



311 West Saratoga Street  
Baltimore MD 21201

## FIA Action Transmittal

Control Number: # 20-08

Effective Date: Immediately

Issuance Date: November 26, 2019

**TO: DIRECTORS, LOCAL DEPARTMENTS OF SOCIAL SERVICES  
DEPUTY/ASSISTANT DIRECTORS FOR FAMILY INVESTMENT  
FAMILY INVESTMENT SUPERVISORS AND CASE MANAGERS**

**FROM: NETSANET KIBRET, EXECUTIVE DIRECTOR**

A handwritten signature in blue ink, appearing to be 'NK', is written over the name 'NETSANET KIBRET'.

**RE: PAYMENT IRREGULARITY POLICY**

**PROGRAM AFFECTED: TEMPORARY CASH ASSISTANCE (TCA)**

**ORIGINATING OFFICE: OFFICE OF CASH PROGRAMS**

### Summary

A recent audit found that Maryland has issued a number of Temporary Cash Assistance (TCA) overpayments that may be due to be recouped. To do so, FIA must assess and update the current TCA overpayment policy. Current policy needs clearer instructions on both identifying and processing cash overpayments.

The purposes of this Action Transmittal are to:

1. Introduce updated policies on the handling of overpayments; and
2. Review how to assess and treat outstanding overpayments.

### Current Policy

Policy surrounding overpayments and the recoupment of outstanding debts needs clarification. This policy may have an effect on cases that have received overpayments due to errors in applying the 60-month time limit policy. Further instruction is needed on handling any outstanding debts and/or future overpayments.

## Action Required

### Pursuing Overpayments

In order to pursue an overpayment, the case must include the following;

- Verification and documentation of the verification for each instance of overpayment;
- A calculation of the overpayment;
- Notification to the customer; and
- A written agreement, when applicable.

There are three causes for an overpayment for which recoupment may be pursued.

#### 1. Agency Error (AE)

- Occurs when the local department:
  - fails to take action in a timely manner on a known change
  - incorrectly applies policy or procedures
  - makes an incorrect calculation
  - issues benefits when the certification period has expired and no redetermination was completed
  - issues benefits for more than 60 months without the required documentation as specific in Section 313 and Section 204 of the TCA Manual.
- In the event of an agency error, the recoupment/recovery amount is \$10 or 10% of the TCA grant amount, whichever is greater.
  - Any overpayment *established* after January 1, 2020 solely due to a customer receiving over 60 months of TCA without a hardship exemption and/or documentation of an exemption is subject to the Agency Error overpayments recoupment policy.

#### 2. Customer Error (CE)

- This may also be called an Inadvertent Household Error and occurs when the customer fails to:
  - give complete or accurate information
  - report a change in a timely manner
- In the event of a customer error, the recoupment/recovery amount is \$20 or 20%, whichever is greater

#### 3. Intentional Program Violation (IPV)

- An IPV occurs when the customer deliberately and knowingly does any of the following:
  - makes false statements to receive benefits, maintain benefit level increase or avoid a reduction in benefits
  - misrepresents facts to receive benefits they would have otherwise not been eligible for

**REMINDER: An overpayment cannot be noted as fraud or IPV unless there is a legal decision establishing the fraud or the individual signed a waiver of administrative disqualification hearing (ADH).**

#### Notifying the customer

The LDSS must retain verification that the customer was notified of the overpayment. This can be done using a Notice 18 (the CARES-generated Overpayment/Demand Notice) or a manual letter that includes the following information;

- the amount owed;
- reason for the overpayment;
- period of time in which the overpayment occurred;
- ways the overpaid amount can be repaid;
- the customer's right to an administrative hearing if the customer disagrees with either the overpayment or the amount of overpayment;
- the customer's right to renegotiate any repayment schedule if the assistance unit/household's circumstances change;
- the requirement to return the enclosed repayment agreement, completed and signed within 30 days of the date the notice is mailed, indicating an agreement to make restitution and the method by which repayment will be made; and,
- failure to return the completed agreement by (00/00/0000) may result in further collection action, including a referral to the State's Central Collections Unit.

A second Notice 18 must be sent when there is no response from the household to the first notice.

If the household does not respond by the 30th day after the second Notice 18 is mailed, issue a Notice 43, the CARES-generated Failure to Pay Notice. Once 30 days has passed since the Notice 43 was sent and no action is taken by the customer, label the case Closed and Referred and transfer it to the Central Collections Unit (CCU) via the systems interface process.

## Acceptable Forms of Payment

The following mechanisms are considered acceptable forms of payment:

- Reducing benefits prior to issuance.
- Accepting cash or any of its generally acceptable equivalents such as but not limited to; check, money order, and/or credit or debit cards.
- Conducting the State's own offsets and intercepts. These methods are used when a debt is referred to the State's Central Collection Unit.

## Terminating a Collection Action

There are certain instances when the LDSS may terminate a collection claim. Once the claim has been terminated, all collection action must cease. A claim shall be terminated for any of the following reasons:

- The claim has been found to be invalid in a fair hearing, administrative disqualification hearing, or court determination.
- The claim has been found to have been established in error.
- The claim is missing any of the required documentation needed to establish and pursue the debt.
- The household cannot be located after three years of the claim establishment date.
- The claim is no longer being pursued by the CCU after having been properly referred and the local department has exhausted means available in recouping the claim.

## Definitions

Discovery date: The date the potential claim is detected as a possible overpayment.

Establishment date: The date the initial demand notice (Notice 18) is sent to the customer.

## **CARES Procedure**

There are no changes in the CARES case processing procedures.

## **Attachment**

TCA Manual Section: 1100 Payment Irregularity

## **Inquiries**

For TCA, TDAP and SNAP policy-related questions, please complete the [FIA Policy Information Request Form](#) found on Knowledge Base as shown in the screenshot below.

For CARES/systems related inquiries, please contact [fia.bsdm@maryland.gov](mailto:fia.bsdm@maryland.gov).

The screenshot shows the DHS Knowledge Base website. The navigation menu on the left includes 'Family Investment Administration' and 'Contact us with your FIA Program Eligibility Policy Question', both of which are circled in red. The main content area features a 'FIA Policy Information Request' form with instructions and a 'Tools' button. The right sidebar contains contact information for Carrie A. Durham, JD and Candice A. Roberts, FIA Executive Assistant.

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### Contact us with your FIA Program Eligibility Policy Question

#### FIA Policy Information Request

Have a FIA policy question? Click on the link to complete a Policy Information Request. Your question will be routed directly to the Bureau of Policy.

Questions will be answered within 48 business hours. If a question requires further research, you will be notified that there will be a delay and kept apprised of the status. Remember to review the policy manuals, Action Transmittals, and forms found on Knowledge Base (<http://kb.dhs.maryland.gov/family-investment-administration/>) prior to submitting a request; many times the answer to your question can be found through our online resources.

Technical questions regarding CARES functions should be directed to the Bureau of Systems Development and Management at [fia.bsdm@maryland.gov](mailto:fia.bsdm@maryland.gov).

\* Required

Email address \*

Your email

**Contact Us**

**DHS**  
DEPARTMENT OF HUMAN SERVICES

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**Tools**

cc: DHS Executive Staff  
Constituent Services  
DHS Help Desk  
FIA Management Staff  
Office of Administrative Hearings

<b>DEPARTMENT OF HUMAN SERVICES FAMILY INVESTMENT ADMINISTRATION</b>	<b>TEMPORARY CASH ASSISTANCE MANUAL</b>	
<b>PAYMENT IRREGULARITY 1101</b>	<b>COMAR 07.03.03.21</b>	<b>PAYMENT IRREGULARITY-1100</b>

### 1101.1 Payment Irregularity

- A. Payment irregularity means a benefit amount was incorrect and occurs when the assistance unit or the household does not receive the amount it is entitled to. The payment could be:
1. More than entitled to – resulting in an overpayment, or
  2. Less than entitled to – resulting in an underpayment
- B. Payment irregularities are classified as:
1. **Agency Error (AE)** - when the local department:
    - a. Fails to take action in a timely manner on a known change
    - b. Incorrectly applies policy or procedures
    - c. Makes an incorrect calculation
    - d. Issues benefits when the certification period has expired and no redetermination has been completed
    - e. Issues benefits for more than 60 months without a customer meeting a hardship requirement and/or work requirements in his/her Independence Plan. (See Section 313 for determining eligibility beyond 60 months. See Section 204 for information on required documentation for a hardship exemption.)
  2. **Customer Error (CE)** - also called Inadvertent Household Error when the customer fails to:
    - a. Give complete or accurate information
    - b. Report a change in a timely manner
  3. **Intentional Program Violation (IPV)** - occurs when the customer deliberately and knowingly:
    - a. Makes false statements to receive benefits, maintain benefit level increase or avoid a reduction in benefits

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- b. Misrepresents facts in order to receive benefits for which he or she is not eligible
- c. Is found guilty of Food Supplement Program trafficking (see SNAP manual for additional information)

**Reminder:** Do not code an overpayment as fraud or IPV unless there is a legal decision establishing the fraud or the individual signed a waiver of an administrative disqualification hearing (ADH).

### **1101.2 Causes of Payment Irregularities**

- A. Unreported changes or local department failure to act on known changes in:
  - 1. Household composition
  - 2. Earned and/or unearned income
  - 3. Household expenses and shelter costs
- B. Local department's incorrect application of policy and procedure
- C. Fraud and/or Intentional Program Violations

**Reminder:** Overpayments in associated programs do not necessarily mean there is an overpayment in the SNAP benefits. Under simplified reporting requirements, there is no overpayment, as long as the customer's income does not exceed 130% of the federal poverty level for household size. (See the SNAP Manual for additional information).

### **1101.3 Local Department Action**

- A. Local departments must take immediate action to correct payment irregularities.
  - 1. Issue underpayments as quickly as possible within 24 business hours of discovery.
  - 2. Make changes in the system in the on-going month first to ensure the change is made and prevent additional overpayments or underpayments.
  - 3. Make changes in each historical month in which the error occurred to determine the payment irregularity for up to three years prior.

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- B. Establish a claim against the household or assistance unit regardless of the reason for the overpayment.
- C. Before establishing an overpayment on a change, allow for the appropriate adverse action time.
  - 1. The first month, following the adverse action period, that the change could have been made is the beginning of the overpayment
  - 2. The end of the overpayment is the last month incorrect benefits were paid
  - 3. When a payment irregularity occurs in one program, review eligibility in all associated programs

#### **1101.4 Verification of the Overpayment**

- A. Attempt to obtain verification that documents the household’s circumstances for **each month** of the payment error.
- B. Allow the customer 10 days to provide verification.
- C. If the customer cannot or will not provide verification, attempt to have the customer sign a Consent for the Release of Information form to allow the local department to obtain the information.
  - 1. You may use the customer’s signed application page that states the customer provides consent for the contact.
- D. Contacts may include but are not limited to: the employer, landlord, or child care provider.
- E. Secondary sources of verification include: Maryland Automated Benefit System (MABS), the State Verification and Exchange System (SVES), the Income and Eligibility Verification System (IEVS), “The Work Number” and MD/DC Online.
- F. When using MABS to verify earnings, the case manager must divide the quarterly income by 3 to arrive at a monthly figure.
- G. Complete a separate set of calculations for each error by using the figures that were in effect for each month the error existed.



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### **1101.5 Overpayment Dates**

- A. Discovery Date: The date the potential claim is detected as a possible overpayment.
- B. Establishment Date: The date the initial demand notice (in CARES, Notice 18) is sent to the customer.

### **1101.6 Loss of Earnings Disregards and Child Care Deductions for Late Reporting**

Customers not reporting new earned income or an increase in earned income timely are not entitled to the earned income disregards (40% for regular earnings and 50% if self-employed) and the child care deduction for the months that the income was unreported.

### **1101.7 Waiver of Overpayment Claims**

The local department will waive the establishment of a TCA overpayment if the:

- Total overpayment is \$125 or less **and**
- TCA case is closed.

### **1101.8 Manual Calculation of a Payment Irregularity**

- A. The calculation to determine an OP or UP is the same. It is the difference between what was received and what the applicant or recipient was eligible for.
- B. Determine the correct amount of benefits for each month that the household received an overpayment.
- C. Do not include any amounts that occurred more than three years prior to the month the claim was identified.

### **1101.9 Special Circumstances Regarding TCA Overpayments**

- A. Recipient convicted of a drug felony.
  - 1. A custodial parent convicted of a drug related felony on or after July 1, 2000 while receiving TCA, is ineligible for TCA for one year from the date of the conviction and is subject to substance abuse testing and treatment

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2. Remove the custodial parent from the TCA, after timely and adequate adverse action is given
3. Establish an OP for every month that the custodial parent received TCA from the month of the conviction to the effective date of the change

**B. 60 Month time limit.**

1. Federal TCA benefits cannot be paid to adults who have received benefits for 60 months, whether consecutive or not, unless the customer meets the requirements for a hardship or is meeting the work requirements in his or her Independence Plan.
2. Do not count any month a customer is overpaid an entire month of TCA benefits and subsequently repays the entire benefit towards the 60-month time limit.

**C. Child Support**

1. Review child support screens to determine the amount, if any, of child support payments received and retained by the Agency
2. Offset (reduce) the TCA OP amount by the amount of child support collected and retained by the Agency

**1101.10 Notification to the Customer**

- A. Customers must be provided with written notification of a payment irregularity.
- B. Whether the overpayment notification letter to the customer is a system generated letter (Notice 18) or a manual letter it must state the following information:
  1. The amount owed
  2. Reason for the overpayment
  3. The period of time in which the overpayment occurred
  4. Ways the overpaid amount can be repaid
  5. The customer's right to an administrative hearing if the customer disagrees with the overpayment (that an overpayment exists or the amount)

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6. The customer’s right to renegotiate any repayment schedule if the assistance unit/household’s circumstances change
  7. The requirement to return the enclosed repayment agreement, completed and signed within 30 days (00/00/0000) of the date the notice is mailed, indicating an agreement to make restitution and the method by which repayment will be made
  8. Failure to return the completed agreement by 00/00/0000 may result in further collection action, including a referral to the State’s Central Collections Unit
- C. A second notice (Notice 18) must be sent when there is no response from the household to the first notice sent. The second notice should be sent no later than 60 days but no sooner than 30 days after the issue date of the first notice.
- D. Issue a third and final notice indicating failure to repay (Notice 43) if the customer does not respond within thirty days to the second Notice 18. Issue the final notice indicating failure to repay no later than 60 days but no sooner than 30 days after the issue date of the second notice.

### **1101.11 Right to an Administrative Hearing**

- A. Customers have the right to a hearing before an administrative law judge (ALJ) regarding a payment irregularity.
- B. The CARES system generates a page explaining how to file an appeal along with the CARES repayment notice.
  1. Customers can pick up a DHR/FIA Request for Hearing form (DHR/FIA 334) in the local department or have the local department mail them one.
- C. If the customer requests a hearing within 10 days of the notification of the overpayment and recoupment, the customer may request benefits be continued pending the hearing decision.
  1. There are specific rules for other programs regarding the continuation of benefits pending a hearing decision. Please refer to the policy for a specific program.
- D. If the customer requests an administrative hearing and the hearing decision upholds the proposed reduction or termination, the overpayment includes any benefits issued pending the decision.

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- E. Following an Administrative Hearing, the local department must re-notify the household of the claim if the following occurs;
1. The Administrative Law Judge (ALJ) finds in favor of the State and determines that a claim does exist against the household;
  2. The appellant does not show for the hearing; or
  3. The case is dismissed.
- F. Once the hearing decision is received, upholding the local department action, do not send another adverse action before implementing recoupment. Delinquency is based upon this decision date and not the date noted on the initial Notice 18 sent to the household.
- G. If the ALJ determines that a claim does not exist, the claim is terminated and written off. The local department must notify the customer in writing once the claim is terminated and written off.
- H. The local department must comply with the ALJ's decision within 10 days.

### **1101.12 Recoupment**

- A. For TCA, TDAP, SNAP, PAA, and RCA cases that are Agency Error (AE) or Customer Error (CE) overpayments the recoupment amount is \$10 or 10 percent, whichever is greater
- B. The rules for IPVs and fraud are slightly different for each program. They are discussed in the individual program sections
- C. Customers have the option of paying more than the standard recoupment amount
- D. Do not recoup benefits from an initial benefit
- E. Approving a recoupment BEG within the last 10 days of the month reduces the following month's benefit, without allowing 10 days adverse action time. Local departments should avoid approving BEG plans during the end of the month adverse action period
- F. Re-screening the same assistance unit number when customers, whose benefit case closed with an outstanding balance, reapply for benefits CARES automatically begins recoupment when the case is approved

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**1101.13 TCA Increase in Benefits (Underpayment)**

**Note:** When a change is reported or the local department becomes aware of a change, the case manager must re-evaluate the assistance unit’s eligibility and benefit amount.

- A. Changes resulting in increases in benefits must be made so that the benefits increase no later than the month following the month the change was reported.
- B. When the case manager is not able to make the change the month following the month the change was reported, issue supplements or underpayments as soon as possible in the next month.
- C. Issue supplements for the month in which a customer reports that a newborn or other member has joined the household.

**1101.14 Initiating a Collection Claim**

- A. Within 60 days of the discovery of the overpayment the following must be initiated;
  - a. Either recovery of the overpayment; or
  - b. Recoupment from the household’s benefit.
- B. Failure to take any of the above actions within the specific timeframe does not release a household from the debt.
- C. When a household with a closed case fails to submit a scheduled payment in accordance with the signed repayment agreement, a secondary Notice 43 is sent.

For collecting from an active or reactivated case	
Cases that are Agency Error (AE) overpayments the recoupment amount is \$10 or 10 percent, whichever is greater. Cases that are Customer Error (CE) overpayments the recoupment/recovery amount is \$20 or 20%, whichever is greater. The local department needs written	For IPV cases, see Section 1100 of the Manual.

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permission to collect against active benefits. See below for written permission guidance.	
For collecting from a closed case	
The local department and the household must agree to a repayment plan. The household must return the signed agreement no later than 30 days after receiving the second Notice 18.	If the local department does not receive a signed repayment agreement by the 30thth day following the second Notice 18, refer the debt to the Central Collections Unit.
For any overpayment	
Verify that for each month of overpayment, there is evidence of overpayment and an overpayment calculation.	Verify that a Notice 18 is in the household's file and that all overpayments referenced match the calculated and verified overpayment for each month an overpayment is being pursued.
Refer the case to the CCU if the household failed to return a repayment agreement as required in the Notice 18 by the 30th day.	If there is no Notice 18 in the case file, send a Notice 18 and include only overpayments for which there is a calculation and matching verification. Follow the same 30-day rule for the receipt of the repayment agreement.

- B. A written agreement with the household to collect a claim using active TCA benefits must include.
- a. The statement that the agreement is voluntary
  - b. The amount of the repayment
  - c. The frequency of the repayment (monthly, one-time, etc.)

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- d. The length, if any, of the agreement; and
- e. A statement that the household may revoke the agreement at any time.
  - i. In the event a household revokes the agreement, the household may make alternative arrangements to satisfy the debt.

C. A claim is delinquent when:

- a. The claim has not been paid in full by the due date of the initial Notice 18 and/or the household has not made a satisfactory adjustment to the payment agreement with the local department.
  - i. The delinquency date following the Notice 18 is 30 days from the date of the original Notice 18.
- b. A payment arrangement has been established and the scheduled payment has not been made by the due date.
  - i. The delinquency date is the due date of the missed payment.
- c. A household fails to make a payment on a monthly basis in the amount specified in the repayment agreement.

**1101.15 Acceptable Forms of Payment**

- A. The State may collect a claim by:
  - b. Reducing benefits prior to issuance.
  - c. Accepting cash or any of its generally acceptable equivalents such as but not limited to; check, money order, and/or credit or debit cards.
  - d. Conducting the State’s own offsets and intercepts. These methods are used when a debt is referred to the States’ Central Collection Unit.

**1101.16 Criteria for Terminating a Collection Action**

- A. A terminated claim is a claim in which all collection action has ceased.

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B. A claim shall be terminated for any of the following reasons:

- a. The claim has been found to be invalid in a fair hearing, administrative disqualification hearing, or court determination.
- b. The claim has been found to have been established in error.
- c. The claim is missing any of the required documentation needed to establish and pursue the debt. This includes;
  - i. Verification for each instance of overpayment as outlined in Sections 1101.4 and 1101.8.
  - ii. Proof of notification to the customer of the overpayment as outlined in Section 1101.10.
- d. The household cannot be located after three years of the claim establishment date.
- e. The claim is no longer being pursued by the CCU after having been properly referred and the local department has exhausted means available in recouping the claim.

### **1101.17 Central Collections Unit**

- A. The Central Collections Unit (CCU) is a unit within the Department of Budget and Management. It is the entity responsible for pursuing the payment of debts owed to the State of Maryland.
- B. A referral to the CCU is made when a customer fails to return a payment agreement or fails to make payments on an outstanding overpayment as per an agreement made with the local department.
- C. Once a demand letter (Notice 18) or a notice of failure to repay (Notice 43) is issued, an alert will be generated advising the local department case manager of the cases referral to the CCU.
- D. Once 30 days has passed since the second Notice 18 or Notice 43 was sent and no action is taken by the customer, the case will be labeled Closed and Referred. The Case will then be transferred to the CCU via the interface process.



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**EXAMPLES:**

**Example 1.** Mr. and Mrs. Pluto receive TCA for themselves and their son. On June 5, Mr. Pluto reported that his wife had a baby. The case manager did not add the baby to the case until August 10. The newborn was added retroactively to the case effective June 5. Underpayments must be issued for June, July and August since the change was not processed timely.

**Example 2.** Ms. Mars receives TCA for herself and two children. She is employed part-time. On March 15 she reported she was laid off and provided a letter from her employer to verify her last day worked and last date paid. She received her last paycheck on March 10. On March 23, the case manager removed the earnings from the TCA case for the ongoing month of April. The TCA benefit increased April 1.