REPORT OF THE VIRGINIA
DEPARTMENT OF SOCIAL SERVICES

Implementing Annual Credit Checks for Children in Foster Care (Chapter 432, 2012)

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 20

COMMONWEALTH OF VIRGINIA
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COMMONWEALTH *of* VIRGINIA

DEPARTMENT OF SOCIAL SERVICES

Office of the Commissioner

Martin D. Brown
COMMISSIONER

December 1, 2012

MEMORANDUM

TO: Members, Virginia General Assembly

FROM: Martin D. Brown

SUBJECT: Report on Implementation of Credit Checks for Children in Foster Care

Chapter 432 of the 2012 Acts of Assembly requires local departments of social services to conduct annual credit checks for children in foster care and to resolve cases of identity theft when detected. The legislation also requires the Department to develop and implement procedures to protect personal identifying information of children in foster care. The third enactment clause of this legislation requires the Department of Social Services to report on their activities to implement the provisions of this act.

I am pleased to submit the Department of Social Services' report prepared pursuant to Chapter 432 of the 2012 Acts of Assembly. Please feel free to contact me if you have questions or if I can provide additional information.

Sincerely,

Martin D. Brown

MDB:kc

Attachment

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A REPORT OF THE
DEPARTMENT OF SOCIAL SERVICES
COMMONWEALTH OF VIRGINIA

IMPLEMENTING ANNUAL CREDIT CHECKS FOR CHILDREN IN FOSTER CARE

REPORT TO THE GENERAL ASSEMBLY OF VIRGINIA

DECEMBER 2012

Introduction

The 2012 Virginia General Assembly required the Department of Social Services (Department) to establish policy and procedures and furnish a report by December 1, 2012 on its activities to implement provisions of § 63.2-905.2 of the Code of Virginia (Appendix A) that requires annual credit checks on children ages 16 and over in foster care. This section of Code also requires the Department to develop policies and procedures to assign unique identifying numbers other than social security numbers to children entering foster care, limit the disclosure of identifying information on children in foster care to foster parents or others, and to respond to valid request for a child's personal identifying information. The report is to include any recommendations for legislative or regulatory action necessary to enable the Department to implement the provisions of this act.

The federal Child and Family Services Improvement and Innovation Act (CFSIIA) of 2011 also requires that annual credit checks be conducted on all youth age 16 and older in foster care. The Department collaborated with stakeholders to implement the provisions of these laws. However, Virginia and other states' inability to develop a systematic approach with the three national credit bureaus for conducting the credit checks on each youth and procedures for correcting situations where identity theft and misuse of personal information is identified creates a barrier to implementation of both the federal and state laws.

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Executive Summary

Identity theft is a national problem and is becoming more common among the foster care population. According to one study, "as many as 30 percent of foster children might be victims of identity theft, based on reviews of the credit reports of foster children." [1] Children in foster care are at greater risk to suffer from identity theft due to the fact that a wide variety of individuals including parents, extended family members, social workers, foster parents and many others may have access to a foster youth's social security number and other identifying information. In addition, children may not become aware of any problems and how their information has been compromised until they become young adults. Older youth aging out of foster care may learn that they were the victim of identity theft for the first time when they apply for credit on their own.

To address this problem, Virginia enacted legislation to help deal with the problem of identity theft among foster children. Section 63.2-905.2 of the Code of Virginia requires credit checks on foster children to identify cases of identity theft and misuse of personal information and to help resolve cases where identity theft occurred. This law requires each child in foster care, age 16 and over, to have annual credits checks which allows local departments of social services (LDSS) to identify problems earlier and provide assistance in correcting any identity theft or other fraudulent use of children's identity by others. Also, it provides support for the Department to develop and implement policies and procedures so that identity theft and misuse of personal information of foster children can be addressed in a consistent and efficient manner statewide. Virginia law is consistent with the federal CFSIIA of 2011 which mandates annual credit checks for all youth ages 16 and older in foster care. The CFSIIA also requires states to help children resolve credit problems that turn up on their credit report which may include negotiating debt incurred by the identity theft and removing false information.

The Department worked with Virginia's stakeholders to develop procedures and guidance based on the requirements of federal and state laws for annual credit checks for older youth. Stakeholders included the United States Department of Health and Human Services, Administration for Children and Families (ACF), National Resource Center on Youth Development, LexisNexis Corporation, three nationwide Credit Reporting Agencies (CRA's), and state, regional and local staff. Until the CRA's establish a final process for managing these checks, it is not known if conducting credit reports on youth needs to be done by LDSS or the Department.

The Department and its stakeholder work group also discussed developing unique client identifiers other than the child's social security number (SSN) and the challenges associated with assigning a unique identifying number to a child entering foster care. Implementing credit checks and developing policy and procedures for protecting the identity of youth in foster care is an on-going process.

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[1] http://news.yahoo.com/law-protects-foster-kids-identity-theft-163241775.html

Report of Activities to Implement Provisions of §63.2-905.2 of the Code of Virginia

Background

Identity theft is a national problem that is becoming common among the foster care population. According to one study, "as many as 30 percent of foster children might be victims of identity theft, based on reviews of the credit reports of foster children." [2] When a child's identifying information is used to request a credit check, the result of the credit check should result in "no report" because minors do not have resources or established credit that would result in a report on their credit rating. However, these children are particularly vulnerable to identity theft because their personal information is often shared widely. Parents, extended family members, foster parents, group home personnel, social workers, the schools and many others may have access to a foster youth's SSN, birth date, birth certificate, and other identifying information. According to a recent report from the *Children's Advocacy Institute and First Star*, "Identity theft can have devastating consequences for foster youth who lack the familial and social safety net and support that their peers, with no history of foster care, enjoy." [3]

Children may not become aware of any credit problems and how their identifying information was compromised until they become young adults. The misuse of the child's identity may not be discovered until the youth exits the foster care system and applies for a cell phone, job, student loan or apartment. Without careful management of identity theft cases and resolution of the theft while the child is in foster care, the child could face penalties as they become adults for acts committed by others resulting from the theft of their identity. "Complicating the problem is the reality that repairing credit problems caused by identity theft can be a complex, expensive, and time consuming process, particularly for a youth with no familial or social safety net."[4]

The federal CFSIIA of 2011 mandates that free annual credit checks be conducted on all youth, age 16 and older, in foster care. It also requires states to help children resolve credit problems that turn up on their credit report which may include negotiating debt incurred by the identity theft and removing false information. The ACF is requiring that credit checks be conducted for each foster youth through the three nationwide CRA's which are Equifax, Experian and TransUnion. New state law (§ 63.2-905.2 of the Code of Virginia) is consistent with CFSIIA regarding conducting credit checks on foster children to identify cases of identity theft and misuse of personal information and resolving cases of identity theft for youth in foster care. Virginia law now requires each child age 16 and over to have annual credits checks allowing LDSS to identify problems earlier and provide assistance in correcting any identity theft or other fraudulent use of the child's identity by others. Section §63.2-905.2 of the Code of Virginia specifically requires the Department to develop and implement policies and procedures that:

- Ensure annual credit checks on foster children over 16 are conducted;

[2] http://news.yahoo.com/law-protects-foster-kids-identity-theft-163241775.html

[3] First Star and The Children's Advocacy Institute. *The Fleecing of Foster Children: How We Confiscate their Assets and Undermine their Financial Security,* Children's Advocacy Institute of the University of San Diego School of Law, 2011. Page19.

[4] Ibid. Page 19

- Assign unique identifying numbers (other than SSN's) to children entering foster care;
- Limit disclosure of foster children's SSN's and other unique identifying information to foster care providers and others who have access; and
- Respond to valid requests for information regarding the child's SSN or personal information from those having a legitimate need for such information.

Also, this section of the Code of Virginia instructs the Department to develop policies and procedures so that identity theft and misuse of personal information of foster children can be addressed in a consistent and efficient manner statewide.

Actions Taken to Implement Credit Checks

The Department continues to work on the implementation of federal and state laws for annual credit checks for older youth. In order to develop processes and procedures to meet legislative requirements, the Department:

- Participated in a federally sponsored webinar and a nationwide technical meeting sponsored by the ACF National Resource Center on Youth Development to discuss the requirements of the CFSIIA, barriers faced by all states in implementation and federal activities taken to assist states in overcoming these barriers.
- Received guidance from the ACF on obtaining credit reports, which included contact information for the three nationwide CRAs. Although ACF discussed the idea of the CRA's developing one universal process that would be used by all three CRA's to obtain the credit reports, no such process is currently available.
- Contacted the CRA's regarding their process for conducting the credit checks on youth. Procedures for each CRA to have a separate Service Agreement and master account with the Department that would allow several users' access at the state level to their search tools are available. However, the CRA's have no process to develop user agreements for staff in the 120 LDSS to access the credit reports of youth in foster care under their legal custody.
- Consulted the Commonwealth's Permanency Advisory Committee (PAC), composed of public and private foster care providers, to discuss the processes, procedures and barriers of meeting the requirements of the federal and state legislation.
- Conducted five regional training events to discuss the federal and state laws requiring credit checks on older youth in foster care. Common concerns that resonated throughout the LDSS staff being trained included: 1) who will conduct the credit checks (i.e., the Department versus the LDSS; 2) who will work with the youth on interpreting the reports; and 3) who will pay fees and costs associated with conducting credit checks and clearing up a youth's credit records of erroneous and fraudulent data.
- Drafted preliminary guidance on obtaining annual credit checks with input from PAC, the Department's regional Permanency Consultants and LDSS. However, procedures for conducting checks are not yet in place. The Department sent out a statewide announcement to inform LDSS that credit checks are required for older youth in foster care as directed by federal and state laws and that procedures for conducting these reports were being developed.
- Met with the LexisNexis Corporation, a provider of computer-assisted research services, to assess their ability to provide statewide access for credit check searches. The Department currently contracts with LexisNexis to provide Accurint, an on-line investigative search tool, to all LDSS for use in finding family members and other adults who may serve as a resource

to children/youths involved in the child welfare system. The Department learned that Florida had developed a "tri-merge report" (a single report from all 3 CRA's that would be generated as a result of one single request) to do credit checks on youth in foster care. The Department consulted with LexisNexis to determine if they could run a similar "tri-merge" report and was informed that the corporation that covers this region did not have the capability to perform this function. However, LexisNexis agreed to explore this option for Virginia.

Implementation Issues for Obtaining Credit Checks

Conducting credit checks on all foster care youth 16 and over is a major undertaking for all states. For Virginia, the barriers to implementation are exacerbated by the fact that it is one of only 12 states that operate under a state supervised, locally administered social services delivery system. The Department's research into developing and implementing a consistent and efficient process to conduct credit checks on youth in the custody of LDSS identified the following challenges for implementing the requirements of CFSIIA and § 63.2-905.2 of the Code of Virginia:

- Procedures adults use to get credit checks will not work for minors. While youth ages 18 and over can request a free annual credit report (annualcreditreport.com) from each CRA, many may need assistance in interpreting the report.
- In order to conduct the annual credit checks, the child's SSN will need to be provided to the CRAs.
- It has not been determined who will provide the identifying information on youth to the CRA (i.e., state staff or local staff) and how the fees for credit checks will be paid. This decision rests in part, on the final procedures for requesting credit reports developed by the CRA's and how these procedures can best be implemented in a state supervised, locally administered child welfare system.
- There are fees for running credit check reports for foster children and each CRA's fees are different. If the "Agreement for Services" contract for each CRA is signed by the Department, then the state will be responsible for the fees as opposed to 120 localities signing an agreement and paying the set up fee and ongoing monthly fee. The current process for requesting credit checks and the fee structure for each CRA is described below.

    - **Equifax**- is in the process of finalizing an "Agreement of Services" for states to enter into to access credit reports. Once names are submitted, Equifax will only report to the state if a credit report exists as this will indicate identify theft. There is a one-time set up fee of $500 and a monthly service fee of $50 for unlimited reports.

    - **Experian**- is working on a process that would allow the state to authenticate and sign an agreement with them and send credit check requests electronically. The current manual process involves mailing the youth's identification information (i.e., a court order indicating the LDSS has legal responsibility for the youth) to Experian. Experian will run the credit checks and mail the results back to the sender. Currently, there is no fee for the manual process but there will be for the electronic submission once it is in place (tentatively January 2013).

- **TransUnion-** wants the Department to sign the "Agreement of Services" contract and be enrolled as a customer. This will entitle Virginia to one account with as many users as needed; however, if the credit check requests are to be made by the 120 LDSS, the Department will be required to maintain a list of each user and their user ID. This will require the Department to work with the LDSS to identify at least one user per LDSS and to maintain an up-to-date user identification list. There will be at least 120 users from the LDSS. At this time, there is an initial fee of $250 and an annual fee of $100.

Virginia has 1,768 youth ages 16 up to 21 in foster care. Of that number, 1003 are ages 16 and 17.[5] Given national estimates that 30% of youth age 16 and over in foster care experience identity theft, it is assumed that 300 youth currently in foster care will experience identity theft or misuse of their personal identifying information. Based on the number of foster youth in Virginia and requirements of the new laws, the Department needs to determine if is it more efficient for the state office or the LDSS to be responsible for obtaining the credit checks.

Benefits of the Department being responsible for requesting credit checks on youth in foster care include:

- Since the Department (rather than each LDSS) would pay the fees required by each of the CRA's to access credit check reports on children in foster care, the cost to the state would be much less than if the LDSS were required to each pay the access fees. However, if the Department were to pass all of the costs of credit checks to the LDSS, each locality would assume the costs of these checks and the Department would not experience any fiscal impact.
- It is easier for the Department to track statewide data for youth who are victims of identity theft and ensure that steps were taken to correct the misuse of the child's identifying information.
- The Department can sign the "Agreement for Services" contract with the CRA's and pay the initial set up and ongoing fees for conducting the checks on each youth. This will prevent the 120 LDSS from having to individually sign the "Agreement for Service" contracts with each CRA and paying all required fees.

Disadvantages of the Department being the sole agency responsible for obtaining credit reports for every eligible child in foster care are based on the Department's:

- Inability to provide copies of each youth's court order as currently required by Experian.
- Lack of resources to run the credit checks on youth and track LDSS follow-up on those youth who receive a report of theft.
- Legal role with the child. The Department is not the legal custodian of the child and therefore gaining access to all identifying information on a child including verified SSNs and court orders is a complicated process.

Benefits of the LDSS' being the agencies responsible for requesting credit checks on youth in foster care are based on the LDSS:

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[5] OASIS Data, October 2012

- Access to more manpower than the Department to run credit checks and work with the youth to correct any misuse of identifying information than the state.
- Ability to provide copies of the court order or other identifying information to the CRA that is required for the credit check and may be required for clearing up cases of misuse of child's personal identifying information.[6]

Disadvantages of the LDSS' being the sole agency responsible for obtaining credit reports include:

- Increased costs to the Commonwealth (this could include state, local or state and local funds) since every LDSS would be required to pay the CRA's fees for obtaining credit checks as opposed to the Department paying one fee per CRA.
- A possible fiscal impact for some LDSS due to the increase in the amount of work required to run the credit reports, track them and resolve cases of identity theft including paying legal fees if a lawyer is required to assist in resolving these cases.
- Increased requirements for foster parents since some of the work required to resolve identity theft cases may be delegated by the LDSS to the foster family. Foster or pre-adoptive parents may be required to taking time off work and transport the child to meet with lawyers or others to resolve the theft. It is also more difficult to ensure the resolution of the identity theft case if the foster parent is responsible for this task.

Implementation Issues for Unique Identifiers for Children in Foster Care

In addition to conducting credit checks on older foster youth, § 63.2-905.2 of the Code of Virginia requires the Department to develop and implement procedures to assign unique identifying numbers (other than the SSN) to children entering foster care. The Department currently assigns each child in foster care a unique numeric identifier in the Commonwealth's child welfare database, OASIS (Online Automated Services Information System). This client ID number is only used as a unique identifier for the Department and the LDSS. Other child-serving agencies that interact with children in foster care such as the Comprehensive Services Act, the Department of Education, the Department of Behavioral Health and Developmental Services, the Department of Juvenile Justice, the Department of Medical Assistance Services and the Domestic and Child Relations courts have their own unique identifiers for each child. There is no system in place allowing for the cross-matching of children across child-serving agencies based on a universal child ID number. The Commonwealth is addressing the problem of data-sharing across agencies but progress to date has not rectified the need to share data across child-serving agencies via a universal identifier that is not the child's SNN.

It is impossible to substitute an alternative unique identifier for the SSN in order to access other benefits or services for the child. It is the child's SSN number that permits school enrollment, hospitalization, the receipt of out-patient medical care, reimbursement for medical services by insurance companies, access to Social Security benefits and foster parents' ability to

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[6] Any credit check process that requires the submission of a court order regarding the child in foster care is problematic due to the confidential nature of the information contained in such orders. The Department does not support this procedure and is anticipating Experian will change their process and not require these court orders within the next few months.

claim the child on their annual income tax returns. Even if a universal identifier were established for children in foster care, systems governing medical care, taxes and social security would be unable to accept such a number in place of a social security number for the child.

Foster parents are often required to assume many of the daily requirements any parent accepts in raising a child. School enrollment, obtaining medical care, and for those foster parents with whom children are placed with the permanency goal of "permanent foster care," pursuant to §§63.2-906 and 63.2-908 of the Code of Virginia, consent for enlistment in the armed service, surgery, marriage, enrollment in college and obtaining a drivers license require the foster parent to have access to identifying information, including the social security number of children in foster care. Restricting foster parents from access to the child's identifying information would severely compromise the foster parent's ability to carry out these parental duties and could negatively impact the child's well-being (e.g., waiting for the LDSS case worker to enroll the child in school could cause delays in enrollment).

Fiscal Impact

The fact that the CRA's have not yet determined how states can access credit reports for children in foster care prohibits the Department from providing a fiscal impact estimate for implementation of the federal and Commonwealth's laws for conducting these credit checks. Although there is information that suggests rectifying an inaccurate credit report on a child in foster care (i.e., fraudulent use of the child's identifying information to obtain credit by others) may be as costly as $1000 per child and 150 hours of work by the individual who assists the child,[7] this cost estimate is variable depending on the nature of the identity theft.

What is clear is that the Commonwealth will be required to pay access fees for the CRA's to obtain these credit checks. These fees will likely be significantly increased if the responsibility to obtain these checks rests with the 120 LDSS as opposed to the Department since the CRA's are developing procedures (and fees) based on the states entering into "Agreements for Service" contracts based on centralized organizational governments (i.e., state administered child welfare structures).

Findings and Next Steps

Findings obtained as a result of this study include:

- The credit report process currently in place from the three CRA's are particularly complicated to implement for states such as Virginia that have state supervised, locally administered child welfare systems.
- Without a defined procedure to obtain these checks, the fiscal impact of obtaining these checks is unknown.
- Implementing the requirements of federal and state laws to obtain credit checks for children in foster care are unclear and development of procedures, including payment for these

[7] 2008 study from Javelin Strategy and Research, http://www.thedailybeast.com/newsweek/2009/02/06/sabotaged-by-the-system.html

checks, is more complex due to Virginia being a state supervised, locally administered child welfare system; and

- There is no reasonable way to substitute another universal unique identifier for the SSN for accessing services in most situations.

Next steps for the Department include:

- Reconvene a workgroup to further discuss how to protect children from their identity being stolen, especially given the need to use the SSN to access benefits. This workgroup will also assist in drafting statewide guidance for the LDSS.
- Continue to pursue establishing a unique identifier to share data across the Commonwealths' child-serving agencies.
- Work with the CRA's to develop a more "user-friendly" and fiscally economical approach in searching for records on children in foster care especially if the LDSS are responsible for obtaining credit checks on children in foster care.
- Develop processes with assistance from the CRA's and state law enforcement for resolving cases of identity theft and misuse of personal information when such cases are identified.
- Provide training for foster parents, child care institutions, group home personnel and LDSS workers on protecting foster children's identity; and
- Provide education on the importance of identity theft protection and credit preservation to youth in foster care.

APPENDIX A

VIRGINIA ACTS OF ASSEMBLY--2012

CHAPTER 432

An Act to amend the Code of Virginia by adding a section numbered 63.2-905.2, relating to foster children; credit checks.

Approved March 30, 2012 [HB 500]

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 63.2-905.2 as follows:

§ 63.2-905.2. Annual credit checks for children in foster care.

Local departments shall conduct annual credit checks on children aged 16 years and older who are in foster care to identify cases of identity theft or misuse of personal identifying information of such children. Local departments shall resolve, to the greatest extent possible, cases of identity theft or misuse of personal identifying information of foster care children identified pursuant to this section.

2. That the Department of Social Services shall develop and implement policies and procedures designed to protect personal identifying information of children aged 16 years and older in foster care in order to prevent identity theft by foster care providers and others who may have access to personal identifying information of such children. In doing so, the Department shall include policies and procedures for (i) assigning unique identifying numbers other than social security numbers to children entering foster care; (ii) limiting, to the greatest extent possible, disclosure of foster children's social security numbers and other unique identifying information to foster parents or other persons who may have access to personal identifying information about a child in foster care; and (iii) responding to valid requests for information regarding a foster child's social security number or other personal identifying information from individuals and entities having a legitimate need for such information. The Department shall also develop policies and procedures for conducting annual credit checks on foster children.

3. That the Department shall report to the General Assembly on its activities to implement provisions of this act, including any recommendations for legislative or regulatory action necessary to enable the Department to implement the provisions of this act, no later than December 1, 2012.