

INVESTIGATIVE REPORT

Final Finding and Closure -- Public Version In this public report, names of the complainant, his former spouse and his child have been changed to protect their privacy.

Alaska Ombudsman Complaint J097-0317

January 14, 1998

SUMMARY OF THE COMPLAINT

On March 7, 1997, the Alaska Office of the Ombudsman received a complaint from a non-custodial parent who had been reported to consumer reporting agencies by the Child Support Enforcement Division (CSED). The complainant, Mr. Jack Green, said that CSED's account showing a debt of more than \$1,000 was wrong. He said he explained to CSED that it was wrong, CSED agreed that it was wrong, and yet CSED reported this debt to consumer reporting agencies. According to Mr. Green, CSED also refused to correct his inaccurate credit report and suggested that he contest the credit report with the consumer reporting agencies directly.

The allegations under investigation were:

Allegation 1: The Child Support Enforcement Division operated inefficiently by reporting a debt to consumer reporting agencies that it should have known was inaccurate.

Allegation 2: The Child Support Enforcement Division unreasonably refused to correct the inaccurate report with consumer reporting agencies.

In the course of the investigation, and in accordance with AS 24.55.120, the Ombudsman added an additional allegation:

Allegation 3: The Child Support Enforcement Division unfairly and contrary to law reported the complainant to consumer reporting agencies without providing the complainant advance notice of the proposed release of information or procedures for

contesting the accuracy of the information.

Assistant Ombudsman Mark Kissel conducted the investigation. On April 7, 1997, written notice of investigation was mailed to CSED Director Glenda Straube in accordance with AS 24.55.140. The preliminary investigative report was mailed to Director Straube on August 12, 1997, in accordance with AS 24.55.180. CSED's new director, Barbara Miklos, responded for the agency on October 3, 1997. Acting Ombudsman Maria Moya then requested a teleconference with Ms. Miklos. As a result of the November 6 teleconference, CSED on December 4, 1997, amended its response to Allegation 3 and the ombudsman's recommendation.

BACKGROUND

In 1985, Jack and Susan Green divorced. As part of the dissolution decree, Susan Green took custody of the couple's three children; Mr. Green was to pay for their support, except when the children were with him.

On March 26, 1991, CSED records showed that Mr. Green had fallen more than \$1,700 in arrears. CSED sent Mr. Green a Notice of Reporting to Consumer Reporting Agencies (Form 1810), which warned Mr. Green that he would be reported to consumer reporting agencies, such as credit bureaus and lending institutions, unless he paid the debt or proved he had no debt. CSED sent the notice in compliance with 45 CFR 303.105, which requires child support agencies to release information on overdue child support to consumer reporting agencies when an obligor's debt exceeds \$1,000. Mr. Green paid that debt and apparently was not reported at that time. He stayed current on his payments over the next six years.

In June and July 1996, CSED credited more than \$4,000 to Mr. Green's account as the result of an audit and visitation adjustments. This credit covered his ongoing support obligation through December. CSED sent Mr. Green a statement in mid-January, 1997, that showed a debt for January's overdue child support. On January 27, CSED sent an Order to Withhold Income for Child Support to Mr. Green's employer.

On February 4, 1997, Mr. Green faxed written notice to CSED that his remaining minor daughter, Molly, had been living with him since November 30, 1996, and planned to live there indefinitely. That same day, CSED terminated the wage withholding order with Mr. Green's

employer. On February 5, CSED mailed a letter to Susan Green requesting confirmation of the visitation claimed by her former husband.

By February 10, CSED had sent Mr. Green's file to its accounting section for adjustments based on the change in physical custody reported by Mr. Green. One month later, on March 10, the accounting section adjusted the account, eliminating Mr. Green's arrearage.

However, until CSED made the adjustment, its records showed Mr. Green's account in arrears \$1,265. On February 27 CSED reported this debt to consumer reporting agencies without sending Mr. Green notice of its intent or giving him opportunity to contest the accuracy of the debt information.

In early March, Mr. Green discovered while purchasing a new vehicle that he had been reported as a child support debtor. Although he was still able to purchase a vehicle, he was angry that he had been reported. When he called about this, CSED told him that he would have to contest the report with the consumer reporting agencies himself. He was also told how to do this, and he contacted two consumer reporting agencies. He said both told him he needed to purchase a copy of his credit report for \$20 before he could effectively challenge the information. At this point, Mr. Green called the Office of the Ombudsman.

On March 28, Susan Green responded to CSED's letter of February 5 by contesting the visitation credit for Mr. Green, saying she believes the child Molly is a runaway. CSED then suspended action on the case until a judge rules on visitation and custody issues.

STANDARDS

Allegation 1 alleges that CSED performed inefficiently. The Office of the Ombudsman's Policy and Procedures Manual at 4040(14) defines *performed inefficiently*. The portions relevant to Allegation 1 are as follows:

Performed inefficiently generally covers instances of unreasonable agency delay and ineffectual performance.

(A) The timeliness of an administrative act is sometimes an issue. Use this determination in those

situations in which the complaint suggests that the administrative action exceeded:

(b) a limit or balance established by custom, good judgment, sound administrative practice, or decent regard for the rights or interests of the person complaining or of the general public.

(B) An agency performs ineffectually when it mishandles the decision-making process or the process of implementing an act or service.

Allegation 2 alleges that CSED acted unreasonably. The Office of the Ombudsman Policy and Procedures Manual at 4040(2) defines *unreasonable*. The portions relevant to Allegation 2 are as follows:
Unreasonable means:

(A) a procedure adopted and followed by an agency in the management of a program is inconsistent with, or fails to achieve, the purposes of the program,

(B) a procedure that defeats the complainant's valid application for a right or program benefit....

Allegation 3 alleges that CSED acted unfairly. The Office of the Ombudsman's Policy and Procedures Manual at 4040(3) defines *unfair*. The portions relevant to Allegation 3 are as follows:
Unfair means:

An administrative act that was violative of some principle of justice.

Investigation of a complaint that an administrative act was "unfair" should consider both the process by which the action was taken or the decision was made and the equitableness of that decision, that is, the balance between the agency and a complainant in the decision-making process.

Procedurally, a complaint that an administrative act was "unfair" usually will involve an examination of one or more of the following elements:

(A) adequate and reasonable notice of the matter was not provided to the complainant;

(B) adequate opportunity has not been given for a person having an interest in a decision to be heard or, if applicable, to conduct an

examination or cross-examination to secure full disclosure of the facts;

Allegation 3 also alleges that CSED acted contrary to law. The Office of the Ombudsman's Policy and Procedures Manual at 4040(1) defines *contrary to law*. The portions relevant to Allegation 3 are as follows:

Use this determination to categorize complaints of:

(A) failure to comply with statutory or regulatory requirements;

(B) misinterpretation or misapplication of a statute, regulation, or comparable requirement;

(C) failure to follow common law doctrines;

INVESTIGATION

The ombudsman investigator interviewed the following individuals in the course of the investigation:

- Jack Green, complainant
- Pam Snyder, General Manager, Credit Bureau of Alaska
- Rick Romero, Child Support Enforcement Officer, Problem Resolution
- John Doogan, Child Support Enforcement Officer, Southeast Regional Office, Mr. Green's caseworker
- Judy Webb, Supervisor, CSED System Support Services
- Judith Imlach, Manager, CSED Regional Offices
- Greg Mills, Programmer, CSED System Programming
- Shirley Dean, Supervisor, Southeast Regional Office, CSED

Additionally, the investigator reviewed:

- Decree of Dissolution of Marriage, Superior Court
- *Turinsky v. Long*, 910 P.2d 590 (Alaska, 1996)
- 45 CFR 302.70, Required state laws
- 45 CFR 303.105. Procedures for making information available to consumer reporting agencies
- AS 25.27.273. Reporting of payment information concerning delinquent obligors
- 15 AAC 125.155. Reporting of arrearages to credit bureaus and lenders
- AS 25.27.265. Method of service
- CSED Procedures 8260: Credit Bureau, Reporting Delinquent Cases
- Notice of Reporting to Consumer Reporting Agencies (CSED)

Form 1810)

- Letter, May 19, 1997: Glenda Straube to Jack Green
- Letter, May 19, 1997: Glenda Straube to Susan Green

Jack Green, the complainant, said an automobile salesman told him he had a child support debt on his credit report. He said CSED did not notify him that he was to be reported, although he remembered receiving something like the Notice of Reporting to Consumer Reporting Agencies once about five years ago. Mr. Green said he disputed child support charges on his CSED account in January 1997, because he realized CSED was charging child support even though his daughter was living with him. He said his child support order releases him of support obligations when his children are with him. CSED would not accept this information orally, so he faxed a written statement to CSED that his daughter would be living with him indefinitely.

Once he realized he had been reported to consumer reporting agencies, Mr. Green said he phoned CSED to complain. He said he was told to fix the credit report himself and told how to go about it. He called two different consumer reporting agencies. Each told him he would need a copy of his credit report in order to contest it. This would cost \$20. He said he did not want to pay to fix CSED's mistake.

Pam Snyder, General Manager of Credit Bureau of Alaska, said that Mr. Green is not required to purchase his credit report in order to dispute it, although she usually recommends that. If he had filed a dispute with her credit bureau, he would have needed to supply only the name of the reporting agency and his case or account number. After a person files a dispute, the consumer reporting agency has 30 days to investigate it. Investigation consists of having the reporting agency, in this case CSED, review and verify the disputed debt.

Rick Romero, Child Support Enforcement Officer with the Problem Resolution team, said that Mr. Green was sent a Notice of Reporting to Consumer Reporting Agencies on March 26, 1991, when his arrearage totaled \$1,739. CSED records show that Mr. Green settled that debt, and his account did not again exceed \$1,000 until February 27, 1997, when it totaled \$1,265.

Mr. Romero said Mr. Green submitted written notice on February 4, 1997, that his child Molly lived with him. CSED immediately terminated the wage withholding order with Green's employer. On February 10, Mr. Green's file was hand carried from the Juneau office to the accounting section in Anchorage for adjustment. Adjustments

normally take 10 to 15 days, but Mr. Green's account was not adjusted until one month later on March 10.

Mr. Romero said he was concerned that CSED had terminated Mr. Green's wage withholding order and adjusted his account without checking his claim with the custodial parent, Susan Green. Mr. Romero said the custodial parent maintained that she had not relinquished physical custody of Molly, and that she considered Molly a runaway. Mr. Romero said he consequently put a hold on all action on the Green case until the custody issues are clarified through the Office of the Attorney General.

John Doogan, Child Support Enforcement Officer, Southeast Regional Office, recently became Mr. Green's caseworker at CSED. Doogan said that the Notice of Reporting to Consumer Reporting Agencies gives debtors 15 days to pay their debt before CSED reports them. Once an obligor receives the notice, that obligor is considered to have notice for all subsequent arrearages and will be reported without further notice anytime arrearages total more than \$1,000.

Judith Imlach, manager, CSED Regional Offices, said that Mr. Green paid his debt in 1991 without requesting a hearing. Consequently his Notice of Reporting to Consumer Reporting Agencies was still on file and he was reported automatically six years later.

When an obligor disputes a CSED credit report, Ms. Imlach said, he is told to file a form with the consumer reporting agency. The consumer reporting agency then sends the form to CSED. CSED completes the form, indicating whether the initial report of a debt was accurate, and returns it to the consumer reporting agency.

Ms. Imlach said CSED should not have credited Mr. Green for the visitation he claimed on February 4 because it did not have confirmation from the custodial parent. CSED granted Mr. Green more than \$1,200 in credit on March 10; on March 28 the custodial parent informed CSED that her daughter was not visiting Mr. Green, but was a runaway. According to Ms. Imlach, the Attorney General's Office advised CSED that it should have refrained from issuing Mr. Green's visitation credit until a court decided whether visitation had occurred.

Ms. Imlach said that when CSED sent Mr. Green's file to accounting to have the credit issued, it should have entered a code on its computer system to prevent Mr. Green's debt from being reported to consumer reporting agencies. This should have been done when CSED sent the

file to accounting in early February. Because CSED now believes it granted the visitation credit either prematurely or in error, Ms. Imlach said, the debt was reported to the consumer reporting agencies correctly.

Greg Mills, CSED programmer, said that reports to consumer reporting agencies are generated by computer on the 27th of each month and mailed within a few days. He said that once an obligor is reported for being more than \$1,000 in debt, he will continue to be reported until the debt is paid. Once the debt is paid, however, the CSED report instructs consumer reporting agencies to purge the debt from their files. This is due to a computer system anomaly that works to the advantage of the obligor; instead of a paid debt continuing to appear on a credit report for seven years as in the case of other consumer debt, the debt is erased as if it never existed. This anomaly will likely be corrected in a rewrite of the software. Debts reported in error are likewise corrected at the next monthly report. The consumer reporting agencies are instructed to erase erroneous debts from their files.

Decree of Dissolution of Marriage of Jack and Susan Green took effect July, 1985. The decree gives Susan Green custody of the couple's three children with reasonable visitation rights for the father. The decree requires Jack Green to pay child support, except that:

Child support not to be paid when children are with
(Jack Green).

Turinsky v. Long, 910 P.2d 590 (Alaska, 1996), is an Alaska Supreme Court decision that child support be based on the custody and visitation order rather than where the child actually resides. If the parties do not follow the custody order, the court said, they should move to modify it.

45 CFR 303.105. Procedures for making information available to consumer reporting agencies, is a federal regulation that requires child support enforcement agencies like Alaska's CSED to make available to consumer reporting agencies information about overdue support owed by an absent parent when the overdue support exceeds \$1,000. It also requires that the child support agency:

...provide advance notice to the absent parent who owes the support concerning the proposed release of the information to the consumer reporting agency and...inform the absent parent of the methods available for contesting the accuracy of the information.

AS 25.27.273. Reporting of payment information concerning delinquent obligors, gives CSED authority to provide information about delinquent child support to credit bureaus or lending institutions. It also requires CSED to notify these bureaus and institutions "immediately" when an obligor is no longer delinquent.

15 AAC 125.155. Reporting of arrearages to credit bureaus and lenders, requires that an obligor be notified before CSED releases payment history information to a consumer reporting agency.

CSED Procedures 8260: Credit Bureau, Reporting Delinquent Cases, provides information on the process of consumer agency reporting. Cases are reviewed by computer each month to determine whether the criteria for credit reporting notice are met. For those that meet the criteria (an existing child support order, arrearage of \$1,000 or more, a domestic or responding interstate case) notices are automatically issued on cases with no prior notice and no stay or exemption codes.

Notice of Reporting to Consumer Reporting Agencies (Form 1810), notifies the obligor that he has 15 days to bring his account current or be reported to a consumer reporting agency. The form states that once an initial report is made, any changes in the status or amount of arrears will also be reported. The recipient is also notified that:

...from this date forward, if you once again become delinquent in your child support obligation, your name and payment information will be reported to consumer reporting agencies without further notice.

Letter, May 19, 1997: Glenda Straube to Jack Green, informs Mr. Green of Ms. Green's objection to his visitation credit and recommends that the parents petition the court to resolve the dispute. It suspends CSED enforcement actions on this case until September 1, 1997.

ANALYSIS AND PROPOSED FINDINGS

Allegation 1: The Child Support Enforcement Division operated inefficiently by reporting a debt to consumer reporting agencies that it should have known was inaccurate.

Errors and delay affecting this case included:

(1) CSED granted visitation credit to Mr. Green without confirming the visitation with the custodial parent. The Alaska

Supreme Court's decision in *Turinsky v. Long* [910 P.2d 590 (Alaska, 1996)] prevents CSED from changing the type of custody specified in a court order, regardless of where the child resides. By claiming Molly would be with him "indefinitely," Mr. Green, in effect, was asking CSED to change the terms of the dissolution decree. Ms. Green brought attention to this when she denied that Molly's stay with Mr. Green was visitation. CSED recognized then that the issue involved not visitation, but custody, and that the Greens needed to return to court to resolve where Molly will live and who will pay child support. Unfortunately, CSED recognized this too late to prevent a great deal of confusion. When CSED finally realized what was happening, it acted appropriately by suspending all enforcement actions in the case, including credit bureau reporting, to give the Greens opportunity to resolve the custody issue in court.

(2) CSED failed to place a stop code in its computer system to keep Mr. Green from being reported to consumer reporting agencies while his account was being adjusted. When first contacted by the ombudsman investigator, a CSED administrator, Judith Imlach, admitted this should have been done. This makes sense, because it would be unreasonable to report a debt that the agency intends to adjust to zero. Wrote Ms. Imlach:

Technically, when we sent the file to accounting to have the credit issued, we should have entered a code on our system which would have prevented the debt from being reported to credit bureaus. We overlooked this action in part because there was no history of credit bureau reporting to prompt the caseworker to enter the code. Because we now believe that we issued the visitation credit either prematurely or in error, it is correct for the debt to have been reported to the credit bureaus.

In other words, CSED argued that its first mistake was washed clean by a second mistake. This is not a reasonable way to conduct business.

(3) CSED's accounting section took a full month rather than the usual 10-15 days to adjust Mr. Green's account. When contacted on March 28, CSED's Rick Romero estimated the average time to adjust an account at 10 to 15 days. Because the accounting section took two weeks longer than usual, Mr. Green's account still reflected the disputed arrearage on February 27 when CSED ran its computerized list of debtors for consumer reporting agencies. This delay is significant only within the context of the preceding two mistakes; it was CSED's last chance to save Mr. Green from an erroneous credit

report.

At the time it reported Mr. Green to the consumer reporting agencies, CSED believed --and led Mr. Green to believe-- that he did not owe the child support arrearage showing on his account. Through mishandling his case, CSED reported him anyway. Consequently, the Ombudsman proposed to find this allegation justified.

Agency Response to Allegation 1

The agency agreed that it erred when it granted visitation credit to Mr. Green without confirming the visitation with the custodial parent. Said CSED Director Miklos:

We acknowledge there was a great deal of confusion with this case because CSED moved to change the child support obligation based upon Mr. (Green's) request -- without requiring that he go back to court to resolve the custody issue.

CSED disagreed that it was wrong in failing to place a stop code in its computer system to block reports of Mr. Green's arrears from being sent to consumer reporting agencies while his account was being adjusted.

Because we lacked a confirmation of the visitation from the custodial parent, it would have been premature to suspend Mr. (Green's) debt. Though you stated that a CSED employee told your investigator that a hold should have been put on Mr. (Green's) account while his case was under review for adjustment, that is not our policy.

CSED also disagreed that it took too long to adjust Mr. Green's account. According to the agency:

You are correct in stating that CSED's accounting section took a full month to adjust Mr. (Green's) account, but that was the normal turnaround time during the period of his case review. At the time the incident with Mr. (Green) occurred, 30 days was the average time to respond. CSED has been working very hard to reduce the time it takes to respond and presently the response time is down to about 15 days.

Overall, we do not believe that we handled Mr. (Green's) case inefficiently. It was proper to report his debt to consumer reporting agencies until such time that the visitation issue could be resolved with the custodial parent.

Ombudsman's Comments

In its response, CSED admits error in failing to confirm Mr. Green's request with the custodial parent, but seems to believe that subsequent

errors were of no account --that Mr. Green deserved to be reported, and he was. This ignores two disturbing facts:

(1) CSED told Mr. Green that his account was current and did not tell him differently before reporting him to consumer reporting agencies.

(2) When CSED reported Mr. Green as a debtor to consumer reporting agencies, CSED staff believed that Mr. Green owed no child support.

A chronology of the events, with some attention to what CSED believed to be true at the time, may be helpful:

February 4, 1997: Mr. Green faxed written notice to CSED that his daughter had been living with him since November 30. CSED told Mr. Green that it would now remove the accumulated arrearages from his account --a mistake, and so acknowledged by CSED.

February 4: CSED failed to put a stop code on Mr. Green's computer record to prevent his debt from being reported to consumer reporting agencies. Since CSED intended to erase that debt, and in fact did erase it, the code should have been entered.

February 10: CSED sent Mr. Green's file to its accounting section to have the accumulated arrearages removed. This is in keeping with what CSED believed at the time, that is, that Mr. Green did not owe past due child support.

February 27: CSED reported Mr. Green to consumer reporting agencies as a debtor. At this time, CSED believed that Mr. Green's child support was current. CSED's ironic response is that, had it been doing things correctly, it would have reported Mr. Green anyway.

March 10: CSED's accounting section finally removed the accumulated arrearages from Mr. Green's account. In its formal response on October 3, CSED said that the delay in adjusting the account was justifiable because 30 days was the average response time then. But on March 28, much closer to the events in question, CSED's Rick Romero had told an ombudsman investigator that the average time to adjust an account was 10 to 15 days. Further, if a 30-day turnaround was acceptable, why would CSED have worked "very hard to reduce the time it takes to respond"?

March 28: Ms. Green contested the visitation credit for Mr. Green. CSED suspended action on the case until a judge can rule on visitation

and custody issues.

CSED mishandled Mr. Green's request for visitation credit at nearly every turn. CSED's wrongs were not made right when Ms. Green contested the credit. Her protest merely added to the reigning confusion. CSED's argument to the contrary is unconvincing. The Ombudsman finds this allegation justified.

Allegation 2: The Child Support Enforcement Agency unreasonably refused to correct the inaccurate report with consumer reporting agencies.

CSED's statutory authority to report debtors also gives it the responsibility to update the status of paid up debtors "immediately." The requirement for immediate updates implies a special action by CSED to repair the obligor's credit. (Black's Law Dictionary, 4th Edition, states: "The words 'immediately' and 'forthwith' have the same meaning. They are stronger than the expression 'within a reasonable time' and imply prompt, vigorous action without any delay.")

When Mr. Green complained to CSED about the erroneous report, the agency told him it has no procedure for correcting reports to consumer reporting agencies outside of its regular monthly updates. CSED explained how he could dispute the report through the consumer reporting agencies. The Federal Fair Credit Reporting Act gives debtors a procedure for disputing items in their credit report. That procedure involves the following steps:

(1) The complainant files a form with the consumer reporting agency contesting the report.

(2) The consumer reporting agency investigates the dispute and forwards the form to the entity that reported the debt initially, in this case, CSED.

(3) CSED reviews its files to determine whether the debt was reported accurately, completes the form, and returns it to the consumer reporting agency.

(4) Based on the information CSED provides, the consumer reporting agency changes the complainant's credit report or declines to change it.

(5) If the complainant continues to dispute the item, he may submit a

brief statement of the dispute for inclusion in the credit report.

Mr. Green attempted to follow this process and phoned two consumer reporting agencies. They said he had to identify specifically the debt he was appealing as it appeared on his credit report. In other words, he needed a copy of his credit report.

While it is difficult to describe CSED's action here as "vigorous," it is likely that CSED's regular process of monthly updates to consumer reporting agencies is as quick and effective as the appeal available through consumer reporting agencies. In any event, it is \$20 cheaper.

CSED did not refuse to correct Mr. Green's credit report; the report was corrected within a month of Mr. Green's complaint to CSED. CSED said its March 1997 report to consumer reporting agencies showed Mr. Green's account current, and, according to Mr. Mills, instructed the consumer reporting agencies to purge from their files the debt that was recorded in February. This is the relief Mr. Green sought. The Ombudsman found this allegation not supported.

CSED agreed with this finding.

Allegation 3: The Child Support Enforcement Division unfairly and contrary to law reported the complainant to consumer reporting agencies without providing advance notice of the proposed release of information or procedures for contesting the accuracy of the information.

Both 15 AAC 125.155 and 45 CFR 303.105 require that CSED notify an obligor before it releases payment information to a consumer reporting agency. The federal regulation further requires CSED to notify the obligor how to contest the accuracy of the information. CSED met both of these requirements in 1991 when Mr. Green fell in arrears; it met neither of these requirements in 1997 when its computer showed Mr. Green again in arrears of more than \$1,000.

CSED admits that Mr. Green was not notified in 1997, but maintains that its Notice of Reporting to Consumer Reporting Agencies of 1991 suffices as notice for the 1997 arrearage as well. The notice (Form 1810) states that the obligor will be reported without notice if he ever again falls behind. This makes no sense. The arrearage of 1991 was paid in full by Mr. Green. Nothing of that 1991 debt carried forward even to the following month, much less to 1997. By holding that the 1991 notice sufficed for the 1997 arrearage, CSED denied Mr. Green reasonable or fair notice and any chance to contest the accuracy of the

information to be reported.

Mr. Green's case is a perfect example of why the law requires fair notice before a debt is reported to consumer reporting agencies. Had CSED followed the requirements of notice in state regulation and 45 CFR 303.105, Mr. Green would have had opportunity to protest, and CSED would have had opportunity to correct its initial mistake before compounding it with others.

Agency Response to Allegation 3

CSED disagreed with the proposed finding. On October 3, 1997, Director Miklos wrote:

Although we understand why you are concerned about our existing procedures, we believe they meet the requirements of 45 CFR 303.105 and 15 AAC 125.155, and that there is no simple way to provide notice whenever an account goes from zero to a debt of more than \$1,000. This happens frequently. In fact, in some cases, it can happen monthly. The responsibility for assuring that payments are current lies with the obligors.

State and federal law require that CSED give advance notice to the obligor that his or her debt may be reported to consumer reporting agencies. The notice that CSED sends to delinquent obligors says, ***"However, from this day forward, if you once again become delinquent in your child support obligation, your name and payment information will be reported to consumer reporting agencies without further notice"***. We believe the notice is sufficient--and reasonable--within the law. The law does not require that such notice be given each and every time the obligor falls behind in child support payments.

Mr. (Green) was given notice when he fell behind in his payments in 1991, and it's his responsibility to keep his payments current. CSED did not deny him due process in his 1997 arrears. In fact, Mr. (Green) should have addressed the issue sooner. Though he says his daughter had been living with him since Nov. 30, 1996, he did not notify CSED of this until Feb. 4, 1997. If he had started the process earlier, his account might not have fallen into arrears in January and this problem

might never have existed.

During a November 6, 1997, meeting to discuss the response with Acting Ombudsman Maria Moya and Assistant Ombudsman Mark Kissel, Ms. Miklos agreed to seek an informal opinion from the Department of Law about whether the blanket notice CSED gives obligors is sufficient under 45 CFR 303.105 and 15 AAC 125.155. Ms. Miklos informed Ms. Moya in a December 4 letter that Law had advised the agency "that CSED should provide notice more often than we did in the (Green) case." She added that "we continue to maintain that the finding is not justified," but offered a compromise solution to the proposed recommendation.

Ombudsman's Comments

CSED has been advised by its attorneys, and agreed, that it should give obligors notice of prospective credit reporting more often than it did in the Green case. Given CSED's agreement on this point, it is difficult to understand why the agency insists that the finding is not justified. The final finding in Allegation 3 is justified.

PROPOSED RECOMMENDATION

Mistakes happen, and the errors and delay noted under Allegation 1 result from human error. A staff with a large workload dealing with complicated issues can be excused occasional mistakes.

More disturbing, however, are the process issues attending Allegation 3, specifically the lack of current notice to an obligor before reporting his debt to a consumer reporting agency. The central finding in this investigation is that CSED's process for reporting debts to consumer reporting agencies is flawed. Consequently, the Ombudsman proposed that CSED rewrite its policy and Form 1810 to provide notice of consumer reporting each time an obligor goes from a zero balance to a debt of more than \$1,000.

Adoption of this recommendation would bring CSED into compliance with 45 CFR 303.105, 15 AAC 125.155, and recognized standards of fairness that require reasonable notice and an opportunity to be heard - both basic tenets of due process and procedure.

Agency Response to the Recommendation

CSED does not believe that the Ombudsman's recommendation is

workable or necessary. CSED consulted with Law on this question as well. According to the agency, Law does not believe CSED is required to send notice every time an obligor goes from a zero balance to a debt of more than \$1,000. This could occur every month for some individuals, according to CSED. The agency proposed a compromise:

... we will develop a program to send out notices at least yearly to individuals who become delinquent. If an individual is consistently delinquent, they will not receive additional notices until their balance goes to zero. If their balance goes to zero, they become delinquent again and it has been more than a year since they received the last notice, CSED will send them another notice.

We believe that this is reasonable and something we can accomplish without additional resources.

Ombudsman Comments

The change in procedures proposed by CSED, while not going as far as the Ombudsman recommended, is a significant improvement. The ombudsman finds Allegation 3 partially rectified.

FINDINGS OF RECORD AND FINAL RECOMMENDATION

After considering CSED's response to the preliminary report, Acting Ombudsman Maria C. Moya made the following findings:

Allegation 1: The Child Support Enforcement Division operated inefficiently by reporting a debt to consumer reporting agencies that it should have known was inaccurate.

The ombudsman found this allegation justified. No recommendation accompanied this finding.

Allegation 2: The Child Support Enforcement Division unreasonably refused to correct the inaccurate report with consumer reporting agencies.

The ombudsman found this allegation not supported.

Allegation 3: The Child Support Enforcement Division unfairly and contrary to law reported the complainant to consumer

reporting agencies without providing the complainant advance notice of the proposed release of information or procedures for contesting the accuracy of the information.

The ombudsman found this allegation justified.

The Ombudsman's proposed recommendation regarding Allegation 3 remains as the final recommendation:

CSED should rewrite its policy and Form 1810 to provide notice of consumer reporting each time an obligor goes from a zero balance to a debt of more than \$1,000.

CLOSURE

CSED partially accepted the Ombudsman's recommendation. In agreeing to correct the deficiency noted in the investigation, CSED has agreed to give obligors more meaningful notice of prospective credit reporting. This is an improvement that allows obligors facing credit reporting to contest the accuracy of the information to be reported. Accordingly, complaint J097-0317 will be closed as partially rectified.