



STATE OF MICHIGAN

DEPARTMENT OF HUMAN SERVICES
LANSING

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IV-D MEMORANDUM 2013-004

TO: All Friend of the Court (FOC) Staff
All Prosecuting Attorney (PA) Staff
All Office of Child Support (OCS) Staff

FROM: Erin P. Frisch, Director
Office of Child Support

DATE: April 15, 2013

SUBJECT: Fair Credit Reporting Act (FCRA) Requirements and Requests
to Third-Party Verification of Employment (VOE) Providers

RESPONSE DUE: None

POLICY EFFECTIVE DATE: Upon receipt

PURPOSE:

This IV-D Memorandum discusses the guidance provided in the federal Office of Child Support Enforcement (OCSE) Dear Colleague Letter (DCL)-12-12, *Third-Party Verification of Employment Providers and the Fair Credit Reporting Act Requirements* (Ref: [Exhibit 2013-004E1](#)). DCL-12-12 explains how the FCRA¹ requirements apply to requests for information made by IV-D agencies to third-party VOE providers. Some employers contract with third-party VOE providers to respond when the employers receive requests for their employees' employment and income information. Some third-party VOE providers are considered credit reporting agencies (CRAs) and are subject to the FCRA requirements.

IV-D workers sometimes request employment and income information from employers for establishing child support orders, reviewing and modifying child support orders, creating income withholding notices (IWNs), and locating parents. Michigan law requires employers to respond to requests from FOCs and OCS for employment and income information.² Employers must also respond to these requests from PA staff since OCS has delegated some of its functions to the PA per contractual agreements between the Department of Human Services and the offices of the PA.³

¹ 15 United States Code (USC) 1681 et seq.

² Michigan Compiled Law (MCL) 400.234; MCL 552.518

³ 45 Code of Federal Regulations (CFR) 302.12

UPDATE(S):

Manual

Form(s)

However, when IV-D workers request employment and income information directly from a CRA⁴ or directly from a third-party VOE provider that is considered a CRA, the IV-D worker must comply with the FCRA requirements for submitting these requests. There are penalties, including fines and imprisonment, for failing to comply with the FCRA requirements or for obtaining information under false pretenses.⁵

This memorandum describes:

- The types of information requests IV-D workers may make under the FCRA to third-party VOE providers that are considered CRAs;
- When IV-D workers are required to give notice to the non-custodial parent (NCP) prior to making an information request;
- Options to consider before submitting an information request for enforcement purposes;
- Identification and certification requirements; and
- Penalties for failing to comply with the FCRA or for obtaining information from CRAs under false pretenses.

DISCUSSION:

When a IV-D worker submits a VOE request directly to an employer or to an employer who forwards the request to a third-party VOE provider, the employer is required to respond to the request.⁶ The FCRA requirements do not apply to these requests. However, when a IV-D worker submits a VOE request directly to a CRA or to a third-party VOE that is considered a CRA, the request is subject to FCRA requirements. The IV-D worker must follow these requirements, which will differ depending on the type of information request.

Note: To avoid inadvertent violations of the FCRA, IV-D workers are advised to comply with the FCRA provisions when making a request to any VOE provider.

For example, some IV-D workers submit VOE requests to the TALX Corporation via The Work Number, an employment and income verification service, to obtain or confirm employment and income information for the purpose of locate and establishment. TALX is a subsidiary of Equifax, a CRA, and is subject to the FCRA. Therefore, the IV-D worker must follow the FCRA requirements when submitting a request directly to this third-party VOE provider. The FCRA governs CRAs and imposes restrictions on a CRA's distribution of consumer reports.⁷

⁴ OCSE and the FCRA use the terms "consumer reporting agencies" and "consumer credit reporting agencies" to refer to CRAs such as Equifax, Experian, and TransUnion. Unless directly quoting another source, the term "credit reporting agency" will be used in this memorandum.

⁵ Ref: Section D of this memorandum.

⁶ MCL 400.234; MCL 552.518

⁷ When the terms "consumer" or "consumer report" are used in this memorandum, they refer to the NCP or custodial party (CP) or a report about the NCP or CP.

The FCRA defines a CRA as any “person” who assembles or evaluates “consumer credit information ... for the purpose of furnishing consumer reports to third parties.” Consumer reports are defined as “any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character or general reputation, personal characteristics, or mode of living....”⁸

OCSE instructs IV-D agencies to consider the purpose for which they are requesting consumer reports from third-party VOE providers that are considered CRAs and to “ensure that they are adhering to the requirements”⁹ of the FCRA.

A. Types of Information Requests

OCSE has determined that the FCRA allows for three types of information requests from the IV-D agency to third-party VOE providers that are considered CRAs:

- Information requests for enforcement of a child support order;
- Information requests for establishment or modification of a child support order; and
- Limited information requests.

1. Information Requests for Enforcement of a Child Support Order

A IV-D worker may submit an information request directly to a third-party VOE provider that is considered a CRA “for the purpose of establishing an individual’s capacity to make child support payments or determining the appropriate level of such payments.”¹⁰ OCSE has described this type of request as a “request for enforcement purposes.”

a. Notice to the NCP

Prior to making this type of request, the IV-D worker is required to provide at least 10 days’ notice to the NCP whose report is being requested.¹¹ The notice must be sent by certified or registered mail to the NCP’s last-known address. When sending certified or registered mail, the sender is notified when the mail has been delivered. This requirement implies that the 10-day period does not begin until after the notice has been delivered. Therefore, the IV-D worker must not submit an information request for enforcement purposes until 10 days after the notice has been delivered.

⁸ 15 USC 1681a

⁹ DCL-12-12, *Third-Party Verification of Employment Providers and the Fair Credit Reporting Act Requirements*

¹⁰ 15 USC 1681b(a)(4)

¹¹ The FCRA does not specify whether to calculate the 10 days using business days or calendar days.

Although the IV-D worker is required to provide notice to the NCP, there is no provision requiring that the NCP respond to the notice before the CRA can release the consumer report. Nor is there a provision allowing the NCP to object to the request. If an NCP does object to a IV-D worker obtaining his/her consumer report, the IV-D worker will inform the NCP that the IV-D agency is authorized by federal law to obtain the consumer report, and the NCP does not have the right to object.

Some IV-D agencies are concerned that providing advance notice to an NCP may result in the NCP terminating employment and may increase costs because the notice must be sent by certified or registered mail. If the request is for the purpose of enforcing a child support order, the IV-D worker should first consider whether the information can be obtained through other enforcement actions or another type of request (Ref: Section B of this memorandum). However, if the IV-D worker determines that the required information can only be obtained by contacting a third-party VOE that is considered a CRA, the IV-D worker must provide the NCP with the advance 10-day notice described in this section.

b. Additional Required Certifications

In addition to certifying that the NCP was provided at least 10 days' notice that a report would be requested, the IV-D worker must also certify all of the following:

- That “the consumer report is needed for the purpose of establishing an individual’s capacity to make child support payments or determining the appropriate level of such payments”;
- That the requested report is for an NCP for whom paternity has been established or acknowledged for the obligation being enforced; and
- That the report will be kept confidential and not used for any purpose other than “the purpose of establishing an individual’s capacity to make child support payments or determining the appropriate level of such payments.”¹²

The FCRA does not specify how to make the required certifications. OCS suggests making the certifications in the same manner that the request is made. For example, if the request is made and accepted verbally, IV-D staff may provide the certifications verbally.¹³ For the 10-day notice certification, IV-D staff could make the following written or verbal statement to the CRA or third-party VOE provider that is considered a CRA: “The person for whom this

¹² 15 USC 1681b(a)(4)

¹³ The State Court Administrative Office recommends that FOCs provide *written* certifications in all instances.

request is submitted was provided a 10-day notice stating that a request for information would be sent to a CRA.”

Identification and certification requirements also apply when submitting this type of information request. These requirements apply to all types of information requests submitted to a CRA (Ref: Section C of this memorandum for more information).

2. Information Requests for Establishment or Modification of a Child Support Order

The FCRA allows CRAs to provide consumer reports to child support agencies “for use to set an initial or modified child support award.”¹⁴ When information is needed for these purposes, the IV-D worker may submit an information request to a third-party VOE provider that is considered a CRA without providing advance notice to the NCP or CP. The notice and certifications described in Section A(1) of this memorandum are not required. However, the identification and certification requirements described in Section C of this memorandum apply.

3. Limited Information Requests

The FCRA allows a IV-D worker to obtain limited information about an NCP or CP from a CRA without giving notice to the NCP or CP or restricting how the IV-D worker uses the information. The information is limited to the name, address, former addresses, places of employment, and former places of employment of the NCP or CP.¹⁵ OCS staff use this type of request when they request the data elements listed above via the TALX website for locate purposes.

B. Options to Consider Before Requesting Information for Enforcement Purposes¹⁶

When deciding whether to submit an information request for the enforcement of a child support order to a third-party VOE that is considered a CRA (including TALX), the IV-D worker must first consider whether the required information can be obtained with a limited information request (Ref: Section A[3]). With a limited information request, information can be obtained from a CRA or from a third-party VOE provider that is considered a CRA without providing advance notice to the NCP. However, the information is limited to the data provided in Section A(3) above.

The IV-D worker must then consider whether the requested information is needed for the purpose of establishing or modifying a child support order (Ref: Section

¹⁴ 15 USC 1681b(a)(5)

¹⁵ 15 USC 1681f

¹⁶ Ref: Section A(1) of this memorandum for an explanation of a “request for enforcement purposes.”

A[2]). If the information will be used for this purpose, the requirement to notify the NCP does not apply.

If a limited information request will not provide the necessary information, and the requested information is not for the purpose of establishing or modifying a child support order, OCSE advises IV-D agencies to submit the information request directly to the employer rather than to the third-party VOE provider. IV-D workers are not required to obtain employment and income information from third-party VOE providers.

States are required to enforce their authority to require employers to respond to requests for employment and income information for any employee.¹⁷ If an employer refuses to provide the required information, other action may be taken.¹⁸

C. Identification and Certification Requirements

Under the FCRA, CRA procedures must require IV-D workers to “identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose.”¹⁹ The identification and certification requirements are intended, in part, to ensure that information obtained from the CRA is being used for the purposes allowed under the FCRA. These requirements are different from the requirements described in Section A(1) which apply only to information requests for the enforcement of a child support order.

The identification and certification requirements described in this section apply to information requests for the establishment or modification of a child support order and to information requests for the enforcement of a child support order. Requests for information submitted to CRAs should incorporate these identification and certification requirements since they eliminate the need for the CRA to contact the IV-D worker to confirm the certification requirements for every request and will prevent delays in obtaining information from the CRA.

As for limited information requests, only governmental agencies can submit these requests to CRAs or third-party VOEs that are considered CRAs. Therefore, when a IV-D worker makes a limited information request, (s)he must certify that it is being made on behalf of a governmental agency. However, the IV-D worker is not required to certify the purpose of obtaining the limited information.²⁰

The following forms generated in the Michigan Child Support Enforcement System (MiCSES) are used to verify employment and income information. Current language on these forms satisfies the identification and certification requirements described in this section:

¹⁷ 42 USC 666(c)(1)(C)

¹⁸ MCL 400.234; MCL 552.518

¹⁹ 15 USC 1681e(a)

²⁰ 15 USC 1681f

- *Employer's Verification of Income* (2030);
- *Employer's Verification of Income and Health Insurance Information* (2031);
- *Employer's Disclosure of Income and Health Insurance Information* (FEN305);
- *Employer's Disclosure of Health Insurance Information* (FEN306);
- *Employment Status Disclosure* (FEN307);
- *Employer Information Request* (LOC_Employer); and
- *Employment Status Disclosure* (RNMFOC22).

When the information request is for enforcement purposes, the language in the above MiCSES-generated VOE forms does not satisfy the requirements that:

- The IV-D worker must also certify that the requested report is for an NCP for whom paternity has been established or acknowledged for the obligation being enforced; or
- The NCP received at least 10 days' notice that a request would be submitted to a CRA.²¹

Therefore, IV-D workers must include this additional information in the request sent to the CRA.

D. Penalties for Failing to Comply with the FCRA or Obtaining Information Under False Pretenses

A IV-D worker who intentionally does not comply with the requirements of the FCRA or obtains a consumer report under false pretenses is responsible for paying for damages suffered either by the consumer or the CRA.²² Additionally, a IV-D worker who intentionally obtains information on a consumer from a CRA under false pretenses may be fined or imprisoned or both.²³

NECESSARY ACTION:

Retain this IV-D Memorandum until further notice.

REVIEW PARTICIPANTS:

Case Management Work Improvement Team (WIT)
 Enforcement WIT
 Program Leadership Group

²¹ Help Desk ticket 426792 was entered to refer the issue of complying with the FCRA notification and certification requirements to the appropriate forms committee to review and add any appropriate language to the VOE forms generated in MiCSES.

²² 15 USC 1681n

²³ 15 USC 1681q

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None

SUPPORTING REFERENCES:

Federal

15 USC 1681 et seq.
15 USC 1681a
15 USC 1681a(j)(2)
15 USC 1681b(a)(4)
15 USC 1681b(a)(5)
15 USC 1681e(a)
15 USC 1681f
15 USC 1681n
15 USC 1681q
42 USC 666(c)(1)(C)
45 CFR 302.12

DCL-12-12, *Third-Party Verification of Employment Providers and the Fair Credit Reporting Act Requirements*

State

MCL 400.234
MCL 552.518

ATTACHMENT:

2013-004E1: DCL-12-12, *Third-Party Verification of Employment Providers and the Fair Credit Reporting Act Requirements*

EPF/VPW