WESTERN INTERGOVERNMENTAL CHILD SUPPORT ENGAGEMENT COUNCIL

Navigating the Currents of Change

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To Report or Not To Report

Does Credit Reporting Lead to Collections or Make it Harder for Parents to be Regular Payers?

Today's Speakers

- Todd Majeka, Vice President Credit Risk, US Bank
- Bryan Tribble, Child Support Director, Illinois
- Jim Fleming, Child Support Director, North Dakota
- Moderator: Alexandra Popescu, Policy Analyst, Oregon Child Support Program

Today’s Format

- History of Federal Law, Regulations, and Guidance
- Credit Reports – Did You Know?
- Trying a New Way – One State’s Recent Approach
- Panel Discussion

History of Credit Reporting Requirement

Prior to 1994: Each State must have in effect laws requiring the use of the following procedures:

> Procedures by which information regarding the amount of overdue support owed by an absent parent residing in the State will be made available to any consumer reporting agency (as defined in section 1681a(f) of title 15) upon the request of such agency; except that (A) if the amount of the overdue support involved in any case is less than $1,000, information regarding such amount shall be made available only at the option of the State

History of Credit Reporting Requirement

1994 to 1996: Each State must have in effect laws requiring the use of the following procedures:

Procedures which require the State to periodically report to consumer reporting agencies (as defined in section 1681a(f) of title 15) the name of any parent who owes overdue support and is at least 2 months delinquent in the payment of such support and the amount of such delinquency; except that (A) if the amount of the overdue support involved in any case is less than $1,000, information regarding such amount shall be made available only at the option of the State

History of Credit Reporting Requirement

1996 to Present: Each State must have in effect laws requiring the use of the following procedures:

(A) In general.-Procedures (subject to safeguards pursuant to subparagraph (B)) requiring the State to report periodically to consumer reporting agencies (as defined in section 1681a(f) of title 15) the name of any noncustodial parent who is delinquent in the payment of support, and the amount of overdue support owed by such parent.

42 USC § 666(a)(7)

History of Credit Reporting Requirement

Federal Rulemaking in 1999:

64 FR 6249 (1999): Section 303.105 Procedures for Making Information Available to Consumer Reporting Agencies. We are removing this section as portions of it are inconsistent with the revised section 466(a)(7) of the Act which requires obligors with any child support arrearage to be reported to consumer reporting agencies. Consistent with the President's Initiative to limit regulatory burden, we are not imposing mandates beyond those in statute or restating statutory requirements and, therefore, are removing the remaining portions.

History of Credit Reporting Requirement

45 CFR § 302.70 Required State Laws:

(a) Required Laws. The State plan shall provide that, in accordance with sections 454(20) and 466 of the Act and part 303 of this chapter, the State has in effect laws providing for, and has implemented procedures to improve, program effectiveness:

> (7) Procedures for making information regarding the amount of overdue support owed by a noncustodial parent available to consumer reporting agencies;

History of Credit Reporting Requirement

42 USC § 666(a):

Notwithstanding section 654(20)(B) of this title, the procedures which are required under paragraphs (3), (4), (6), (7), and (15) need not be used or applied in cases where the State determines (using guidelines which are generally available within the State and which take into account the payment record of the noncustodial parent, the availability of other remedies, and other relevant considerations) that such use or application would not carry out the purposes of this part or would be otherwise inappropriate in the circumstances.

History of Credit Reporting Requirement

42 USC § 666(d):

If a State demonstrates to the satisfaction of the Secretary, through the presentation to the Secretary of such data pertaining to caseloads, processing times, administrative costs, and average support collections, and such other data or estimates as the Secretary may specify, that the enactment of any law or the use of any procedure or procedures required by or pursuant to this section will not increase the effectiveness and efficiency of the State child support enforcement program, the Secretary may exempt the State, subject to the Secretary's continuing review and to termination of the exemption should circumstances change, from the requirement to enact the law or use the procedure or procedures involved.

History of Credit Reporting Requirement

45 CFR § 302.70 Required State Laws:

(b) A State need not apply a procedure required under paragraphs (a) (3), (4), (6) and (7) of this section in an individual case if the State determines that it is not appropriate using guidelines generally available to the public which take into account the payment record of the noncustodial parent, the availability of other remedies, and other relevant considerations. The guidelines may not determine a majority of cases in which no other remedy is being used to be inappropriate.

History of Credit Reporting Requirement

OCSE AT-97-09: **Section 2.12, Procedures to Improve Program Effectiveness,** is amended by revising section 2.12-7, Making Information Available to Consumer Reporting Agencies, in several ways: (1) changing the title to "Reporting Arrearages to Credit Bureaus"; (2) removing the two paragraphs on compliance when arrearages are either above or below $1,000 and adding a paragraph requiring the State to report periodically to consumer reporting agencies the name of any noncustodial parent who is delinquent in the payment of support and the amount of the overdue support owed; (3) adding a paragraph that specifies the State has guidelines which are generally available to the public to determine whether a case is inappropriate for application of this procedure in accordance with §466(d); and (4) changing the citation in the exemption paragraph from §303.105 to §466(d).

History of Credit Reporting Requirement

State Plan Section 2.12, Procedures to Improve Program Effectiveness:

- The IV-D agency has in effect laws requiring the use of procedures subject to safeguards under §466(a)(7)(B) which require the State to report periodically to consumer reporting agencies the name of any non-custodial parent who is delinquent in the payment of support, and the amount of overdue support owed by such parent in accordance with §§454(20) and 466(a)(7).
- The State has guidelines which are generally available to the public to determine whether a case is inappropriate for application of this procedure, in accordance with §466(a).
- [ ]The Secretary has granted the State an exemption from making information available to Consumer Reporting Agencies in accordance with §466(d).

History of Credit Reporting Requirement

COVID-19 FAQ:

The Act also requires states to have in effect laws requiring the use of the other enforcement procedures in section 466, such as driver's license suspension, credit monitoring, and state tax refund offset, but provides that certain of these enforcement actions "need not be used or applied in cases where the State determines (using guidelines which are generally available within the State and which take into account the payment record of the noncustodial parent, the availability of other remedies, and other relevant considerations) that such use or application would not carry out the purposes of [title IV-D of the Act] or would be otherwise inappropriate in the circumstances." States may review their guidelines for use of procedures under paragraphs (3), (4), (6), (7), (15), (16), (17) and (18) of section 466(a) of the Act to determine whether such enforcement action is appropriate during the current public health crisis. State law governs the process for implementing suspension of these enforcement actions during the pandemic.

What Does This Mean?

- No threshold or minimum delinquency – a parent with ANY arrearage must be reported
- Case-specific exception pursuant to guidelines officially adopted by the State as long as the "guidelines may not determine a majority of cases in which no other remedy is being used to be inappropriate"
- State may request exemption from the Secretary if credit bureau reporting "will not increase the effectiveness and efficiency of the State child support enforcement program."

What is the Purpose?

NCSEA Quick Fact:

The purpose of reporting a parent owing support to credit reporting agencies is to give lenders an accurate picture of the total amount of the parent’s debt, including child support. The goal of the program is to encourage parents owing child support to keep current with their child support obligations and to make payments towards arrears to avoid an unfavorable entry on their credit report and an unfavorable credit rating. If an account is reported as past due and the parent brings his or her child support obligation current, it improves the parent’s credit rating.

Credit Reports – Did You Know?

Todd Majeka, Vice President Credit Risk, US Bank

Trying a New Way – One State's Recent Approach

Bryan Tribble, Child Support Director, Illinois

Illinois

- Philosophy
- Issues
- Considerations
- Our Approach

Philosophy

First, do no harm (Primum non nocere)-<u>*NOT*</u> *Hippocrates, likely English physician Thomas Sydenham*

Philosophy, continued

- No place in administrative enforcement for purely punitive actions
  - Should always be centered on the best interests of the child and the family, as a whole

Issues

- Wide current usage of credit reports
- On average, a 780 credit score can be negatively impacted by 100 points due to a reported child support debt
- Once reported, payment toward debt, even if 100% or more of court ordered, has little to no impact until balance paid in full
- 7-year lookback

Issues, continued

- Furthers negative narrative of our program
  - Connected to avoidance, making engagement more difficult
- Higher interest rates or declined
- Historical policy and practice around order establishment and modification
- Census data

Considerations

- What is your goal with this enforcement remedy?
- What is the percentage of cases where your first action is establishment v. enforcement?
- What do those you serve truly want and need from you?
  - Do you have the ability to provide “a la carte” services?

Considerations, continued

- How do you currently handle cases where the parent responsible for paying support is justice involved?
    - When did that practice start?
    - Any carve-out for those whose cases were handled differently?
- What is the reporting threshold?
    - When was that amount established?
    - What was the average and median current support amount at that time v. today?
    - Is the threshold appropriate?

Considerations, continued

- Do you have any ability for Turner-type review or use of criteria similar to driver’s license suspension?
- What is your percentage of current support collected?
- What is the percentage of your cases with 100% of current support collected annually?
- How strong is your modification process?
  - What is the average number of days from request to filing?

Considerations, continued

- If you are going to report those who have a past-due balance, why do you not report those who pay, regularly and routinely, as ordered?
- Are there possible alternative uses of this data, meaning what if we were the consumer rather than the contributor?
    - There is some emerging information regarding the use of credit reporting as a tool for predictive analytics for cases that do not have a past-due balance but are likely to accrue a debt within 30 days, 60 days, 90 days, 180 days, 12 months

Our Approach

- We reviewed many of the factors on the foregoing sections, and found from a policy perspective, this just was not appropriate for the families we serve.
- Additionally, we quantified the cost v. collections. In so doing, found that from an efficiency and fiscal perspective, it did not make sense.
- We requested, and were granted, a waiver.

To Report or Not To Report – Panel Discussion

Questions?


THANK YOU!