STATE OF RHODE ISLAND
CHILD SUPPORT ENFORCEMENT

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THE LEGAL BASIS FOR FINANCIAL INSTITUTION DATA MATCHES

I. OVERVIEW OF CHILD SUPPORT PROGRAM

Until about 1975 the Federal Government, for the most part, viewed issues relating to child support as domestic relations matters that should more properly be dealt with at the state level. However, sometime in the early 1970's it became apparent to Congress that the Aid To Families With Dependent Children (AFDC) program had dramatically changed over time.

What it discovered was that in prior years the majority of children needing public assistance was as a result of the death of their father. By the 1970's the majority of children needing public assistance was as a result of the parents being separated, divorced, or otherwise never married. Congress began to consider ways it could possibly reduce the costs of its burgeoning public assistance programs.

In 1975 Congress enacted Public Law 93-647 in an effort to reduce public assistance expenditures. This Act added a new section (part D) to Title IV of the Social Security Act. Generally speaking, this law provided for federal matching funds to the states to be used for enforcing child support obligations. In 1981 state child support agencies were permitted to collect spousal support in certain circumstances as part of its "IV-D" program. In 1984 Congress saw fit to extend its child support program to include a requirement that states secure medical coverage or medical support orders as part of their efforts, and to include non-welfare custodial parents in these efforts.

Basic responsibility for administering the program is left to the respective states; however, the Federal Government, through the Department of Health and Human Services Federal Office of Child Support Enforcement oversees the performance of the states in their respective compliance with federal mandates.

In short the federal law requires that the states provide services to both public assistance and non-public assistance families alike. Those services must include locating absent parents, establishing paternity, establishing child support orders, enforcing child support and medical support obligations, and establishing medical coverage or medical support orders. Individuals receiving Temporary Assistance for Needy Families (TANF), the successor program to AFDC, must assign their right to child support to each state as a condition of receiving public assistance. (See, RI Gen. Laws § 40-6-9 "Assignment of child, spousal, and medical support rights" and RI Gen. Laws § 42-12.3-12 "Assignment of medical support rights.")

For purposes of Financial Institution Data Matches (FIDM), the seminal moment occurred in 1996 when Congress enacted Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) otherwise commonly referred to as the Welfare Reform Act. In that Act Congress abolished the AFDC program and replaced it with a block grant program (TANF) and made approximately fifty changes to the child support enforcement requirements of Title IV-D of the Social Security Act. One of the changes included a new requirement of an integrated automated network that linked all states to information about the location and assets of non-custodial parents. The new provisions also mandated that states implement more specific enforcement techniques.

II. THE ROLE OF STATES AND FINANCIAL INSTITUTIONS AS MANDATED BY FEDERAL LAW

PRWORA required states to use such enforcement techniques as:

a) imposing liens against real and personal property for amounts of overdue child support;

b) withholding of state income tax refunds payable to a parent who is delinquent in support payments;

c) reporting overdue child support arrears to credit bureaus;

d) withholding, suspending, or restricting use of a driver's, professional, recreational, sporting, and occupational licenses of non-custodial parents who owe past due child support; and

e) using of administrative process to secure assets to satisfy payment of past-due support by seizing or attaching unemployment compensation, workers compensation,

> judgments, settlements, lottery winnings, and assets held in financial institutions.

Congress codified these changes at 42 U.S.C. § 651 et.seq.

The specific provisions relating to financial institution data matches are found at 42 U.S.C. § 666 (a) (17) (A), which provides that:

> Procedures under which the State agency shall enter into agreements with financial institutions doing business in the state –
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> (i) to develop and operate, in coordination with such financial institutions…a data match system, using automated data exchanges to the maximum extent feasible, in which each such financial institution is required to provide for each calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at such institution and who owes past-due support, as identified by the State by name and social security number or other taxpayer identification number; and
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> (ii) in response to a notice of lien or levy, encumber or surrender, as the case may be, assets held by such institution on behalf of any noncustodial parent who is subject to a child support lien ….

The federal law **provides immunity from liability** to financial institutions for either providing information to the State in accordance with the aforementioned provisions or otherwise surrendering any asset in response to a lien or levy issued by the state as provided for in subsection 17.(See 42 U.S.C.§ 666 (a) (17) (C). The immunity from liability also extends to "any other action taken in good faith to comply with requirements of subparagraph (A)." Id.

III. THE FEDERAL LAW SPECIFICALLY AND BROADLY DEFINES

WHICH FINANCIAL INSTITUTIONS AND WHAT ACCOUNTS ARE SUBJECT TO LIENS AND LEVYS

PRWORA defined "[f]inancial institution" for purposes of section 17 at 42 U.SC. § 669 a (d) (1). It provides that:

> The term "financial institution " means –
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> (A) depository institution, as defined in section 1813(c) of Title 12;
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> (B) an institution - affiliated party, as defined in section 1813(u) of Title 12
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> (C) any Federal credit union or State credit union, as defined in section 1752 of Title 12, including an institution – affiliated party of such a credit union, as defined in section 1786 (r) of Title 12; and
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> (D) any benefit association, insurance company, safe deposit company, money-market mutual fund, or similar entity authorized to do business in the State.

Although this analysis cites specific definitions contained in sections of Title 12 of the U.S. Code, it is left to the financial institutions to acquaint themselves with these specific provisions. Those provisions reflect Congress's intention to use a very broad definition of the kinds of financial institutions that would be subject to each state's respective lien provisions. Moreover, Congress retained this expansive definition when it provided that "[f]inancial record for purposes of section 17 has the meaning given such term in section 3401 of Title 12." (See, 42 U.S.C. § 669a (d) (2).

Finally, any doubt as to the expansive intent of Congress when it required the respective states to implement the Financial Data Match provisions is dispelled when you consider that "[a]ccount[s]" subject to state liens for child support purposes is defined to include any:

> demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money-market mutual fund account. (See, 42 U.S.C. § 666 a (17) (D) (ii)).

Indeed, recognizing the enormity of the undertaking by the states and financial institutions to comply with these new requirements, Congress in 1998 made it easier for multistate financial institutions to match their respective account records with individual state child support cases. Specifically, it permitted the Federal Parent Locater Service (FPLS) to assist in coordinating

these matches in a multistate report that was then provided to the individual state child support offices.

IV. RHODE ISLAND ENACTED THE CHILD SUPPORT LIEN ACT AND THE EXCHANGE OF INFORMATION ACT IN SUPPORT OF CHILD SUPPORT COLLECTIONS

A. CHILD SUPPORT LIEN ACT

In conjunction with the federal provisions enacted by Congress as part of PRWORA, the Rhode Island General Assembly enacted two acts that directly relate to financial institution data matches. First, it enacted the Child Support Lien Act in Chapter 21 of Title 15. Section 1 of that chapter authorizes the child support agency to "institute collection procedures for all arrearages which accrue against child support payments owed pursuant to a court judgment or support order." Subsection (b) of that section specifically provides for the "use of lien[s] [and] levy[s]…."

Section 2 of that chapter creates a lien in favor of the "obligee or assignee" as of the date on which any child support was due. The section provides further that the lien "incorporates any unpaid child support which may accrue in the future and shall not terminate except as provided [for in section 4 subsection f of the act.]." This section also provides that any non-obligor joint party to any property (including financial institution accounts) may seek either an administrative hearing or judicial review by motion in the family court if they lay claim to any portion of the account proceeds.

Section 3 of this chapter has particular relevance for purposes of bank matches. Generally, the section provides for notice to any obligor of the agency's intent to lien accounts located at financial institutions. What is particularly important for purposes of bank matches is that subsection (c) of this section addresses the effect on any financial institution when it receives an intent to lien from the agency where it provides that:

> The notice of intent to lien directed to any financial institution, or other similar institution or organization, shall operate as a hold on any and all accounts specified in the notice. Neither the obligor or non obligor joint owner shall be permitted to withdraw from these accounts until the earlier of:

> [1. a decision by the agency or its hearing officer that the obligor's account is subject to any exemptions provided by law or 2. an administrative or judicial decision in favor of the obligor as to the extent any arrears exist].

Thus, any lien acts as a freeze on any account "specified in the notice." Rhode Island Child Support Enforcement has interpreted that language to mean that the "freeze" only applies up to the amount of arrears indicated in the notice of intent to lien sent to the financial institution.

Another important aspect of this section is the time requirements for certain notices. It should be noted that the last sentence of subsection (d) provides that "[t]he notice of intent shall be recorded no more than ten (10) days prior to the mailing of the notice to the obligor under subsection (a) of this section." Although it recognizes financial accounts are not maintained as a matter of public record, Rhode Island Child Support Enforcement has interpreted this provision, for purposes of bank accounts, to permit it to send a notice of intent to lien to the financial institution no more than ten (10) days before the agency sends written notice to the obligor/account holder. Obviously, this practice is done so as to insure that the "freeze" on the account occurs before the obligor/account holder is informed of the agency's intentions; otherwise, the obligor/account holder would be alerted to empty the account before the financial institution receives the notice of intent to lien.

Section 4 of this act provides how the "intent to lien" may be perfected to a lien. Relevant for purposes of bank matches, the agency is permitted to perfect the lien:

> (c) If any obligor against whom a notice of intent to create a child support enforcement lien has been filed according to this section:
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> (1) Fails to request a hearing within the time frame provided;
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> (2) Fails to appear; or
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> (3) Neglects or refuses to pay the sum due after the expiration of thirty (30) days after a hearing is conducted by the department pursuant to §15-21-3 at which the determination is made the obligor parent is in arrears.

Section 5 of the Act addresses the authority provided to the agency to levy any personal property up to the amount of the lien. (See, RI Gen. Laws § 15-21-5 (b)). Indeed, subsection (a) specifically declares that "[a]ny person in possession of property upon which a lien has been imposed shall, upon demand, surrender the property to the department." Subsection (c) of that same section provides further that:

> Whenever any property upon which levy has been made is not sufficient to satisfy the claim of the state for which levy is made, the department may thereafter, as often as necessary, proceed to levy, with notice, upon any other personal property of the obligor liable to levy, until the amount due from him or her, together with expenses, is fully paid. In all cases, any support obligations shall be fully satisfied prior to payments for expenses.

Of more particular interest to financial institutions may be the provisions of subsection (d), which in part declare that "any person required to surrender property who fails or refuses to surrender the property without reasonable cause shall be liable for a penalty equal to twenty-five percent (25%) of the amount receivable." (See, RI Gen. Laws § 15-21-5(d)). Consequently, Rhode Island Child Support Enforcement asserts that a financial institution within this jurisdiction may not simply elect to ignore a lien or levy procured for child support arrearages simply because the financial institution would prefer not dedicating its resources to such an endeavor. Title 15 chapter 21 section 6 (a) holds financial institutions harmless so long as they comply in good faith with the levy procured by the state agency.

Finally, financial institutions should be aware that Section 11 of the Child Support Lien Act (RI Gen. Laws § 15-21-11) requires any institution in this state to honor any lien of another state so long as that other jurisdiction has complied with the specific requirements contained in the act. That law specifically requires that the lien be awarded "full faith and credit without the requirement of a hearing."

B. EXCHANGE OF INFORMATION IN SUPPORT OF CHILD SUPPORT COLLECTION ACT

The second major law enacted by the General Assembly as a result of PRWORA was the addition of several new sections to Chapter 22, which provided for broad access to information by the Child Support Agency.

Section 1, in part, permits the agency to seek access from individuals and entities named in this section for purposes related to the establishment of paternity, to establish or modify a child support and/or medical support order, to enforce a child support or medical support order, or to locate an individual for any or all of the aforementioned purposes. (See, RI Gen. Laws § 15-22-1 (a)).

That same section provides immunity from liability, either criminally or civilly, for any entity that complies with the agency's request for information provided for in the section. Moreover, any entity who without reasonable cause fails to reply to a request pursuant to the provisions of subsection (a), or "fails to comply with a request within twenty (20) days of receipt [of such a request], shall be liable for a civil penalty of one hundred dollars ($100) for each violation, to be assessed by the department or by the family court."(See, RI Gen. Laws § 15-22-1 (a)).

Any question as to whether financial institutions are covered by this Act is answered by subsection (d) where it provides that:

> Unless otherwise limited by federal statute, the department may require disclosure of information relating to the obligor including, but not limited to, the obligor's location, employment, title to property, credit status, or professional affiliation to assist the department to determine the current whereabouts of an obligor from any source including, but not limited to, … banks, and other financial institutions…." RI Gen. Laws § 15-22-1 (d) (emphasis added).

That same subsection retains the $100 civil penalty (as provided for in subsection a) for each failure to comply and "require[s] [the financial institution] to provide the information."

The addition of Section 2 to this Act in 1997 specifically requires the Department of Administration, Division of Taxation, to enter into cooperative agreements with:

> financial institutions further defined as any bank, savings association, federal or state credit union, benefit association, insurance company, safe deposit company, money-market mutual fund or similar entity authorized to do business

> in the state, to develop and operate a data match system using automated data exchanges to the maximum extent feasible on a quarterly basis, listing each non custodial parent … in the exchange who maintains an account at the financial institution and who owes past-due support in amount of five hundred dollars ($500).

That same section also specifies what is expected of the financial institutions, as follows:

> The financial exchange shall include, but not be limited to, the name, address, date of birth and social security number or other taxpayer identification number, the asset description, account number and account balance and any and all information required pursuant to §15-21-2 [of The Child Support Lien Act] for the purpose of establishing an administrative lien.

Not unlike the provisions contained in The Child Support Lien Act, the financial institution's liability is limited because Section 2 of the Exchange of Information Act declares that:

> The financial institution shall not be liable to any person for any disclosure to the state agency, for encumbering or surrendering any assets held by the financial institution in response to a notice of lien or levy issued by the state pursuant to [The Child Support Lien Act], or for any other action taken in good faith to comply with the requirements of this chapter. (emphasis added).

Thus, Section 2 requires that each financial institution act in good faith in an attempt to enter into cooperative agreements with the state and to become a partner with the state by joining the automated Child Support Lien Network (CSLN) so as to provide quarterly data matches.

Section 3 of The Exchange of Information Act (§ 15-22-3) provides the agency with an additional arrow in its quiver because it provides authority for administrative subpoenas to be issued to "individuals and entities named in [The Exchange of Information Act] to secure financial and other information relating to the obligor for the administration of the child support enforcement program." This section contains a subsection that also provides for a one hundred dollar ($100) assessment against each entity for any failure to reply to an administrative subpoena.

The final two sections of the Act, namely § 15-22-4 and § 5-22-5, provide extensive safeguards for the disclosure of any such information provided to the IV-D agency. The sections specifically delineate who may access such information given to the agency, how the information is to be handled in cases of domestic violence, and what penalties exist for certain disclosure violations by the IV-D agency, its employees, agents, or vendors.