderly and disabled individuals must be permitted to estimate their anticipated medical expenses at certification and may not be required during the certification to report expenses as they arise, even if their actual expenses differ from their estimate. (Until 1994, many states had required monthly reporting of expenses, and the regulations had explicitly required any change in medical expenses over $25 to be reported.) Recipients may, however, voluntarily report changes in medical expenses and be rebudgeted. They should be encouraged to report

immediately any significant increase in medical expenses since they will not be permitted to claim deductions and obtain supplemental issuances later.

The final regulations clarify that if recipients voluntarily report changes they may be required only to document increases, not decreases, in medical expenses. The final regulations also provide that all medical expenses must be budgeted prospectively, even in households otherwise subject to retrospective budgeting. /21/ Advocates should be wary since many states have issued regulations that do not fully comply with the federal law and regulations. /22/

2. Exclusion from Income of Payments for Transitional Housing

Families residing in transitional housing for the homeless may exclude from their income any housing assistance payments made to a third party on their behalf. /23/

C. Excluded Resources

1. Exclusion of Resources That Cannot Be Sold for a Significant Return

In 1995, USDA amended the "inaccessible resource" regulation, in accordance with legislative changes made in 1990 and 1991. /24/ The new provision excludes a resource from consideration in the eligibility determination if the household is unable to sell it for any significant return. /25/ Under the regulation, if the sale of the resource would net less than half of the household's resource limit after the costs of sale and the calculation of the household's share in the case of jointly held property, then the resource should be considered inaccessible and not count toward the household's resource limit. The accessibility of each resource must be considered separately.

The regulation explicitly excludes vehicles from consideration as inaccessible resources based on lack of significant return. USDA's policy of refusing to consider vehicles as inaccessible resources, even when an outstanding lien on a car exceeds the car's value, has been challenged repeatedly, with mixed success. /26/ Advocates should note that vehicles may still be deemed "inaccessible" for other reasons, for example if a co-owner outside the household refuses to cooperate in its sale. Additionally, some states have sought and received waivers to increase or eliminate the vehicle asset limit as part of a package of welfare "reforms." /27/

2. Exemption of Earned Income Tax Credits

Any household receiving food stamps at the time a household member received a federal, state or local Earned Income Tax Credit (EITC) may exclude the EITC as a household resource for up to 12 months, providing that the household remains continuously in receipt of food stamps during that period. A break of less than one month's participation for administrative reasons will not deprive the household of the exclusion. /28/

D. Disqualifications for Intentional Program Violations

In 1993, the disqualification penalties for certain intentional program violations (IPVs) were increased. /29/ USDA has now issued regulations implementing the increased penalties. /30/ An individual found by a court to have traded or received controlled substances in return for food stamps will be disqualified from the program for 12 months on the first offense and permanently on the second offense. An individual who is found by a court to have traded or received firearms, ammunition, or explosives in return for food stamps must be permanently disqualified on the first offense. The same penalties apply in cases where the court defers adjudication with a finding of culpability.

The regulations also restate USDA's policy on the timing of IPV disqualifications. Under both current and prior regulations, if the disqualified individual is not receiving food stamps at the time the disqualification is imposed, the disqualification period begins after the individual applies and is found eligible for food stamps. Advocates should be aware that this policy, as expressed in prior regulations, has been successfully challenged. /31/

The regulations eliminate the requirement that notices of IPV hearings be sent by certified mail, return receipt requested. States are now required to establish policies determining when nonreceipt of a hearing notice constitutes good cause for vacating a decision. The recipient must show, within 30 days after issuance of the decision, that he or she never received notice of the hearing.

E. Collection Procedures for Overpayment Claims

1. Time Frames for Electing Method of Repayment

The Mickey Leland Memorial Domestic Hunger Relief Act of 1990 reduced the time for households to decide how they wish to repay IPVs. The legislation required that households respond on the "same day" that they receive the demand letter. /32/ In 1991, households were given a minimum of ten days to decide how they wished to repay inadvertent household error (IHE) claims. /33/

USDA has now issued regulations implementing these provisions. /34/ A household currently participating in the Food Stamp Program that receives a demand notice for repayment of an IPV claim must elect a method of repayment on the day it receives the demand letter or request a fair hearing in time to continue receiving benefits. If the household does not respond, the claim is recouped automatically from the household's benefits. State agencies must set a deadline for receipt of the household's election. The deadline must be no more than ten days from the day that the demand letter was mailed or delivered to the household. Thus, as a practical matter, to avoid having benefits recouped, a household currently receiving food stamps must inform the state agency of its choice of repayment within ten days of the demand letter's mailing.

A household that receives a demand letter for repayment of an IHE claim will have its benefits recouped unless it notifies the agency of its choice of repayment method within 20 days of the demand notice's mailing.

2. Interception of Federal Income Tax Refunds and Federal Salary Offsets

For some time, USDA has been testing interception of federal income tax refunds in selected states as a means of collecting unpaid IPV and IHE claims against former food stamp recipients. /35/ In 1994, USDA began testing federal salary offset to collect claims -- essentially, garnishing the federal employee's pay. /36/ In 1995, USDA issued regulations permitting state agencies nationwide to recover IPV and IHE claims through interception of income tax refunds and through offsets against federal salaries. /37/ The regulation was issued in time to collect claims from 1995 tax return refunds.

For households currently receiving food stamps, IPV or IHE overpayment claims must be collected through recoupment if the household refuses to choose another payment method or fails to respond to a demand notice after missing payments. /38/ Therefore, households receiving food stamps should always have their food stamps recouped rather than have their income tax return intercepted. Only IPV and IHE claims may be collected through refund interception. No agency error claims may be so collected. Additionally, current regulations require that individuals with overpayments be offered an opportunity to negotiate a payment schedule; individuals who miss a payment must be offered a chance to renegotiate. /39/ Under Internal Revenue Service (IRS) policy, income tax refunds should be intercepted only as a last resort. /40/ Therefore, an agency seeking collection should pursue salary garnishment (or salary offset for federal employees) before intercepting a refund.

The regulations establish the following criteria for claims to be submitted for refund interception. The claims must be for IPV or IHE claims that are past due and legally enforceable. They must be against a former recipient who was an adult member of a household at the time the overpayment occurred and who is not a member of a household currently receiving food stamps in the same state as the agency seeking collection. /41/ The first demand letter must have been issued no more than ten years before. A claim must have been properly established in accordance with federal regulation, that is, the subject of the claim must have been given notice and an opportunity for a hearing and either have received a hearing decision or exhausted the time for requesting a hearing. Any claim or portion of a claim that may be paid through other means during the time it takes to process the interception must not be submitted for refund interception.

Before interception, the taxpayer is entitled to a "review." While the review is pending, the taxpayer's refund may not be intercepted. The state agency must send individuals subject to tax refund interception a notice of the proposed interception, including an opportunity to request a review in writing. /42/ The text of the notice is specified by regulation. /43/ If the taxpayer filed jointly with a spouse who is not liable for the overpayment, the spouse may file an application with the IRS to receive his or her share of the return.

The review, which may not be requested orally and will apparently be conducted upon the submitted papers without any appearance by the taxpayer, does not permit review of the underlying claim. /44/ Rather, the individual may challenge only whether the claim is for a "legally enforceable, past due debt." Thus, arguments that should succeed at such "reviews" include that the claim has been paid; is currently being paid through recoupment, salary garnishment, or repayment agreement; is barred by a bankruptcy proceeding; or has been reversed by a previous fair hearing. The regulations will not permit taxpayers to argue that they received no notice of the overpayment claim as a defense or require state agencies to offer a new opportunity for a fair hearing in that event. /45/

An individual who is not satisfied with the results of the review may appeal the decision to the Food and Consumer Service (FCS) of USDA. The appeal must be received at the appropriate FCS regional office within 30 days of the state agency decision and must contain the appellee's social security number. /46/

Once a refund has been intercepted, the state agency is required to send the taxpayer a "notice of offset." In addition, the state agency is required to "[a]s close in time as possible to the notice of offset . . . refund to the individual . . . any over collection which resulted." However, the regulations do not establish any process for taxpayers to contest the interception, let alone for a full, posttaking hearing. The regulations do not specify any method for taxpayers to request a review of the taking; do not require the agency to follow any process or apply any standard of proof in reviewing the taking; do not protect taxpayers' rights to appear, submit evidence or witnesses, or be represented by counsel; do not require decisions to be rendered in a set time frame; and do not require notice to be given to taxpayers of their right to have overcollections returned. /47/ In addition, the state agency may deduct from the refund the offset fee that the IRS charges the agency for each interception. /48/

The salary-offset procedures are substantially similar to the tax-interception procedures, and many of the procedures described above apply. In addition, federal employees have the protection of USDA's and the Office of Personnel Management's general provisions for salary offset of any debt from a federal employee's salary. /49/ The minimum deduction from each paycheck is $50; the maximum, 15 percent of "disposable income" (take-home pay). There is no prohibition against implementing a salary offset against an individual currently receiving food stamps; as discussed above, salary offset may violate the repayment regulations. There is no posttaking review specified for salary offset; however, general USDA regulations do permit federal employees who believe that their salaries have been improperly withheld to appeal to the General Accounting Office. /50/

IV. Some Recent Case Developments

A. Immediate Imposition of Intentional Program Violation Disqualifications

In Garcia v. Concannon, /51/ the Ninth Circuit held that IPV disqualification periods must begin immediately upon the finding of an IPV, as required by statute. /52/ Current and past USDA regulations have provided that, when the disqualified individual was not participating in the Food

Stamp Program (i.e., receiving benefits) at the time of the IPV finding, then the disqualification period had to be deferred until the person reapplied for, and was found otherwise eligible for, benefits. /53/ As a result, individuals who did not apply for benefits because they believed themselves to be immediately disqualified discovered, after waiting out the prescribed period and reapplying, that they had to, in effect, serve the disqualification period twice.

The district court has not yet issued an order implementing the Ninth Circuit's decision. It is unclear whether the court will enjoin the recently issued regulations restating this policy or only the old regulations in effect at the time the suit was brought.

B. Applying for Food Stamps at Social Security Offices

The parties in Manchaca v. Chater /54/ have reached a tentative settlement governing the provision of information about and processing applications for food stamp benefits by the Social Security Administration (SSA). /55/

The lawsuit was brought on behalf of a class of Texas residents living in households in which all members are applying for or receive supplemental security income (SSI) or social security benefits. Although the settlement will be binding only in Texas, SSA has indicated that it will enforce the following terms nationwide: SSA will hang posters and make available leaflets on food stamps in all SSA field offices; make food stamp applications available in all offices; offer to take a food stamp application from every SSI applicant or recipient who lives in a "pure SSI" household (in which all members are receiving or applying for SSI); have staff fill out a food stamp application (or recertification, if requested) for the SSI applicant or recipient; request documentation of eligibility; and to transfer the applications and whatever documents it receives to the food stamp office within one work day. If applicants appear eligible for expedited service but choose to apply through SSA, their applications will be marked "expedited service" by SSA. Unless applicants appear eligible for expedited food stamps, SSA staff will not advise them that they may receive their food stamps more quickly at a food stamp office.

Advocates should monitor whether SSA is performing these functions in their states. /56/

C. Agencies May Not Appeal from Fair Hearing Decisions

In Soto v. Blessing, a consent decree was entered prohibiting the state agency from seeking to appeal food stamp fair hearing decisions that overturned the agency's decisions. /57/ Federal regulations do not permit the state agency to appeal from fair hearing decisions. /58/

V. Future of the Food Stamp Program

USDA has begun to grant more and more requests for state waivers, and the scope of those waivers has broadened beyond administrative details to affect the availability of benefits. /59/ While some of these waivers offer broad and troubling incursions on the rights of poor individuals to receive

food stamp benefits, others actually increase the availability of benefits. These waivers focus on encouraging recipients to work and leave the federal program structure intact.

Congress may also once again attempt some far-reaching changes in the Food Stamp Program in the name of "welfare reform." Whether these proposals will ever become law, and in what form, is unclear. Recently, the President vetoed the welfare reform bill. /60/ The most radical of the possible proposals include optional state block grants, a scheme under which a state may elect to receive a block grant rather than participate in the federal Food Stamp Program. In states receiving block grants, there would be no federal entitlement to food stamp benefits; within certain broad limits, the state could provide nutritional assistance in whatever form, following whatever standards, it saw fit.

Even if block grants become available, they will not be mandatory. Many states will choose to remain part of the federal Food Stamp Program, which includes federal reimbursements for administrative costs, the federal regulatory system, and the federal entitlement.

The federal Food Stamp Program will continue to provide important benefits and services to low income families and children until and unless new legislation is enacted. Food stamp recipients will continue to have the protection of federal law, and advocates for the poor need to remain knowledgeable about their clients' federal rights to food stamp benefits.

Footnotes

/1/ 7 U.S.C. Sec. 2014(c).

/2/ The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 1996, Pub. L. No. 104-37, Sec. 720, 109 Stat. 299.

/3/ The Mickey Leland Childhood Hunger Relief Act, Pub. L. No. 103-66, Sec. 13921, 107 Stat. 674. Agencies were permitted to implement this provision as early as September 1, 1994, and were required to do so by October 1, 1995. Id. Sec. 13971.

/4/ Letter from Thomas O'Connor to All Regional Directors of the Food Stamp Program Regarding Implementation of the Child Support Deduction (July 4, 1995).

/5/ 59 Fed. Reg. 63265 (Dec. 8, 1994).

/6/ Letter from Thomas O'Connor, supra note 9, at 2 -- 3.

/7/ 59 Fed. Reg. at 63271 (Dec. 8, 1994).

/8/ This change was enacted as part of the Food Stamp Program Improvements Act of 1994, Pub. L. 103-225, Sec. 101(a), 108 Stat. 106. See 7 C.F.R. Sec. 273.21(b)(2) (1995).

/9/ The Mickey Leland Memorial Domestic Hunger Relief Act of 1990, Pub. L. 101-624, Sec. 1719, 104 Stat. 3785.

/10/ 60 Fed. Reg. 48865 (Sept. 21, 1995) (to be codified at 7 C.F.R. Secs. 273.2(f)(1)(xii) and 273.5).

/11/ Previously, the age limit was 60.

/12/ Previously, the exemption applied only to federal work-study programs.

/13/ This had not been addressed before.

/14/ This is separate from the previous exemption for any person responsible for the care of a child aged 6 -- 12 where the state agency determines that adequate child care is not available.

/15/ These changes were made to implement the Food, Agriculture, Conservation, and Trade Act Amendments of 1991, Pub. L. 102-237, Sec. 902, 105 Stat. 1818.

/16/ Cash or another form of assistance, other than in-kind assistance, financed by local funds as part of a program that provides assistance to cover living expenses or other basic needs.

/17/ 7 C.F.R. Secs. 272.1(g)(121), 273.2(j)(2), 273.2(j)(4)(i), & 273.2(j)(4)(iv)(A) (1995).

/18/ The Hunger Prevention Act of 1988, Pub. L. No. 100-435 Sec. 351, 102 Stat 1645.

/19/ Pub. L. 101-624, Sec. 1717, 104 Stat. 3784.

/20/ 60 Fed. Reg. 17628 (Apr. 7, 1995) (to be codified at 7 C.F.R. Secs. 273.10(d)(4), 273.21(f)(2), & 273.21(j)(3)). The interim regulations were originally published at 59 Fed. Reg. 50153 (Oct. 3, 1994). Both the interim and final regulations were issued only after several legal services programs, including the Food Research and Action Center and the National Senior Citizens' Law Center, filed Graeser v. Glickman, No. 94-1042 (NHJ) (D.D.C. filed July 14, 1995) (Clearinghouse No. 50,784). The litigation continues over the failure of the Department of Agriculture (USDA) to require states to conform their regulations to the new federal regulations and over the need for notice and retroactive benefits.

/21/ E.g., if a recipient in a retrospectively budgeted household, who previously had no medical expenses, learns that each month she will incur $200 worth of medical bills, she must be allowed to claim those deductions beginning in the first month that they are incurred, rather than waiting two months as required by retrospective budgeting.

/22/ E.g., clients should not be required to report any changes in medical expenses during a certification period and should not be required at the next certification period to document that all estimated expenses were incurred or be charged with an overpayment claim if some estimated expense was not incurred. In addition, medical expenses should not be retrospectively budgeted, even if the household's income is retrospectively budgeted.

/23/ Pub. L. No. 103-66, Sec. 13914, 107 Stat. 674; 7 C.F.R. Sec. 273.9(c)(1)(ii)(D).

/24/ Those changes are in Pub. L. No. 101-624, Sec. 1719, 104 Stat. 3785, and the Food, Agriculture, Conservation, and Trade Act Amendments of 1991, Pub. L. 102-237, Sec. 904, 105 Stat. 1818.

/25/ 60 Fed. Reg. 43347 (Aug. 21, 1995) (to be codified at 7 C.F.R. Sec. 273.8(e)(18)). The provision was effective September 20, 1995, and must have been implemented by December 19, 1995.

/26/ See Valenzuela v. Espy, 860 F. Supp. 1421 (D. Ariz. 1993); Alexander v. Espy, 898 F. Supp. 716 (D. Nev. 1995) (policy overturned); but see Wasserman v. Glickman, 882 F. Supp. 288 (E.D.N.Y. 1995); Cook v. Espy, 856 F. Supp. 1095 (S.D. W. Va. 1994); Warren v. North Carolina. Dep't of Human Resources, Civ. No. 1:94-33 (W.D.N.C Aug. 29, 1994); Butler v. Miller, 1994 WL 860788 (E.D. Mich. 1994); Bizzell v. Espy, No. LR-C-94-267 (E.D. Ark. Mar. 29, 1995) (Clearinghouse No. 50,511); Alexander v. North Carolina Dep't of Human Resources, 446 S.E.2d 847 (N.C. Ct. App. 1994) (policy upheld). For a general analysis of why vehicles should be eligible for inaccessible resource treatment, see David Super, 1990 Farm Bill's Inaccessible-Resource Provision Applies to Vehicles, 26 Clearinghouse Rev. 1343 (Feb. 1993).

/27/ See, e.g., Letter of William E. Ludwig to Peter S. Blouke (Apr. 11, 1995) and Item #13 on the attachment, approving Montana's waiver request to permit exclusion of one vehicle from the resources of any applicant household, no matter what the value.

/28/ Pub. L. No. 103-66, Sec. 13913, 107 Stat. 674; 7 C.F.R. Sec. 273.8(e)(12)(2).

/29/ Pub. L. No. 103-66, Sec. 13942, 107 Stat. 677.

/30/ 60 Fed. Reg. 43513 (Aug. 22, 1995) (to be codified at 7 C.F.R. Sec. 273.16). The increased penalty provision became effective September 1, 1994; related provisions became effective October 23, 1995. Id. 43515 (to be codified at 7 C.F.R. Sec. 272.1(g)(142).

/31/ Garcia v. Concannon, 67 F.3d 256 (9th Cir. 1995) (see discussion infra); Poole v. Madigan, 771 F. Supp. 142 (W.D. Va. 1991) (Clearinghouse No. 46,502) (holding that the Act required immediate disqualification without addressing the validity of the regulations); Stump v. Yeutter, Civ. No. 90-0028 (W.D. Va. July 11, 1990) (Clearinghouse No. 45,673) (consent decree providing all relief sought to plaintiff without addressing validity of the regulation); Anderson v. North Carolina Dep't of Human Resources, 428 S.E.2d 267 (N.C. Ct. App. 1993) (Clearinghouse No. 49,033) (finding that regulations do not express the intent of the statute).

/32/ Pub. L. No. 101-624, Sec. 1746, 104 Stat. 3796.

/33/ Pub. L. 102-237, Sec. 911, 105 Stat. 1818.

/34/ 7 C.F.R. Secs. 273.13, 273.18 (1995). The provision for repayment of intentional program violation (IPV) claims was retroactive to November 1990; the provision for repayment of inadvertent household error claims, to December 1991. 7 C.F.R. Sec. 272.1(g)(130) (1995).

/35/ See, e.g., 59 Fed. Reg. 43536 (Aug. 24, 1994). Interception of federal income tax refunds has been used extensively to collect overdue payments on federally insured student loans and to collect child support arrears, fostering significant litigation over the procedures involved. See, e.g., Cleveland Board of Educ. v. Loudermill, 470 U.S. 532 (1985) (what debts meet the "legally enforceable" test for collection); Nelson v. Regan, 731 F.2d 105 (2d Cir. 1984) (Clearinghouse No. 32,745) (state must afford individual adequate notice and meaningful opportunity to be heard prior to interception); McClelland v. Massinga, 786 F.2d 1205 (4th Cir. 1986) (where some form of review was given before interception, full hearing was required after interception); Wagner v. Duffy, 700 F. Supp. 935 (N.D. Ill. 1988) (notice of proposed tax refund interception must contain list of common defenses).

/36/ 59 Fed. Reg. 44400 (Aug. 29, 1994).

/37/ 60 Fed. Reg. 45990 (1995) (to be codified at 7 C.F.R. Secs. 271.2, 272.1(g)(143), 272.2(a)(2), 272.2(d)(1)(xii), 273.18(g)(5), 273.18(6)).

/38/ 7 C.F.R. Sec. 273.18(g)(2)(iv), 273.18(g)(4) (1995).

/39/ 7 C.F.R. Sec. 273.18(g)(2)(ii) (1995).

/40/ See 60 Fed. Reg. 45990 (Sept. 1, 1995), passim.

/41/ Note that state agencies are required to check only whether such person is receiving food stamps in his or her own state. One who is currently receiving food stamps in another state may nevertheless have his or her tax returns intercepted. This clearly violates the policy set forth in the regulations, although the issue is not specifically addressed. Presumably, states have the technology to determine whether the person in question is receiving stamps in another state. See 7 C.F.R. Sec. 273.18(m) (1995), which provides for interstate claim collections.

/42/ State agencies must send the notice to individuals subject to tax refund interception at the address given by the Internal Revenue Service (IRS); generally this is the individual’s last year’s income tax return address. Note that the regulations will not permit, let alone require, state agencies to send notices to other addresses they may have for the person unless the taxpayer requests otherwise in writing. This is true even if the state agency knows that the address it has is more recent. Inevitably, many of these notices do not reach taxpayers subject to interceptions.

/43/ The text of the notice, while greatly improved over the versions used in test programs, has a number of flaws. Most important, it does not clearly list all the common defenses and may not satisfy the standards set forth in Wagner, 700 F. Supp. 935.

/44/ A written review process may not satisfy due process standards for a taking. See Nelson, 731 F.2d 105 (state must afford individual adequate notice and meaningful opportunity to be heard prior

to interception); but see McClelland, 786 F.2d 1205 (where some form of review was given before interception, a full hearing was required after interception).

/45/ Again, this provision may violate constitutional standards of due process.

/46/ This may be inconsistent with IRS regulations, which require that the taxpayer have 30 days to request review from the federal agency; IRS regulations may require that requests be deemed timely if mailed within 30 days of receipt of the state agency decision, rather than received at USDA's Food and Consumer Service within 30 days of issuance. See 36 C.F.R. Sec. 301.6402.

/47/ This may violate the due process clause of the constitution. See McClelland, 786 F.2d 1205 (where some form of review given before interception, full hearing required after interception).

/48/ The current cost is $8.

/49/ 7 C.F.R. Secs. 3.51 et seq., 3.62 et seq. (1995); 5 C.F.R. Secs. 179.206, pt. 550 subpt. K (1995).

/50/ 7 C.F.R. Secs. 3.51 et seq.

/51/ Garcia, 67 F.3d 256.

/52/ Individuals who are found to have committed an IPV, either in an administrative hearing or through a court proceeding, are disqualified from the Food Stamp Program. For the first offense they are disqualified for six months; for the second, twelve months; and, for the third, permanently. By statute, this disqualification is supposed to take place "immediately." 7 U.S.C.A. Sec. 2015(b)(1).

/53/ 7 C.F.R. Sec. 273.16(e)(8)(iii), 273.16(f)(2)(iii), 273.16(g)(2)(ii) (1995); see also discussion of new IPV disqualification regulation, supra.

/54/ Manchaca v. Chater, CA No. 9:90CV 81 (E.D. Tex. Aug. 29, 1995) (Clearinghouse No. 45,976).

/55/ The settlement was preliminarily approved on January 16, 1996, and a settlement hearing has been scheduled for April 19, 1996. The settlement anticipates that all the required computer program changes will be implemented in 1997. All other changes will be implemented by the end of 1996.

/56/ Questions about the settlement or problems with compliance should be addressed to Burton Fretz at the National Senior Citizens' Law Center, 1818 H St. NW, Suite 700, Washington, DC 20006; (202) 887-5280; HN0538; or to Shimon Kaplan, East Texas Legal Services, Inc., P.O. Box 2552, Beaumont, TX, 77704-2552; (409) 835-4791.

/57/ Soto v. Blessing, No. CIV94-332 TUC ACM (D. Ariz. May 1, 1995).

/58/ 7 C.F.R. Sec. 273.15(q)(3)(ii), 273.15(r)(2), 273.15(s) (1995).

/59/ In a future article, Patricia Collins Murdock and I will analyze the food stamp provisions of welfare reform waivers.

/60/ H.R. 4, 104th Cong., 2d Sess. (vetoed by the President on Jan. 22, 1996). Analyses of the food stamp provisions of the recently vetoed welfare reform legislation are available on HandsNet at Welfare Reform Watch\Analyses of Food and Nutrition Programs.