

RHODE ISLAND DEPARTMENT OF HUMAN SERVICES

DATE: APRIL 30, 2009

NOTICE OF

PROPOSED ADOPTION OF RULES, REGULATIONS,
POLICIES, PROCEDURES, AND OTHER MATERIALS
RELATING TO THE ADMINISTRATION OF THE FOLLOWING PROGRAM(S):

In accordance with Title 42, Chapter 35, of the General Laws of the State of Rhode Island, notice is hereby given that the Department of Human Services (DHS) proposes to adopt rules, regulations, policies, procedures, and other materials relating to the following programs(s):

FAMILY INDEPENDENCE PROGRAM (FIP) REPEAL

The Family Independence Act (RIGL 40-5.1) was repealed effective July 1, 2008, and was replaced by The Rhode Island Works (RIW) Program (RIGL 40-5.2). Effective July 1, 2009, The Family Independence Program policies in Section 0800, et al, are repealed and replaced by the Rhode Island Works Program policies in Sections 1400, et al.

For all assistance units that were receiving cash assistance on October 1, 2008, without any break in eligibility through June 30, 2009, the RI Works time limits will take effect on July 1, 2009.

A Fiscal Note is available upon request. In the development of the rules and regulations, consideration was given to the following: (1) alternative approaches; and (2) overlap or duplication with other statutory and regulatory provisions. No alternative approach or duplication or overlap was identified based upon available information. (Complies with 42-35-3(3).) The health, safety, and welfare of the public preclude any economic impact that may be incurred as a result of these regulations.

Interested persons may inspect said proposed rules, regulations, policies, procedures, summary of policies, and other related materials on the R.I. Secretary of State's website at www.sec.state.ri.us/ProposedRules/ or on the Department of Human Services website at www.dhs.ri.gov, or in the Office of Policy Development, Department of Human Services, Louis Pasteur Building, Bldg. 57, Howard Avenue, Cranston, Rhode Island 02920, between the hours of 9:00 a.m. and 3:00 p.m., Monday through Friday.

Interested persons may submit data, views, or written arguments to the Office of Legal Counsel, Department of Human Services, Louis Pasteur Building, Bldg. 57, 600 New London Avenue, Cranston, Rhode Island 02920, within thirty (30) days of the date of this notice.

In accordance with the Rhode Island General Laws 42-35-3, an oral hearing will be granted on these rules if requested by twenty-five (25) persons, or an agency, or by an

association having at least twenty-five (25) members. A request for an oral hearing must be made within thirty (30) days of this notice.

SCOPE OF CHANGE

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SUMMARY OF CHANGE

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~~0830~~ ~~UNDERPAYMENTS AND OVERPAYMENTS~~

~~0830.05~~ ~~CORRECTION OF UNDERPAYMENTS~~

~~REV:05/1997~~

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~~An underpayment is defined as a cash payment issued to or for an assistance unit for a payment month in an amount less than the amount for which the assistance unit was eligible. The failure to issue a payment for a payment month to an assistance unit eligible for such payment also constitutes an underpayment.~~

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~~Eligibility for Correction of Underpayment~~

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~~The appropriate agency representative corrects the underpayment as soon as possible, but not later than thirty (30) days after discovery of the underpayment, to a current recipient or one who would be a current recipient had the error causing the underpayment not occurred.~~

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~~For purposes of determining eligibility and the amount of assistance, a retroactive corrective payment is not considered income, nor is it considered a resource in the month received or in the following month.~~

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~~Correction of underpayment errors to current recipients is required regardless of when the underpayment occurred. There is no time limit~~

~~for correcting an underpayment that occurred on or after October 1, 1981. However, if the underpayment occurred prior to October 1, 1981, a retroactive corrective payment can be made only for the twelve (12) months preceding the month in which the underpayment was discovered.~~

~~In cases involving an underpayment and an overpayment in the same month, the agency representative must factor in both in determining what the correct payment should have been. If an underpayment still exists, it is promptly corrected.~~

~~Method of Payment~~

~~An underpayment is corrected by first entering the correct information in the appropriate months in STAT to reflect the actual income, resources, or household circumstances during the period of the underpayment. The agency representative then approves the deficit payment through INRHODES. The agency representative must also notate the circumstances regarding the underpayment in the case log (CLOG).~~

~~0830.10 RECOVERY OF OVERPAYMENTS~~

~~REV:07/2002~~

~~An overpayment is defined as a cash benefit issued to or for an assistance unit for a payment month in an amount exceeding the amount for which that unit was eligible. An overpayment may result from either an agency or a client error. To determine the net overpayment amount, the gross overpayment must be reduced by the amount of any child support collected and retained by the Department of Administration, Division of Taxation - Child Support Enforcement over and above the payment the recipient should have received (see Section 0824.10.25).~~

~~In cases involving an underpayment and an overpayment in the same month, the agency representative must factor in both in determining what the correct payment should have been. If an overpayment still exists, the referral is made to the Collections, Claims and Recoveries/Fraud Unit to recover the amount.~~

~~Recovery of overpayments from current or former recipients (as defined in Section 0830.10.15) is required regardless of when the overpayment occurred.~~

~~0830.10.05 Reasonable Effort to Pursue Recovery~~

~~REV:07/2002~~

~~If the amount of the overpayment is more than thirty five dollars (\$35) and owed by a former recipient (as described in Section 0830.10.15) in a non-fraud case, the agency representative must refer the case to the Collections, Claims and Recoveries/Fraud (CCR/Fraud) Unit for a determination by a reasonable effort if it is cost effective to pursue recovery efforts. "Reasonable effort" requires minimally that a repayment request be sent to the former recipient. If s/he fails to respond, CCR/Fraud must consider if the cost of collecting the overpayment is likely to equal or exceed the amount of the overpayment, and what degree of effort is within the bounds of cost effectiveness.~~

~~However, if a former recipient subsequently becomes active within three (3) years, recovery is initiated regardless of the overpayment amount.~~

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~~Every effort must be made to recover any overpayment amount in cases of court determined fraud. The agency must take all reasonable steps necessary to promptly correct any overpayment.~~

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~~Prompt recovery of an overpayment means the agency representative must initiate action by the end of the quarter following the quarter in which the overpayment is first identified to recover the overpayment from an active recipient.~~

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~~In closed cases, the CCR/Fraud must initiate action to locate a former recipient and/or recover the overpayment from him/her.~~

0830.10.10 — Payments Issued Pending Hearing Decision

REV:05/1997

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~~Mandatory recovery of overpayments includes an overpayment resulting from assistance paid pending a hearing decision where the recipient receives an adverse hearing decision. Only the portion of cash assistance paid relating to the disputed issue is recoverable.~~

0830.10.15 — Individual/Assistance Unit Responsibility

REV:07/2002

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~~Any recovery of an overpayment to a current assistance unit must be made through repayment (in part or in full) by the individual recipient responsible for the overpayment, or by reducing the amount of assistance payable to the assistance unit of which s/he is a member, or both.~~

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~~If recovery is not possible from the individual responsible, the CCR/Fraud representative determines, after consulting with Office of Legal Counsel, whether to recover from:~~

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~~— Any assistance unit which has a member who was an adult member of the assistance unit that received the overpayment (was age eighteen (18) or older excluding minor heads of households); or~~

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~~— Any individual members of the overpaid assistance unit, who were adults at the time the unit received the overpayment, whether or not current recipients.~~

0830.10.20 — Recovery's Effect on Eligibility

REV:05/1997

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~~If through recovery the amount payable to the assistance unit is reduced to zero (0), members of the assistance unit are still considered recipients of the Family Independence program.~~

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~~Whenever a payment is reduced below the minimum ten dollar (\$10) payment level due to recovery of an overpayment, the amount still due the recipient must be issued, as illustrated in the following example.~~

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~~EXAMPLE: A recipient is currently eligible to receive a fifty three dollar (\$53) monthly payment. Due to an overpayment, the agency representative must recoup forty five dollars (\$45) monthly. Since the recipient was previously entitled to a fifty three dollar (\$53) payment for the month prior to any adjustment made for recovery, a payment of eight dollars (\$8) monthly must be issued to the recipient even though it is below the ten dollar (\$10) minimum payment level.~~

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~~In situations where there is an outstanding overpayment in a case and no regular monthly payments have been made because the amount is under the ten dollar (\$10) minimum payment, the amount not paid cannot be used to offset the overpayment. There must be a monthly cash payment to recover an overpayment.~~

0830.10.25 — Determination and Referral of Overpayments

REV:07/2002

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~~The determination of the overpayment amount is made by entering the correct information in the appropriate months in STAT to reflect the actual income (earned income that is not reported in a timely manner, i.e., within ten (10) days, or earned income which is unreported is calculated WITHOUT any earned income disregards applied), resources, or household circumstances during the period of the overpayment.~~

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~~After the agency representative approves the retroactive eligibility results for the month(s) affected, s/he then utilizes SPEC/Coll in INRHODES to refer the overpayment to the CCR/Fraud Unit. The agency representative enters the reason for the overpayment, the time period, and the total amount of the overpayment based on the retroactive eligibility results; s/he must also enter a reference to the above-mentioned CLOG entry in the free form text Comments section of the panel. (The relevant policy for INRHODES codes for Collections Referral is located in POLI D at PROC (General Procedures) Sections 1124.42 and 1124.44; it may also accessed by using the Help Key (PF10) when working on the screen.)~~

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~~The CCR/Fraud agency representative completes the AP-68W and as appropriate reviews the FSUM function under MONTHLY ORDER REC. in the INRHODES IV D Interface to determine whether the Department of Administration, Division of Taxation — Child Support Enforcement retained any child support during the month(s) of overpayment. S/he then completes columns E through G of the AP-68W. If support was retained in any overpaid month, the CCR/Fraud representative enters that amount in column E. The amount of retained support over and above the cash assistance payment the recipient should have received is entered in column F and is subtracted from the gross overpayment to yield the net overpayment to be recovered from the recipient or the net overcollection to be refunded to the recipient.~~

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~~Such refunds are authorized and issued only by the Department of Administration, Division of Taxation — Child Support Enforcement.~~

0830.10.30 — Methods of Recovery

REV:01/2005

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~~Appropriate agency representatives refer overpayments to CCR/Fraud via SPEC/Coll in INRHODES. (The relevant policy for the INRHODES Collections referral process is located in POLI D at PROC (General Procedures) Sections 1124.42 and 1124.44.) The recovery methods specified are predicated on the existence of a net overpayment to be recovered as described below.~~

~~— Grant Reduction~~

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~~The agency recovers any overpayment from current recipients, who were adults at the time of the overpayment, by grant reduction unless the agency first accepts either total or partial recovery, with any balance owed repaid through grant reduction. Any initial repayment made in a local office by the recipient must be forwarded to the Collections, Claims and Recoveries/Fraud Unit at the Benjamin Rush, Building 55, Howard Avenue, Cranston, RI 02920. The recipient is given a receipt, and advised that the remainder of the overpayment will be recovered by grant reduction.~~

~~— Recovery Rate~~

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~~The grant reduction recovery rate for all active cases is ten percent (10%) of the monthly standard of assistance or up to the amount of the payment if it is less than the standard of assistance.~~

~~— Direct Repayment~~

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~~Former recipients and recipients who receive no payment because the deficit is less than the ten dollar (\$10) minimum payment make repayments directly to the CCR/Fraud Unit from their income or resources.~~

~~— Setoff of State Personal Income Tax Refund~~

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~~Pursuant to RIGL 44-30.1, DHS may recover overpayment of cash assistance benefits through setoff of the individual's state personal income tax refund. Procedures for setoff are outlined in Section 0830.22.~~

0830.10.40 — Referral of Overpayments to CCR/Fraud Unit

REV:07/2002

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~~Overpayments are referred to the CCR/Fraud Unit by the appropriate agency representative. S/he determines the overpayment amount for active cases by following procedures outlined in 0824.10.25. The agency representative must record the circumstances pertaining to the overpayment in the Case Log (CLOG).~~

~~S/he then utilizes SPEC/Coll in INRHODES to refer the overpayment to CCR/Fraud by entering the reason for the overpayment, the time period, and the total amount of the overpayment, and enters a reference to the above mentioned CLOG entry in the free form text Comments section of the panel. (The relevant policy for INRHODES codes for Collections Referral is located in POLI D at PROC (General Procedures) Sections 1124.42 and 1124.44; it may also be accessed by using the Help Key (PF10) when working on the screen.)~~

~~After reviewing the referral and obtaining all relevant documentation from the case record, CCR/Fraud reviews any case in which the calculation or documentation of the overpayment is incomplete and/or needs further investigation, such as cases where a client caused overpayment appears fraudulent due to unreported income, resources, or changes in family composition.~~

~~Upon receipt of the referral for further investigation and/or documentation, or of alleged fraud, the Fraud Manager assigns the case for investigation.~~

~~Upon completion of the investigation, from the facts presented and/or obtained, a decision may be made to refer the case for prosecution through the Attorney General's Office or for immediate collection action.~~

~~If the overpayment is due to agency error or the decision is made for immediate collection of the overpayment, the CCR/Fraud representative sends the individual a Notice of Overpayment which summarizes the amounts, dates, and reasons for the overpayment.~~

~~It is accompanied by form AP 68W, Calculation of Cash Overpayment. The AP 68R informs the individual that all overpayments must be repaid. It notifies a current Family Independence Program recipient that unless s/he contacts CCR/Fraud within thirty (30) days, automatic grant reduction will be initiated. The form also includes the individual's appeal rights.~~

0830.10.45 — Notice of Overpayment

REV:05/1997

~~A recipient must be promptly notified via a Notice of Overpayment and AP 68W (as appropriate) that a determination of a net overpayment exists. The notice informs the individual of the mandatory aspect of recovery, the right to a hearing, and the method for repayment.~~

0830.10.50 — Repayment Agreement

REV:07/2002

~~Repayment agreements must be initiated for all cash assistance overpayments. CCR/Fraud Unit representatives initiate and complete a signed Repayment Agreement (AP 68) between the agency and individual responsible. The Agreement form states that an overpayment exists in a specified amount and that repayment will be made by direct repayment~~

~~(in full or in part). The recipient is given a copy of the agreement, and one copy is retained by CCR/Fraud.~~

~~**0830.10.50.05 Agency Error Cases**~~

~~REV:07/2002~~

~~Overpayments caused by agency error are considered non fraud.~~

~~Instances of agency error that may result in an overpayment include, but are not limited to, the following:~~

~~_____ The agency representative failed to take prompt action
_____ on a change reported by the recipient; and~~

~~_____ The agency's incorrect computation of the recipient's
_____ income and/or deductions resulted in an incorrect
_____ payment.~~

~~**0830.10.50.10 Certain Client Error Cases**~~

~~REV:07/2002~~

~~Overpayments caused by the following household errors are considered non fraud.~~

~~_____ A payment was issued pending a hearing decision adverse
_____ to the recipient; or~~

~~_____ A payment was issued solely due to ten (10) day notice
_____ requirements even though the recipient was ineligible
_____ for the assistance.~~

~~**0830.15 OUTSTANDING CLAIMS BALANCES**~~

~~REV:11/1998~~

~~INRHODES has been programmed to identify cases with outstanding claims balances. When a former recipient (as defined in Section 0830.10.15) is reinstated, and an overpayment balance still exists, the recipient is notified after approval of eligibility that the overpayment will be recovered by grant reduction (unless the recipient elects to repay the amount in full or in part, with the balance, if any, paid by grant reduction) beginning the following month.~~

~~**0830.20 CLAIMS REFERRED FOR PROSECUTION**~~

~~REV:07/2002~~

~~Upon receipt of the referral and obtaining other evidence of the overpayment, the Fraud Manager assigns the case for investigation. Upon completion of the investigation, from the facts presented and/or obtained, a decision is made whether the overpayment is appropriate for referral for prosecution through the Attorney General's Office. An overpayment is appropriate for such referral based on such factors as, but not limited to, at the Fraud Manager's discretion, the amount of overpayment, repeated occurrences of overpayment, reason for the overpayment, etc.~~

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When an individual pleads nolo contendere to or has been found guilty of a charge of welfare fraud in court, copies of a Welfare Fraud Disposition Sheet are then sent to the CCR/Fraud Unit. If the court makes a finding of fraud and rules that recovery of the overpayment be made through direct payments to the agency, CCR/Fraud initiates direct repayment procedures.~~

~~0830.22 — SETOFF OF STATE PERSONAL INCOME TAX REFUND~~

~~REV:01/2005~~

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In accordance with Sections 44-30.1-1, 44-30.1-3, 44-30.1-4 and 44-30.1-8 of the General Laws in Chapter 44-30.1 entitled 'Setoff of Refund of Personal Income Tax', DHS through the CCR/Fraud Unit can recover cash assistance benefit overpayment claims through offset of the individual state income tax refund.~~

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"Cash assistance benefit overpayments" means any amount of cash assistance benefits which constitutes an overpayment of benefits from the Family Independence Program and/or the Aid to Families With Dependent Children (AFDC) program up until April 30, 1997.~~

~~0830.22.05 — Criteria for Referral for Setoff~~

~~REV:01/2005~~

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The claim must meet the following requirements for the State Personal Income Tax Refund Offset procedure.~~

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The claim must be:~~

~~— * Established by court order, by administrative hearing conducted by the Department of Human Services, or by written agreement between the Department of Human Services and the individual;~~

~~— * Greater than or equal to the minimum amount required for submission for setoff by the R.I. Division of Taxation;~~

~~— * Submitted in the name of one individual or must be reduced by any amount submitted as a separate claim for other individuals who are jointly or severally liable for the claim; and~~

~~— * Not involved in a bankruptcy stay or discharged in bankruptcy.~~

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In addition, the agency must notify the individual of the intended action prior to offset and of her or his appeal rights.~~

~~0830.22.10 — Setoff Procedures and Notification of Debtor~~

~~REV:01/2005~~

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The CCR/Fraud Unit will notify the individual of its intent to refer a claim to the R.I. Division of Taxation for offset and give the~~

~~individual thirty (30) days to appeal the intended referral by presenting evidence that all or part of the claim is not legally enforceable. The pre-offset notice or thirty (30) day notice shall contain the following information:~~

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A. The amount of the claim(s);~~

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B. That the individual has been previously notified of the claim;~~

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C. That the claim is legally enforceable;~~

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D. The individual's DHS Case Identifier;~~

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E. That the claim(s) is to be referred to the R.I. Division of Taxation for offset unless the claim is paid in full within thirty (30) days of the date of the letter;~~

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F. Instructions about how to pay the claim(s), and the address and telephone number of the CCR/Fraud Unit to call to discuss the claim and the intended intercept.~~

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G. That the individual has the right to appeal the offset. The notice will advise the individual that:~~

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(1) The individual is entitled to an administrative hearing to contest the setoff. The appeal request must be in writing and must be received by CCR/Fraud Unit not later than thirty (30) days after the date of the notice.~~

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(2) That the individual should be prepared to provide evidence or documentation of his or her defenses to the claim.~~

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(3) The individual's right to judicial review of the administrative hearing decision.~~

~~The notice must also state that a claim may not be referred for offset where a bankruptcy stay is in effect or if the claim has been discharged in bankruptcy.~~

0830.22.15 — Transfer of Funds by Division of Taxation

REV:01/2005

~~At the time of the transfer of funds to DHS, the Division of Taxation shall notify the debtor that the transfer has been made.~~

~~The notice shall state the name of the debtor, the amount of cash assistance benefit overpayments being claimed, and the transfer of funds to DHS.~~

~~In the case of a joint refund, the Division of Taxation notice shall also state the name of a taxpayer spouse named in the return, if any, against whom no cash assistance benefit overpayments is claimed, the~~

~~opportunity to request that the refund be divided between the spouses by filing an amended income tax return showing each spouse's share of the tax and the contribution to the overpayment of tax resulting in the refund.~~

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~~Upon receipt of funds transferred from the Division of Taxation, DHS Financial Management deposits and holds the funds in an escrow account until final determination of setoff. Upon final determination of the amount of the claim to be setoff by 1) default for failure to apply for an administrative hearing, or by 2) decision of the administrative hearing officer, the claimant agency shall remove from the account of the claim payment from the escrow account and credit the amount to the debtor's obligation. The pendency of judicial proceedings to review the administrative decision shall not stay nor delay the setoff, transfer, and disbursement of the tax refund in question.~~

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~~With respect to setoff for cash assistance benefit overpayments, the Division of Taxation shall provide the debtor's address and social security number to the Department of Human Services. The information obtained by a claimant agency through the Division of Taxation retains its confidentiality and is only used by DHS in pursuit of its cash assistance benefit overpayments collection duties and practices, and any employee or prior employee of any claimant agency who unlawfully discloses that information for any other purpose, except as specifically authorized by law, is subject to the penalties specified by RICL 44-30-95(c).~~

~~0830.22.15.05~~ ***Administrative Hearings***

~~REV:01/2005~~

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~~As appropriate, an administrative hearing may be held pursuant to DHS Policy Manual Section 0110. The appeals officer must be issue her or his decision in writing in accordance with Section 0110. If the decision is made that the claim does not meet the requirements for offset, CCR/Fraud must take appropriate corrective action.~~

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~~0830.25~~ **OVERPAYMENTS TO ALIENS**

~~REV:11/1998~~

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~~Any individual who sponsors an alien and the alien who was an adult at the time of the overpayment are jointly and severally liable for any net overpayment of aid made to the alien during the three (3) years after the alien's entry into the United States, if the overpayment resulted from the sponsor's failure to provide correct information during the determination of alien sponsorship liability. (See Section 0104.)~~

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~~A sponsor is a person who signs an affidavit or other statement accepted by the Immigration and Naturalization Service (INS) as an agreement to support an alien as a condition of the alien's admission for permanent residence in the United States.~~

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~~When it is determined that the sponsor is responsible for the overpayment, the agency representative refers the case to the CCRU to initiate recovery against the sponsor.~~

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~~0830.25.05~~ ~~Good Cause~~

~~REV:05/1997~~

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~~When a sponsor is found to have good cause for not providing information to the agency, the sponsor is not held liable for the overpayment and recovery is not to be made from the sponsor.~~

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~~However, the alien is still liable for the repayment and is not exempted when the sponsor has good cause.~~

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~~Good cause exists when:~~

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~~Correct information on income or resources was given by the sponsor to the alien and was misrepresented to the agency representative by the alien/applicant.~~

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~~Correct information on income or resources was given by the sponsor and was incorrectly calculated by the agency representative.~~

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~~Information supplied to the sponsor by a third party is incorrect, e.g., the sponsor's spouse reports incorrect information on his/her resources.~~

~~0830.25.10~~ ~~Sponsor and Alien Liability for Repayment~~

~~REV:05/1997~~

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~~Overpayments for which the sponsor and the alien are liable shall be repaid in accordance with procedures outlined in Section 0830.10.30. If repayment cannot be accomplished through the methods specified, future Family Independence program payments to which the alien and/or the sponsor may be entitled are subject to recovery.~~