



STATE OF MICHIGAN

DEPARTMENT OF HEALTH AND HUMAN SERVICES
LANSING

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GOVERNOR

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IV-D MEMORANDUM 2016-039

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: December 5, 2016

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

UPDATE(S):

Manual

Form(s)

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 \(DCL\)-16-01, Guidance about Third-Party Verification of Employment Providers](#). DCL-16-01 explains that a 2015 amendment to section 604 of the FCRA¹ removed the requirement that child support agencies give 10 days' notice to the non-custodial parent (NCP) before requesting consumer information² that will be used for enforcing a child support order.

FCRA requirements apply to requests for information that IV-D agencies make to some 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 CRAs and are subject to the FCRA requirements. When IV-D workers request employment and income information directly from a CRA 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.

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

² Consumer information refers to data provided by credit reporting agencies (CRAs). Ref: Section A of this memorandum for more information about CRAs.

This memorandum obsoletes IV-D Memorandum 2013-004, *Fair Credit Reporting Act (FCRA) Requirements and Requests to Third-Party Verification of Employment (VOE) Providers*. Some of the content in IV-D Memorandum 2013-004 was based on DCL-12-12, *Third-Party Verification of Employment Providers and the Fair Credit Reporting Act Requirements*.³ OCS has transferred policy from IV-D Memorandum 2013-004 to this IV-D Memorandum regarding the following topics:

- Why some third-party VOE providers are subject to the FCRA;
- Types of information requests;
- Identification and certification requirements; and
- Penalties for failing to comply with the FCRA.

Much of the content in this memorandum comes from IV-D Memorandum 2013-004. New content in this memorandum is indicated by a change bar in the right margin.

DISCUSSION:

A. Overview

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. States are required to have procedures that give them the authority to require employers to respond to requests for employment and income information for any employee. Michigan law requires employers to respond to FOC and OCS requests for employment and income information.⁴ 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 Michigan Department of Health and Human Services and the offices of the PA.⁵ If an employer refuses to provide the required information, other action may be taken.

Some employers contract with third-party VOE providers to respond when the employers receive requests for their employees' employment and income information. Some of the third-party VOE providers are considered CRAs,⁶ and requests to these providers are subject to the FCRA requirements. The FCRA governs CRAs and imposes restrictions on a CRA's distribution of consumer reports.

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

³ OCSE obsoleted DCL-12-12 with the publication of DCL-16-01.

⁴ Michigan Compiled Law (MCL) 400.234; MCL 552.518

⁵ 45 Code of Federal Regulations (CFR) 302.12

⁶ 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.

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...."⁷

When IV-D workers request employment and income information directly from a CRA or directly from a third-party VOE provider that is considered a CRA, the IV-D worker must comply with the FCRA identification and certification requirements for submitting these requests.⁸

B. Sending VOE Requests

When a IV-D worker sends 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.⁹ The FCRA requirements do not apply to these requests.

Some IV-D workers submit VOE requests directly to third-party VOE providers. When a IV-D worker does this, the request is subject to FCRA identification and certification requirements. For example, IV-D workers have submitted 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, IV-D workers must follow the FCRA requirements when submitting a request directly to this third-party VOE provider. There are penalties, including fines and imprisonment, for failing to comply with the FCRA requirements or for obtaining information under false pretenses.¹⁰

C. Types of Information Requests

The FCRA allows for three types of information requests from the IV-D agency to CRAs:

- Information requests for enforcement of a child support order;¹¹
- Information requests for establishment or modification of a child support order; and
- Limited information requests.

The three types of information requests are discussed below. For all types of information requests, IV-D workers must comply with the identification and certification requirements described in Section D. For information requests that will

⁷ 15 USC 1681a

⁸ The identification and certification requirements are described in Sections C and D of this IV-D Memorandum.

⁹ MCL 400.234; MCL 552.518

¹⁰ Ref: Section E of this memorandum.

¹¹ Before the FCRA was amended in 2015, OCSE interpreted language in the law to permit requests for child support enforcement purposes. The 2015 revisions to the FCRA explicitly state that using consumer information for the purpose of enforcing a child support order is a legitimate purpose.

be used to enforce a child support order, IV-D workers must comply with the additional certification requirements described in Section C(1).

1. Information Requests for Enforcement of a Child Support Order

The 2015 amendments to the FCRA removed the 10-day notice requirement imposed on IV-D agencies requesting information to enforce a child support order. IV-D workers are not required to provide the NCP with 10 days' notice prior to requesting information from a CRA or third-party VOE provider that is considered a CRA to enforce a child support order.

Section 604 of the FCRA states that it is permissible for a CRA to provide information to a state or local child support agency if the person submitting the request makes the required certifications. IV-D workers who submit requests for information that will be used to enforce a child support order must make all of the following certifications in addition to the requirements identified in Section D of this IV-D memorandum. The IV-D worker will certify:

- That the information will be used “for the purpose of establishing an individual’s capacity to make child support payments, determining the appropriate level of such payments, or enforcing a child support order, award, agreement, or judgment”;
- 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 one described above.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 workers may provide the certifications verbally.¹³

Prior to submitting an information request for enforcement purposes, IV-D workers should consider whether a limited information request will provide the necessary information.¹⁴

¹² 15 USC 1681b(a)(4)

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

¹⁴ Ref: Section C(3) of this memorandum for information on limited information requests.

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.”¹⁵ In this situation, the certifications described in Section C(1) of this memorandum are not required. However, the IV-D worker will comply with the identification and certification requirements described in Section D of this memorandum.

3. Limited Information Requests

The FCRA allows a IV-D worker to obtain limited information about an NCP or a custodial party (CP) from a CRA without 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.¹⁶ OCS staff use this type of request when they request the data elements listed above via the TALX website for locate purposes. The IV-D worker will comply with the identification and certification requirements described below.

D. Identification and Certification Requirements

Under the FCRA, CRA procedures must require that individuals or entities requesting consumer information “identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose.”¹⁷ 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.

The identification and certification requirements described in this section apply to all information requests. Requests for information submitted to CRAs or third-party VOE providers considered to be CRAs should incorporate these identification and certification requirements since they eliminate the need for the CRA or third-party VOE provider to contact the IV-D worker to confirm the certification requirements for every request. They also 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 VOE providers 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.¹⁸

¹⁵ 15 USC 1681b(a)(5)

¹⁶ 15 USC 1681f

¹⁷ 15 USC 1681e(a)

¹⁸ 15 USC 1681f

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:

- *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 above MiCSES-generated VOE forms do not contain language which certifies that the requested report is for an NCP for whom paternity has been established or acknowledged for the obligation being enforced.¹⁹ Therefore, IV-D workers must include this additional information when making a request to a CRA.

E. 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.²⁰ 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.²¹

NECESSARY ACTION:

Retain this IV-D Memorandum until further notice. With the publication of this Memorandum, IV-D Memorandum 2013-004 and Exhibit 2013-004E1 are obsolete.

REVIEW PARTICIPANTS:

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

¹⁹ Help Desk ticket 426792 was entered to request that the appropriate forms committee review and modify forms needing this additional certification language.

²⁰ 15 USC 1681n

²¹ 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-16-01, *Guidance about Third-Party Verification of Employment Providers*

State

MCL 400.234
MCL 552.518

ATTACHMENT(S):

None

EPF/VPW