Child Support Enforcement Business Relations Task Force
December 1, 2009
10:00 a.m. – 5:00 p.m.

Task Force Members in Attendance: Paula Bachmeier, Jim Fleming, Harlan Fuglesten, Jim Goetz, Dale A. Haake, Jeb Oehlke (interim member), Mike Rud, Mike Schwindt, Representative Robin Weisz

Task Force Member Absent: Bill Devlin, Senator Judy Lee

Staff: Barbara Reierson, Brianne Skachenko, Suzanne Witkowski

Visitors: Pat Ward, Jack McDonald, Bob Graveline

Review of Prior Meeting and Approval of Minutes

Discussion
Schwindt introduced new Task Force members Paula Bachmeier and Jeb Oehlke. Oehlke is an interim member on behalf of the ND Chamber of Commerce.

The minutes of the October 13, 2009, Task Force meeting were approved with the following change to Page 11.

> Haake suggested breaking into sections because not all groups will be affected the same way. This would create more manageable sections to deal with.
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> Changed to:
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> Haake suggested the group not break into subgroups, as each area brings new and differing ideas and issues to the table, and many of those present may not have even thought of some of these things. He suggested it would therefore be of benefit for all task force members to hear from the others, as it is a learning experience for most of the group.

Schwindt said the Task Force Web page has been developed and can be found at www.childsupportnd.com, Information, Business Relations Task Force. Schwindt said materials will be added to the Web site as they are provided to Task Force members. Fleming demonstrated the Web site. All materials from the October 2009 meeting will soon be on the Web site and the materials from this meeting will be added. This Web site is available to the public. Task Force members should feel free to link others to this Web site.

The agenda was approved with the following change: Item 2(d) – Employer/Business Community was moved to Item 2(a) and the remaining agenda items were renumbered.

Fleming distributed the materials for the meeting. This material included a revised Tab 5 – FIDM Reimbursement. Schwindt explained the Tab 5 update includes information regarding Minnesota's reimbursement to financial institutions.

Fleming provided a recap of New Hire outreach, including the New Hire Outreach 2007-2009 document.

Fleming said park districts have not always reported new hires. Perhaps there has been confusion about whether the city or park district is doing the reporting. Fuglesten and Ward said in some cities park district employees aren't city employees.

Sources of employment information were discussed. Fleming said that following a new hire hit an income withholding order is issued. The law requires parties to notify the State Disbursement Unit of where they are employed.

Fuglesten asked if the ND Child Support Enforcement program (CSE) does any random auditing of new hire compliance. Is the percent of employers complying known? Fleming said random auditing is not done but Job Service quarterly wage information is reverse engineered.

A copy of the 'Green Book' for new business was routed. This information is located online on the Secretary of State's Web site. The 'Green Book' provides information about employers' legal requirements, including child support-related requirements.

Haake asked how farmers and ranchers are notified of their new hire reporting requirements. Reierson said the farmers and ranchers who do not report quarterly wages to Job Service are a difficult group to reach. In the past CSE has contacted and provided information to groups such as the Extension Service and Farmers Union.

Fleming said CSE is looking at pulling information on employers who have not reported new hires for the past 10 years. Chances are that the great majority of employers would have hired someone during that time period.

Reierson said that any suggestions about groups or associations to be contacted are appreciated. CSE contacts groups and associations to see if articles can be included in their newsletters, links from their Web site can be added, or materials or presentations can be provided. Associations are a good way to target groups of employers. Fuglesten said focusing on associations and newsletters makes sense. He suggested the State Bar Association be contacted. Farmers Union and the Farm Bureau and their publications may be good avenues to reach employers of seasonal and rural workers. Fuglesten's association of 3,000 members has a newsletter. Fleming said a contact will be made about submitting a newsletter article. Haake said many small employers like farmers, ranchers, seasonal employers, and contractors don't have close ties with associations. However, most of them pay taxes. CSE should consider exploring whether a stuffer could be included in mailings of state tax documents. This stuffer would basically be an alert to those who may have hired someone. Haake speculated

that most farmers and ranchers have a tax preparer do their taxes. CSE has contacted CPAs but should consider also contacting tax preparers about new hire reporting requirements. Could information be included with income tax forms? Representative Weisz said that information does not come in an envelope so it would be hard to include additional information. Haake said the information would have to be built into the form. Schwindt said the Tax Department has a quarterly newsletter that goes to sales tax preparers. This newsletter is in an envelope. Bachmeier suggested CSE include information in mailings sent by real estate tax departments. Fleming said this would involve the county tax departments. Goetz said this route would not reach the large number of famers and small businesses that rent, rather than own, property.

Fleming said there is no one magic bullet for ensuring new hire compliance. For example, an employer may faithfully report but then there is staff turnover and the new staff member is not familiar with the requirements so does not report new hires.

Reierson and Witkowski provided an online demonstration of the CSE employer Web site (www.childsupportnd.com, Employers). Witkowski demonstrated reporting a new hire online.

Reierson and Witkowski provided an online demonstration of Web sites of the child support enforcement programs in Washington, Texas, Oklahoma, and Wisconsin. The Washington Web site includes quick links for employers (e.g., to Department of Labor), online new hire training videos, an employer workbook, and detailed question and answer sections. The Texas Web site provides a mechanism for employers to maintain a profile of their business online. The Oklahoma Web site includes sections for employers, financial institutions, and insurers. The Wisconsin Web site includes a calculator for determining amounts that can be withheld for income withholding and health insurance.

Schwindt said there is a push at the federal level to require employers to report hourly earnings when reporting new hires. Child support enforcement programs are not supporting this requirement because it is not felt it would be helpful.

Graveline asked how multi-state employers report new hires. Schwindt explained that multistate employers can choose to report new hires to one state. That information goes to the National Directory of New Hires and is then distributed back to the states.

Fuglesten asked what the definition of an employee is. Is it tied to the W-2? Fleming explained that it follows the IRS definition and is generally tied to issuing a W-2. Fuglesten asked if CSE has explored a date exchange with the Department of Labor. Fleming said that the Department of Labor conducts hearings to determine if an individual is an employee or a contractor. If the individual is found to be an employee, the Department of Labor contacts CSE. Goetz asked if that means that for example, real estate agents, who are independent contractors, are not reported through new hire. Fleming said that is correct. Current state law does not require the reporting of independent contractors. Later in the meeting there will be a discussion about new hire

reporting of independent contractors and health insurance information. Some states' child support enforcement programs allow employers to maintain profiles on child support enforcement Web sites. These profiles can include information about employer-sponsored health insurance.

Goetz suggested that the $3 employers can withhold for doing income withholding be increased to $10. He also suggested this be highlighted on the CSE Web site. Schwindt said the $3 was set by the Legislature. Reierson said that a question and answer regarding the $3 will be added to the Web site. Schwindt said it is unknown how many businesses withhold the $3 from the obligor's pay. In response to a question about distribution if an obligor has multiple obligations, Fleming said current support is distributed first and then arrears. Money is prorated if there is not enough to satisfy all obligations.

Rud suggested the $3 be advertised on the top of the Web page in big red letters. He liked the ideas of a question and answer section and the Wisconsin income withholding and health insurance calculator.

Goetz disagrees that complying with child support legal requirements is a cost of doing business. Small businesses didn't create the problem so society should bear the cost. He is pro economic development and withholding is a nightmare. Businesses struggle and fail because of all of the requirements government put on them. He said he is pro collecting child support, pro economic development, and pro small business but businesses need to be paid for what they do. If reimbursement for child support requirements was higher businesses could afford to pay competent accounting help and requirements would be met. Are we spending $10 to recover $1? Goetz believes the Task Force should ask the Legislature for more money to reimburse businesses. Schwindt said CSE's base budget is built on the Governor's instructions, however, Goetz can pursue this. Goetz said the Task Force can take a recommendation to the Governor and the Governor can decide. Fuglesten said $3 per month isn't much. Reierson said this is $3 per month per employee. Fleming clarified that the obligor pays the $3. Goetz said $3 time 12 months doesn't cover the cost over the year. Representative Weisz said a higher cost could alienate employees. Goetz said the state should pay the fee. Oehlke said if the state pays, we all pay. Goetz said the state has a surplus. Oehlke said the state won't always have a surplus.

Fleming said CSE is not the only program with legal requirements for employers. Goetz said the government should pay businesses for performing all required tasks. Schwindt said that is an issue that can't be solved by the Task Force today. It is part of a bigger problem and would need to be addressed by the Legislature. McDonald said three sessions ago the Legislature imposed more costs on criminals – and they are paying them. It is amazing how much money has come in from clients of that system. This may mean that more could be taken out of an employee's paycheck to reimburse the employer for doing income withholding.

Fuglesten asked what triggers income withholding. The only way to avoid income withholding is for the employee to have automatic debit from his or her account. It seems a little like punishing obligors to make them pay more for income withholding when their only recourse is to set up a payment mechanism outside their employment (i.e., to set up autopay). Fleming said state and federal legislation requires all obligors to be subject to income withholding. Fuglesten said this means obligors are subject to income withholding and now would be subject to a larger fee for the income withholding. This is a bit like adding insult to injury. Fleming said ND is one of the first states with the autopay option in lieu of income withholding. The autopay program is in its infancy but growing. Fuglesten said an obligor who is complying would now have a surtax.

Goetz said the Task Force can't solve this but the Legislature when establishing the Task Force said it could bring forth suggested legislation. Schwindt said the Task Force can recommend legislation. Representative Weisz said in the Legislature there is not a lot of support for public funding for these types of costs. Child support is a personal choice (e.g., a choice to have children, divorce, not marry). Why should taxpayers pay? Goetz asked why business should pay. Representative Weisz suggested if the fee is raised it should come from the person who caused problem. Employers, though, may have to deal with disgruntled employees. Goetz said all businesses could be required to withhold the fee. Representative Weisz said child support is different than sales tax, which everyone pays. Child support is paid by a small number of employees. Oehlke asked if the $3 fee is static (i.e., whether it is spread out or weighted up front). Fleming said it is $3 per month. Ward suggested that perhaps there could be a monthly fee or an annual charge that factored in up-front costs. Maybe there is a bigger cost upfront to set up the income withholding. Goetz said the cost is bigger than salary. Other costs include insurance, utilities, and cell phones. Republicans don't think a group that didn't cause the problem should pay for it. If they didn't cause the problem, they should be paid to fix it. Representative Weisz said data matches are different, that it is reasonable to pay for matching. This is different than withholding for child support.

Fuglesten agreed the idea of the state paying employers to do income withholding wouldn't get far. That leaves the option of setting a reasonable fee to charge obligors. There is a need to balance business interests with the interests of obligors with employee/employer relations. Many employers wouldn't want to charge employees for income withholding. They would only feel they needed to pay employees more.

Fleming said obligors are encouraged to monitor their ledgers. State administration has helped with employer compliance. Historically, the perception of county administered CSE offices was that new hire compliance was a central office rather than a regional office responsibility. With state administration, all the offices are one unit and regions now file contempt actions as needed. Stronger income withholding sanctions now in law were introduced by a legislator who had a constituent who had his money stolen by an employer.

Fleming reviewed the sanctions, penalties, and late fees that can be imposed on employers for their failure to comply with their legal requirements. These include

contempt of court, personal liability, damages, and late fees. Recently $200 in damages were awarded in a case where an employer who had an NSF check kept sending checks after being notified that checks would no longer be accepted. This $200 was treated as a payment on behalf of the affected obligors.

Fleming said a 2009 legislative change clarified that employers are responsible for making good on their remittal errors and that they have a course of action against a person who receives a payment in error and refuses to return it.

Fleming talked about CSE errors vs. employer errors. If CSE makes an error when distributing payments CSE makes good on the error and attempts to recover the money. If the employer makes an error on the remittal (e.g., transposes a remittance identifier and the money is accordingly sent to the wrong family) the employer needs to make good on the error. CSE will make one attempt to recover the money and will cooperate with the employer to identify who received the money in error. CSE notifies the party that if he or she does not return the money received in error by a certain date his or her name and address will be provided to the employer. The law change clarified where responsibility lies. Haake asked if the party doesn't return the money whether CSE will divert money from future support payments to repay the employer. Fleming said this would depend on the sequence of events. There are federal restrictions on how and when CSE can attach outgoing payments to obligees. CSE is limited in the amount that can be attached. If the money was retained by the state the money can be returned to the employer. The question is: how much time does the State Disbursement Unit spend to correct an employer error? CSE needed to draw a line beyond which it would not go because it was not staffed to do so. Ward asked what safeguards are in place to prevent payments from going out in error. Does CSE check to make sure the right numbers are used? Fleming said character recognition software remembers the last check received and there are some ways a payment can get suspended. Schwindt said the State Disbursement Unit processes about 30,000 payments a month and there are 25 to 30 errors a month. Around 10 to 12 of these monthly errors are employer errors. The efforts made by CSE result in most of the money being returned. Generally, errors are found when a custodial parent calls to say they didn't receive his or her support. When that happens an alert is put in the system to watch for the next check.

McDonald asked if employers can work with obligors regarding the amount withheld. For example, if an obligor is paid twice a month can the full amount be withheld from the first check rather than half being withheld each pay period? Fleming said the income withholding order asks that a consistent amount be withheld. McDonald thought the full withholding could be taken out of first paycheck. Schwindt said there are some problems with that. For example, what happens if employee quits during the month? There were some situations in the past where the full withholding was coming out of the first check but he believes these are now all coming in as consistent payments. Autopay is an option for obligors who want to pay once a month.

Fleming said another common employer error is remitting support for an obligor who is no longer employed. Sometimes a family is not in a position to refund the money in one

lump sum. Ninety-five percent of outgoing payments are made electronically and can be reversed for a short period of time if errors are recognized. Oehlke asked what percent of employers remit checks. Schwindt said one third to 40 percent of payments come in electronically. The percent of payments coming in electronically is growing slowly. Fleming pointed out that Tab 7 provides this information (i.e., 38% of total payments come in electronically).

McDonald asked if on the employer Web site there is information about how employers can contact CSE. Is there a help line for employers to call? Fleming said that when employers call generally they will be talking with Witkowski. Reierson said there is a toll free number for employers. This number rings in to a person. Employers should identify themselves as employers so they can be routed to the right person.

Fleming reviewed new hire penalties. The $20 per failure to report isn't a large sanction. There is also a conspiracy provision. Penalties received go into the general fund. CSE does not make money when it imposes a penalty. State administration has also helped with enforcement of new hire penalties.

Fuglesten asked if the regional offices are located in court houses. Fleming said that some were but none are since state administration.

Skachenko discussed the new hire compliance process and reviewed the series of four letters that may be sent to an employer once it has been determined the employer may not be reporting new hires. The first letter is an informational letter informing the employer that reporting new hires is a state and federal law. The letter states that the employer has 10 days to comply with the requirements. If the employer does not report new hires or contact CSE within the 10 day timeframe, a second letter is sent to the employer. The second letter is another informational letter with a little stronger language informing the employer of new hire reporting requirements. This letter states that the employer has 10 days to comply with the requirements. If the employer has not complied with the second informational letter, a third letter is sent. This letter constitutes a warning that continued failure to report new hire reports may subject the employer to a civil money penalty. This warning letter gives the employer 20 days to report new hires. If there is no response to the warning letter, an imposition of penalty letter is sent. This letter imposes a penalty on the employer for failure to report new hires. This penalty is $20 per employee not reported. This letter gives the employer 15 days to report new hires and pay the penalty.

Skachenko said CSE has issued 29 penalties to date. The largest penalty to date was $6,480. The goal is to obtain the new hire reports, not to punish employers. Even once a penalty has been issued, Schwindt has been more than willing to consider waiving or suspending the penalty if the employer is willing to cooperate with CSE. The penalty mentioned above was suspended and then waived when the employer committed to reporting new hires and continued to report them

Skachenko explained the role of quarterly wage data in identifying potentially unreported new hires. A comparison is done between Job Service quarterly wages, the State Directory of New Hires, and lists of multistate employers reporting to other states. A list of potential non-reporters is then generated. Skachenko reviews this list for employers who are not complying with the new hire requirements. Reierson explained that two quarters of Job Service quarterly wages are compared. If an individual has wages in the second of the two quarters it appears he or she is a new hire. This person is then compared against the new hire data base and the employer is checked against the list of multistate employers reporting to other states. This is not a clear cut process though. For example, someone may show on the list because they are a seasonal employee or the employer may be reporting quarterly wages under one FEIN and new hires under another FEIN.

Fuglesten asked what fine an employer would face if it had forgotten to report new hires and then realized its error. Is there an amnesty provision? Are employers told how to come into compliance? Skachenko said an employer in this situation would not be penalized. She would work with the employer to bring it into compliance. Penalties only come in to play once an employer is aware of the requirements and refuses to report new hires. Fuglesten said some employers may not say anything because they may not want to rock the boat. Is there any advertising of the amnesty? Schwindt said that is an interesting thought. Fleming said the Job Service quarterly wage file is used to triage new hire reporting compliance. The priority has been the largest non-reporters. As was discussed earlier, CSE will be looking at employers who are reporting quarterly wages but have not reported any new hires for many years. Fuglesten suggested merging that file with an amnesty letter.

McDonald asked how associations could help with compliance efforts. Can CSE release which employers are not reporting? Schwindt said CSE will research what can and can't be released to associations. McDonald gave the example of how associations help the FCC with compliance by working with broadcasters. Some associations may want to help their members, if they can.

Reierson said development of a process to check for future compliance will be tied to development of a process to identify employers who have not reported new hires for years. At the present time monitoring for compliance after sending letters to employers is a manual, time intensive task.

Lunch break

Identification of Goals in Subject Areas and Potential Action Steps

Employer – Business Community

(1) Goal

Electronic remittal of nearly all withholding payments

Discussion
Fleming reviewed electronic remittal statistics for the country. The goal is for ND to be at the top of the list by having 68% or more of payments being made electronically.

Areas for Improvement

- Reduce remittal errors made by income payers - edits
- Reduce distribution errors
- Reduce lost incoming payments – e.g., lost in mail
- Reduce time CSE staff spend on processing checks, contacting employers about questionable remittals, searching for lost checks, and processing checks.
- Reduce expense income payers incur writing checks and doing stop payments for lost checks

Discussion
Fleming said this saves tax dollars. Schwindt said that if electronic payments were increased, staff who manually process payments could be reassigned to other pending tasks.

Fleming said employers do not need to buy a special product to remit payments electronically. There is no cost to remit payments through the CSE secure Web site.

Action Steps – Areas for Change

- Mandate electronic remittals
    - Consider an opt-out clause
    - Other state information – See Tab 7

Discussion
Fleming said that Job Service mandates electronic reporting of employers of a certain size. The requirement has moved from employers with 99 or more employees to employers with 24 or more employees. The Tax Department also has an electronic reporting requirement for businesses using service providers. The Tax Department law includes an opt-out provision. Fuglesten asked if CSE was recommending electronic remittal by employers of a certain size and an opt-out provision. Fleming said one idea would be to start with requiring larger employers to remit electronically and then move to smaller employers, and to have an opt-out provision. Oehlke speculated Job Service will keep introducing legislation to increase the number of employers who are required to report electronically. Fuglesten said CSE may want to start with larger employers and move to smaller employees so there are resources and time to work with employers. Fleming said this could be like the digital TV change where the implementation date is moved back if necessary. An opt-out for good cause is important.

Fleming said the Job Service law is found at N.D.C.C. § 52-04-01.1. 2007 the requirement was established for employers with 99 or more employees. Legislation in 2009 dropped the number to 24.

Fuglesten suggested setting up steps in one bill. Fleming said that would be an advantage for employers because they could plan for the future. Fuglesten said that would provide time for outreach, too. Oehlke said Job Service does not have an opt-out. A benefit to starting with larger employers is they can help sell the idea to smaller businesses. This also gives an opportunity to test the process with larger employers first. Schwindt said that if a phased-in process works, taxpayers come out ahead, too. Washington child support enforcement has 40 staff processing payments. Thirty-nine staff process checks and one staff handles electronic payments, which were about 30 percent of all payments. Fleming said Iowa and Washington have done a lot of outreach regarding electronic payments. Schwindt said that Indiana requires electronic payments from employers with at least five obligors. Oehlke thought it would be confusing to base the requirement on the number of employed obligors because that number can change over time. It would be better to base the requirement on the number of employees. Schwindt suggested the requirement be tied to what Job Service requires.

Rud asked how many FTEs are processing payments now. Schwindt said CSE started out with 10. Now the equivalent of two staff open mail and one processes payments on a normal day.

Representative Weisz asked if any states require parties other than employers to remit electronically. Fleming will check on this.

Action Steps – Areas for Change (cont.)

- As technology advances, implement additional secure payment options for submittal of withholding payments
    - Including option for same day secure payments

Discussion

Fleming said there are issues with credit card payments. CSE is required to disburse the full collection so there is no funding source for credit card payments. VISA does not allow for a fee on top for child support and they are a major card in ND. Oehlke asked if a state law could override VISA on this. Goetz said it could not.

Fleming said debit cards have been explored for a one-time transaction into an obligor's bank account. CSE wants to pursue this but programming is needed. Currently there aren't enough programmers to meet all CSE's programming needs.

Fuglesten asked if there is a downside to credit cards. Fleming said when the bankruptcy law changed this was considered; however, at that time CSE wasn't accepting credit card payments. If there was a funding source for credit cards, CSE

would allow them to be used. Schwindt thought there were prohibitions against paying off child support arrears and then filing for bankruptcy. Also, there can be issues if later a person claims they didn't pay the child support and CSE needs to reverse the payment – which has already been distributed. Fuglesten wondered if using credit creates problems. Schwindt said allowing the use of debit card would be good because you are going directly to the bank account rather than charging a debt. Rud asked how many payments are coming in by credit card now. Schwindt said credit cards cannot be used at the present time. The time when credit card payments were accepted was small, approximately 20 days. Fleming said the cost and risk associated with credit card payments are problems. CSE receives a lot of third party payments (e.g., the obligor's mother). It is very easy for a third party payment to be reversed (e.g., after making the payment the obligor's mother claims that she did not charge the payment).

Action Steps – Areas for Change (cont.)

- Business profile option

Discussion

Fleming said a business profile would allow businesses to maintain information about their company (e.g., contacts, bank routing information) online. This would be a good way for CSE and businesses to exchange information and for businesses to keep their information current. This would require that employers use a unique password. Schwindt said this would also allow documents such as the income withholding order and National Medical Support Notice to be sent electronically.

Oehlke said the Job Service electronic reporting requirement was good because in the long run it decreases costs to business, if they already have the software. Fuglesten said in this case employers would not need to buy software because the software is on the CSE Web site.

Fleming asked if the Job Service requirement had a delayed effective date. Oehlke didn't know because he started working for the ND Chamber of Commerce after that.

Goetz asked how employers sign on and how they find the site for remitting payments electronically. If an employer doesn't pay electronically for a period of time, do they have to go though the sign up process again? Reierson explained where the Web site was and provided some information about the sign up and pre note process. Reierson will check to see how long an account can be inactive before it is terminated.

Oehlke said that since Job Service electronic reporting has been successful there may not be as much concern about electronic new hire reporting and electronic payments. Representative Weisz said there may be resistance if all employers are required to start remitting electronically at the same time. The Job Service threshold (i.e., 24 or more employees) would probably be achievable. Representative Weisz didn't suggest phasing in the requirement. If the number of employees to meet the requirement keeps dropping, there will be opposition from the smaller employers. He suggested the

requirement be for employers with 24 or more employees. If that passes and works well, when Job Service next requests a lower number of employees, then CSE can come in again and ask for the number of employees to be lowered. This would keep CSE's requirement uniform with the Job Service requirement and employers would know what they have to do.

Fuglesten said an opt-out may not be needed. Schwindt said an opt-out is a good relief value.

Oehlke suggested the requirement be tied to the number of employees.

Action Steps – Areas for Change (cont.)

- Proposals from Task Force
    - Mandate employers to remit payments electronically
        - Pattern after Job Service requirement (i.e., currently employers with 24 or more employees)
    - Include opt-out clause
    - Tie requirement to number of employees, not number of obligors

(2) Goal

Increase number of data elements received through new hire reporting

Areas for Improvement

New hire reporting does not currently provide information about:

- independent contractors
    - Currently no other source for this information

<u>Discussion</u>
Fleming said individuals such as self-employed cosmetologists and barbers are not reported through new hire. Fuglesten asked if independent contractors have to be reported how you avoid having to report, for example, kitchen remodelers. Fleming said some states use the 1099 reporting threshold. Schwindt said that generally homeowners don't do 1099s. Fuglesten asked what happens if you pay someone $1,000 in advance to make a presentation and that is your last association with them. Will an income withholding order be issued? Haake said insurance companies send out thousands of 1099s. Fleming asked which 1099 (e.g., 1099 Misc.).

Fleming shared the criteria used by states that require new hire reporting of independent contractors. Several were tied the requirement to the 1099 threshold (i.e., $600). One state has a $2,500 threshold and another state requires reporting by government agencies with optional reporting by private employers. Fuglesten suggested a higher threshold and periodic payments, that a distinction be made between an ongoing relationship versus a one-time event. Haake said insurance

companies have hundreds of these situations. Goetz talked about emergency needs such as snow removal, plumbing, and roof repair where an employer may not do a 1099 until months later. Schwindt asked when 1099s are filed. Goetz said in January, that the employer has all year to do them. 1099s are filed with the state and federal governments. Schwindt wondered if CSE could get copies of the state copies of the 1099s. 1099s can be a source of addresses for obligors. This would also provide information to indicate whether there is an ongoing relationship. Fleming said CSE has some authority now to get this information. However, the Tax Department doesn't file and retain 1099s in a way that they can provide the information to CSE. Schwindt said more 1099s are being filed electronically now. Goetz said it is interesting that a state agency won't do but what private businesses are required to do. Representative Weisz noted the large amount of education that would be needed if individuals were required to report independent contractors. Schwindt said if CSE can get the information from the Tax Department that may resolve this issue. The requirement could be that this is permissive if the 1099 is electronic. The requirement could be that it is mandatory to get the 1099 through the Tax Department. Representative Weisz said the Tax Department's needs have to be considered (i.e., the impact on them). Schwindt said the federal government no longer gives 1099 information to state child support enforcement programs.
Fleming said CSE can do income withholding for recurring payments made to independent contractors. Haake said insurance companies make payments to independent contractors such as doctors, dentists, glass companies, and roofers. Reporting these independent contractors would be a massive burden. Goetz said some independent contractors may quit when an income withholding order is received. Then the employer has to replace that individual. Schwindt said that can be proof of willful nonpayment that supports a criminal prosecution.

Oehlke asked if the discussion is about independent contractors who are individuals, not companies. Schwindt said the discussion is about independent contractors who are individuals. Schwindt said that in working with 1099s CSE workers would learn to recognize which 1099s are useful (e.g., which are ongoing relationships). CSE would not ask for more staff to work with 1099s.

It was noted that 1099 information can be 13 months old.

Areas for Improvement (cont.)

- Availability of health insurance for dependents
    - With no other current source for this information CSE incurs time and expense related to sending National Medical Support Notices to employers when insurance cannot be obtained and employers in turn incur time and expense in responding to National Medical Support Notices

Action Steps – Areas for Change

- Mandate reporting of independent contractors

    - Consider criteria
- Mandate additional data elements
  Examples: Information regarding availability of health insurance for dependents
- Mandate electronic reporting with opt-out

Discussion

Fleming said additional new hire data elements would be helpful. The National Medical Support Notice is 15 pages long. CSE would not need to generate and send this document to employers if it was known that employer-sponsored health insurance was not available. Employers could enter more specific information about employer-sponsored health insurance on an online profile. Haake asked if the online profile exists now. Fleming said it does not. Goetz suggested the requirement be simply yes or no health insurance is or is not available. What if employer-sponsored health insurance is not available? Schwindt said Medicaid and CHIP are options. These are state and federally funded. Reierson said a number of states require health insurance availability be yes, no, or blank (unknown) and that the date of eligibility be reported.

Fleming said the federal requirements now require CSE spend about as much time on medical support as child support.

In response to a question Schwindt said 74 percent of new hires are reported electronically. Oehlke asked if employers use one password. Reierson said new hire and electronic remittals currently have different levels of security and different passwords. This is something to be considered. Some states use one password for all their applications.

Fleming said currently no health insurance information is collected through new hire reporting. An option would be for employers to report yes/no regarding availability of employer-sponsored health insurance and for CSE to go to the employer's online profile for more specific information about the health insurance. Goetz said not all employees have the same health insurance (e.g., family, single with dependent). In addition, in some cases an employee's spouse is providing the health insurance. Fleming said the profile would need to take options into account.

Schwindt said that five percent of new hire hits are matches (i.e., match with an obligor).

Action Steps – Areas for Change (cont.)

- Proposals from Task Force
    - Do not require new hire reporting of emergency independent contractors (e.g., plumbing emergency)
    - Consider new hire reporting of independent contractors where there is a an ongoing/recurring relationship rather than a one-time association
    - Establish monetary thresholds for reporting independent contractors

- Limit new hire reporting requirements to independent contractors that are individuals, not companies
- Explore whether 1099s can be obtained from the Tax Department
  - What is the volume?
  - What is the impact on the Tax Department?
- Require electronic new hire reporting by employers with 24 or more employees
- Collect basic health insurance information through new hire reporting
  - Yes/No
  - Date of eligibility?
- Include more detailed health insurance information in the online employer profile

(3) Goal

Increase support collections and reduce the time between when an obligor is hired and when support payments are received and children are enrolled in employer-sponsored health insurance

Areas for Improvement

- Increase number of employers who are aware of their child support legal requirements
- Increase number of employers who are complying with their child support legal requirements
- Increase timeliness of receipt of employment-related information
  - If an individual is not reported through new hire CSE does not learn of the new hire until that information is passed by Job Service months later
    - Example: For the quarter ending September 30, 2009, an employer has until October 31, 2009, to report the quarterly wages to Job Service. Job Service has until mid-November 2009 to enter the quarterly wage reports into their system. This means that potentially CSE does not become aware until late November 2009 that someone started employment on July 1, 2009. This is as opposed to learning of the new hire within 20 days of the hire.

<u>Discussion</u>
Fleming gave a scenario where a couple separate. Child support is retroactive from when filed. Until there is a court order the State Disbursement Unit doesn't accept payment. The order is then established but CSE doesn't know where the obligor is working. The obligor keeps paying the obligee directly. The sooner CSE hears about a new hire the sooner income withholding can be established and payments routed through the State Disbursement Unit. Fuglesten asked if the courts can find out where the obligor working. Fleming said when there are stipulations and pro se divorces no one may think to ask that question. Fuglesten said it may be an easier task to educate a small number of judges rather than thousands of small businesses. Fleming said

there currently are 43 judges and CSE does work with them. Representative Weisz said information about employment should be available because it was used to establish the child support amount. Fleming said in nonIV-D cases CSE does not search for employment information.

Action Steps – Areas for Change

- Enhance employer outreach efforts
  - Examples: targeted mailings, promotional materials such as pens
- Enhance CSE employer Website
  - Additional questions and answers
  - Income withholding calculators
- Proposals from Task Force
  - Mandate employers to remit new hire reports electronically
    - Pattern after Job Service requirement (i.e., currently employers with 24 or more employees)
  - Make Web site changes discussed earlier in meeting (e.g., add questions and answers)
  - Do targeted mailings (e.g., employers who have not reported new hires for years)
  - Advertise amnesty
  - Contact groups, associations, and agencies
    - Examples: Tax Department, Farm Bureau, tax preparers
    - Associations assist with new hire compliance efforts?
  - Considerations for $3 obligor fee to offset employer income withholding costs
    - Increase?
      - Include upfront costs for setting up withholding?
    - Advertise the fee to employers

(4) Goal

Develop electronic communication options that are convenient, inexpensive, secure, fast, automated, and less susceptible to human error

<u>Discussion</u>
Fleming said the income withholding order is a federal form and can't be changed by CSE. The income withholding order and the National Medical Support Notice are lengthy forms and whenever postage rates change mailing costs can increase.

Areas for Improvement

- Reduce time it takes documents to travel between CSE and employers/business community
- Reduce expense incurred by CSE and employers/business community to mail documents

- Reduce number of lost documents
- Reduce uncertainty about whether communications have reached the other party (e.g., acknowledgements)

Action Steps – Areas for Change

- Implement electronic income withholding
  - There is an option that requires income payers to program
  - There are options that use PDFs and spreadsheets and do not require income payers to program
- Implement electronic National Medical Support Notices
  - Currently being developed at the federal level
- Develop and implement a mechanism for securely transferring forms between CSE and employers/businesses

Discussion
Fleming said an online business profile would be beneficial in this area. The profile could contain the email contact for electronic forms. The state has a secure transfer process that can be used to invite employers to pull down and return documents. However, CSE needs to know to whom to send the invites.

Action Steps – Areas for Change (cont.)

- Proposals from Task Force
  - No additional recommendations beyond those included in other areas

Financial Community

(1) Goal

Universal participation in financial institution data match

Areas for Improvement

- Two in-state financial institutions out of 148 have not signed participation agreements, and one has suspended its participation, creating a competitive disadvantage for those who are participating
  - Lower cost of operating for non-participating institutions

Discussion
Goetz said this implies that financial institutions are incurring significant costs. Fleming said no, but that any cost results in higher operating costs and a lower cost for non-participating institutions.

Areas for Improvement (cont.)

    - Potential incentive for obligors to do business at the nonparticipating institutions

Action Steps – Areas for Change

- Treat all financial institutions the same

Discussion
Fleming said the current appropriation allows for reimbursement up to $25 per quarter. CSE is within budget for this item because of the number of financial institutions that do not claim reimbursement. Reierson said some financial institutions claims are for less than $25 per quarter.

Action Steps – Areas for Change (cont.)

- Subpoena records from non-participating financial institutions

Discussion
Fleming said CSE has tried to negotiate agreements with financial institutions. All but two have signed agreements. A law change last session says that if CSE subpoenas account records, the reimbursement level can't exceed what CSE is paying for financial institutions with agreements (e.g., $25). This change was sought so financial institutions would not benefit from not having agreements to do the data match. Goetz asked if there was evidence or anecdotal evidence that obligors are moving to financial institutions that are not participating in the data match. Fleming said there was not.

Action Steps – Areas for Change (cont.)

- Review compensation allowed to financial institutions for honoring a lien followed by a written demand for surrender of the funds in the account, compared to other states or other analogous transactions in ND
- Law change – authorizing a transactional fee to be deducted from an obligor account when the funds are frozen or seized
    - Income withholding order – up to $3 per month (NDCC 14-09-09.16(4))
    - Deduction order – up to $3 per order (NDCC 50-09-35(6))

Discussion
Fleming asked if this was a better option than increasing reimbursement for conducting data matches. Who is the proper party to bear this cost? For a lien to be placed an obligor has to have at least two months of arrears or owe $2,000, whichever is less.

McDonald said some accounts don't yield much. Is there a minimum amount CSE will take? Fleming said there is a suggested $100 minimum. In the past CSE workers didn't have a lot of time to work matches. Some of this function has been centralized so more time can be dedicated to working matches.

Fleming said financial institutions may also receive a deduction order. A deduction order is like a garnishment. CSE holds the money for 30 days. CSE can issue a deduction order or a lien that is followed in 30 days by a demand to surrender the property. Some financial institutions prefer to freeze funds (rather than have CSE hold the funds). That is why CSE may choose to issue liens rather than deduction orders. Liens are also viewed as being less intrusive.

Fleming provided a scenario in which an obligor is living with an aging parent. The obligor is a cosigner on the parent's account. When the obligor is added to the account it is picked up in the data match. CSE may know who the primary and secondary account holders are but does not know who the contributor to the account is. The obligor files a protest. If documentation is provided that shows the money was contributed by the obligor's parent CSE releases the money. CSE may require that the obligor's name come off account so it is not picked up in future data matches. Currently there are no fees associated with liens.

McDonald said ND is a low reimburser based on the chart of what states reimburse financial institutions. Fleming reminded the group that some states don't provide any reimbursement and that 16 states didn't provide information about what they reimburse. McDonald asked if a recommendation should be made that reimbursement be increased to cover reasonable costs. This would need to be capped at a reasonable cost. Fleming asked why the cost shouldn't be paid by the obligor. Goetz said a financial institution may not have any matches. His financial institution would have an $1,800 initial fee and then a cost of $360 a year plus staff time. Reierson said there is a huge range in actual costs reported by financial institutions who request reimbursement. Software costs appear to differ dramatically. Representative Weisz suggested the option of reimbursing for the match and shifting costs to the obligors. For example, if a financial institution was paid $250 for doing the match every lien would impose a $5 fee on the obligor and each $5 fee would be subtracted from the $250. Fleming said this would have a huge fiscal note. During the prior Legislative session the Senate committee said the data match is a cost of doing business. Reimbursing for data matches is a bigger issue than just financial institutions. Goetz feels financial institutions and insurance companies are being singled out. Fleming said the federal child support enforcement agency has identified groups that CSE needs to target. For reimbursement to be increased either fees need to be increased or taxpayer subsidy needs to be increased. Representative Weisz said this is different for different groups. If this is public policy, should every taxpayer pay or should every business pay? The simplest course of action is for business to absorb the cost. Goetz said that is not fair. Representative Weisz asked if it is fair if this is public policy or if it is fair to spread the cost out among everyone? Fuglesten said another option is to get the money through obligor fees. Schwindt suggested that draft legislation with four alternatives be presented to the group for discussion at the next meeting.

> 1 – Minnesota model (e.g., $150 maximum, based on appropriation, prorated)

2 - Actual cost minus any fees recovered from obligors
3 – No reimbursement
4 – Actual cost plus any fees recovered from obligors

Schwindt said in the end the Governor and Legislature will decide. McDonald said he would like to the Task Force come up with a recommendation. Schwindt asked who caused the problem and who should pay for it. Ultimately the Governor and Legislature will decide how they want to go with this. The Task Force can make a recommendation.

McDonald asked who pays the $3 fee for the income withholding order and the deduction order. Fleming said this is taken from the obligor. Representative Weisz suggested the fee to reimburse the institution for taking an action against the obligor (e.g., lien) is one thing and should perhaps be paid by the obligor while the general cost to conduct the match is another thing. The question then is should financial institutions be reimbursed for the match, and if so, how much. Goetz suggested that part of the fees recovered could be turned back to held fund CSE. Schwindt said that 66% of any fees collected need to be returned to the federal government. Fleming said there is also a public perception issue. CSE does not take actions to raise money for itself. Fuglesten asked if there are budget issues if institutions have to return money from fees (e.g., if fees are deducted how does CSE know what needs to be budgeted for financial institution reimbursement). The two would need to be kept separate. Representative Weisz said the state has no part in obligor fees. Schwindt said CSE does not and will not prosper from enforcement actions taken. Goetz felt that Representative Weisz's approach comes closest to what he would like to see happen. While there are very small and very large financial institutions the cost of software will be similar for both. However, larger financial institutions will likely have more obligors and potentially will take more actions. Larger institutions would be at advantage in coming closer to getting reimbursed because there would be more obligors to collect fees from. However, that financial institution would also have to invest more staff time in taking actions. Smaller financial institutions would likely take a loss. Schwindt said CSE will do a fiscal note as well as it can with available information. Representative Wiesz asked about the number of freezes. Schwindt said the binder includes information about actions taken. Each quarter there are 3,200 matches.

Fuglesten asked what is involved on the institution side with a lien. Is there a big cost? Does it involve pushing a button? Goetz said yes to both. The risk is someone doesn't see the flag and pays out money. Then the institution takes the loss.

Action Steps – Areas for Change (cont.)

- Proposals from Task Force
  - Draft legislation with four alternatives will be discussed at the next meeting
    - Minnesota model (e.g., $150 maximum, based on appropriation, prorated)
    - Actual cost minus any fees recovered from obligors
    - No reimbursement

- Actual cost plus any fees recovered from obligors

(2) Goal

Operation of a streamlined, efficient, and effective freeze and seize process that minimizes the work involved on the part of the financial institution and CSE

Areas for Improvement

- Seizures requested by other states often require the involvement of North Dakota's CSE program
- Delay in implementation of lien or deduction order can provide the obligor with the opportunity to withdraw all funds.
- Confusion of incoming payments as funds withheld from employees of the financial institution (income withholding) or as a result of freeze and seize activities.

Discussion

Fleming said the law requires full faith and credit for liens across state lines. The law also requires that employers honor income withholding across state lines. There is not a requirement for this kind of reciprocity for seizing assets. Haake asked if what was being suggested was full faith and credit for all seize activities or only for child support seize activities. Fleming said for child support actions only. The request would need to be from a legitimate child support enforcement program (i.e., a state child support enforcement program) and not from a private company. These private companies have engaged in questionable practices and a few years ago legislation was enacted that requires them to be licensed.

There was discussion about how to determine a seize request is coming from a government agency and not from a private support collection agency. Haake said this is an area of much concern. McDonald asked if these are non-judicial liens. Fleming said these are statutory liens. Goetz asked if there was a way to send the documents electronically so that the ND CSE could check them and then send them on to the financial institution if they are legitimate requests. Goetz said financial institutions have exposure if they send the money and then find out it was not a legitimate request. Fleming said federal law immunizes financial institutions if they are participating in the data match process. Representative Weisz asked if that immunity was specific to liens. Fleming said it was. Fuglesten asked if the institution would have immunity if it turned out not to be a legitimate request. Fleming said they would still be covered. This is a legitimate concern. How does an institution verify the authenticity of a document? McDonald said legislation could say that the ND CSE has to approve the request. Fleming said currently that is the process and CSE has to open a case to do that. McDonald and Fuglesten said there needs to be a way to verify the request. Fleming said that currently institutions deal with a similar issue because there is full faith and credit for liens which freeze the money. The problem is how to end the process across state lines. Representative Weisz gave a scenario where Colorado child support

enforcement sent a seizure notice. Then there was a protest but the money had already been sent to Colorado. Who is liable? Fleming said Colorado is. The customer would need to go after the money. Fuglesten asked which court would address this. Fleming said Colorado. Goetz asked what the consequences would be if for example a farmer's operating money was seized in error and the farmer couldn't put in his crop. McDonald asked what the draft legislation would look like. Fleming pictured adding something to the lien full faith and credit statute. Some states seize lump sums through the income withholding order and a financial institution has to honor that across state lines.

McDonald suggested a transcription requirement (i.e., transcribe to the bank). This would put the burden on meeting requirements on the other state. Goetz said there needs to be a way to protest locally. Haake asked how many appeals are filed. Do other states accept direct actions across state lines? Reierson said some states accept direct actions across state lines (e.g., Texas). Fleming said there are not many protests. Protests are generally regarding the amount owed. As an example, if an obligor has orders in multiple states, not all states may have complete payment records. Hearings have been conducted in ND.

Fuglesten suggested seeing what other states are doing, pick the best practices, and draft legislation for the Task Force to look at. Fleming will do that.

Oehlke asked what types of financial accounts CSE seizes. Fleming said just about any account.

Action Steps – Areas for Change

- Law change to clarify acceptance across state lines of seize actions
- Develop and implement a mechanism for securely transferring forms between CSE and financial institutions
- Implement process for electronic remittal of payments by financial institutions
- Proposals from Task Force
    - Research other state's laws and protections

Insurance Community

Goal

Increase collections from insurance claims through universal participation in an insurance data match program

Areas for Improvement

- Number of insurance companies participating in the match process

<u>Discussion</u>

Fleming said this is voluntary now. Some companies won't match unless there is a mandatory law. The law provides additional protection.

Areas for Improvement (cont.)

- Acceptance across state lines of documents to seize insurance claims

Discussion
Fleming said this is the same issue that was discussed during the financial institution portion of the agenda.

Areas for Improvement (cont.)

- Timeliness of reports regarding insurance claim payouts

Action Steps – Areas for Change

- Promote participation in an insurance data match program
  - Options for voluntary participation – 2009 HB 1175 § 8, NDCC 26.1-02-28
    - OCSE insurance match – See Tab 7
    - Child Support Lien Network
  - Criteria
    - Threshold of claims that must be reported (e.g., $500)
    - Type of claims
    - Exemptions (e.g., damage to or loss of real property)

Discussion
Fleming said for example when there is hail damage CSE would like to see the property restored so those types of claims would not be seized. Most states have private workers compensation. CSE has a process in place with Workforce Safety and Insurance.

Action Steps – Areas for Change (cont.)

- Mandate participation?

Discussion
Fleming said there is law requiring health insurance companies to match with CSE. The insurance match could be performed by a designee (i.e., Child Support Lien Network, federal Office of Child Support Enforcement).

Action Steps – Areas for Change (cont.)

- 2009 legislative amendment to HB 1175

Discussion

Fleming would like to vet this draft with the business community to see if it has merit. The data match could be done by the insurance company or by CSE or its designee. The financial institution data match offers this choice to financial institutions.

Fleming said the bill draft includes a definition of a claimant. An issue is how to deal with claimants who refuse to provide information. Should there be a penalty clause for insurers who do not report claims as required?
Fleming said a child support lien would be subordinate to preexisting liens (e.g., attorney fees, medical claims). Health insurers would be exempted because there is already a law requiring them to match with CSE. The Insurance Reserve Fund is example of a government self-insurance pool.

Action Steps – Areas for Change (cont.)

- Law change to clarify acceptance across state lines of seize actions
- Develop and implement a mechanism for securely transferring forms between CSE and insurance companies
- Implement process for electronic remittal of payments by insurance companies

Discussion
Although an insurer may be immunized against a frivolous lawsuit Goetz asked how a delinquent obligor would have the money to pay? Fleming said they may not. Goetz said an insurer could be in the position of spending thousands of dollars to defend itself. The suit may be frivolous but if the money can't be collected the insurer takes the loss. Fleming doubted that thousands of dollars in fees would be accumulated for a frivolous suit. A collection agency may go further (i.e., take further actions than CSE would).

Fleming asked the Task Force to look at the bill draft language and comment.

Haake said insurance claims are very distinguishable from other things discussed by the Task Force today. Those other things are assets belonging to an obligor. During the last legislative session the focus was on personal injury claims. In these cases one party has a claim against an insured person who caused the accident. These are often third party claims where an action is being taken against the person covered by the insurance company. NoDak Mutual Insurance Company is participating in the insurance match and in three to four years of participation have only had three matches. A couple matches have been out of state. In one case the obligor had arrears and the lien was received after the settlement. In another case the match entered before the claim went into mediation. Then it was discovered there was a lien. More attorney fees ended up being paid. This shows that it is very easy for a claim to go south. Bodily injury claims are negotiable. The obligor may have a $10,000 claim but owes $11,000 in arrears. That obligor is more motivated to take the case to trial. Costs for a soft injury trial are about $30,000. Insurance companies end up paying more and this is an indirect tax against policy holders. This also means the insured person is involved in a lawsuit that could have been settled outside of the court process. Generally, this isn't a threat. However, the insured may have his or her credit rating negatively affected (i.e.,

have trouble getting operating loans) while the suit is pending. Also, a jury can award more than what the insurance coverage will pay. A private citizen is exposed to a greater risk. That is why this is different than going after other types of accounts.

Fleming said these concerns were also expressed by the State Risk Management Fund. Notices need to be timed carefully (i.e., CSE issue the lien after the settlement has been reached). When CSE receives the match also affects the process. If the insurance company is communicating with CSE, CSE can immediately send the lien or time the sending of the lien after the settlement. Haake said attorneys who work personal injury will quickly learn to screen for child support arrears. Twice his company had small person injury claims with child support arrears. In those two cases the obligors were agreeable and gracious. The third case resulted in a lot of conflict. There have not been large numbers of these cases but the concern is what it can do to the insured person if the process if drug out and the insured is exposed to an excess judgment.

Representative Weisz asked how often this issue arises in areas other than child support. Haake said medical liens are common and have the same effect to a degree. Fuglesten said this is an allowable element in a case. Representative Wiesz said this could affect liens in any area. Haake said he hasn't seen this happen with other than medical liens. Schwindt said he hasn't heard this is an issue in other states. Haake said this is something of which the state child support enforcement programs might not be aware. It adds costs.

Schwindt asked how this can be resolved. Haake said ND enjoys the second lowest insurance rates in nation. Fuglesten asked why the focus is on personal injury rather than life insurance where this would not be an issue. Fleming said life insurance is included in the bill draft. Haake said life insurance is a first party claim.

Fleming said CSE workers will be asked to contact insurance companies before sending liens so that the timing issue can be addressed. Haake wanted the group to be aware of his concerns. He felt he needed to explain the reality of the insurance world. Schwindt asked if language needed to be added to the bill draft. None was offered.

Fleming said the Child Support Lien Network has an option whereby an insurance company can go online and check to see if a claimant is an obligor with arrears. Because time does not permit it during this meeting, during the next meeting this simple online registration process will be demonstrated.

Action Steps – Areas for Change (cont.)

- Proposals from Task Force
  - Review draft legislation and discuss next meeting
  - Consider timing of the lien

<u>Discussion</u>

Because Bachmeier needed to leave the meeting at 4:30 Schwindt asked if the Lien Registry could be discussed before Public Utilities. There was no disagreement with this change.

Lien Registry

Goal

Establishment of a lien on all real and titled personal property in North Dakota that an obligor on the arrears registry owns or may come to own, regardless of county or whether the arrears are docketed.

Discussion
In response to a question Fleming said the arrears registry criteria is two months arrears or $2,000, whichever is less.

Areas for Improvement

- Liens on real property (judgment liens) are still largely a manual process
- Judgment Liens extend to after-acquired property, but only apply to docketed arrears – See Tab 9

Discussion
Fleming said CSE doesn't docket arrears monthly because it is a cumbersome, paper process. Fuglesten asked if the arrears registry is public information. Fleming said it is not. In fact there is not a list, it is simply computer logic. CSE is authorized to do 'most wanted' lists but has chosen not to do them at this time.

Areas for Improvement (cont.)

- Judgment Liens are county-specific:
  - Which county or counties do you check? CSE must know the location of the property before the lien can be obtained
  - Lien is effective on a per-county basis; obtaining a lien in multiple counties requires transcription of the judgment and other steps
- Arrears owed to multiple families by the same obligor are docketed separately
- Personal property liens are marginally effective for third-party purchasers unless a) the lien is recorded on the title of the vehicle and b) a third-party purchaser obtains the title prior to purchasing the property

Discussion
Fleming said the Department of Transportation is moving to an electronic process. As a result, there is less paper.

Action Steps – Areas for Change

- Creation of on-line database including all obligors on the arrears registry (two months or $2000 behind, whichever is less) and the amount of arrears that are owed in IV-D cases
    - Secure process for authorized purposes
        - Realtors
        - Mortgage lenders
        - Attorneys
        - Potential purchasers of titled property
    - Penalty for unauthorized use
- Link database to state disbursement unit records to maintain current information
- Law change – create a lien by operation of law on all current or after-acquired real or titled personal property of a listed obligor:

  A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

  Child support lien registry. The state agency shall create a child support lien registry. The registry shall include a listing of any obligor who is listed on the arrears registry maintained under section 50-09-02.7 and the amount of arrears owed by the obligor that is being enforced under title IV-D. Any real or titled personal property, except the homestead or other property that is exempt under section 28-22-02, of an obligor who is listed on the lien registry or which the obligor thereafter acquires in this state is subject to a lien. A lien created under this section is not effective against a good-faith purchaser of titled personal property, unless the lien is recorded on that title.

    - May require conforming changes to NDCC 14-08.1-05 and chapter 35-34
- Outreach to affected community – potential delayed effective date

Discussion

Fleming said a lot of people do titles and title searches. The community of these people would need to be trained. Goetz asked what happens when for example a farmer does his own title search to buy a neighbor's land. Fleming said this farmer would be authorized to use the Web site. Representative Weisz asked who gives authorization. Fleming said the Web site would maintain footprints of the people who accessed it. Goetz asked how the system knows a person is who they say they are. A person could say they were anyone. What if the person is using a floating IP address?

Bachmeier said they can no longer search by SSN. They have to search by name. All SSNs have been redacted out. They have to ask county recorders for the information and have to pay extra to get it. She would like to have to a name search that is a public search because some people do their own searches. This should be a public record that does not require authorization. It can be hard to get information from clerks of court.

Bachmeier supports the lien concept Fleming introduced.

Fleming said that the Web site will say it is to be used for an authorized purpose. Fuglesten said a person may be authorized to look at information but uses it for a purpose that is not authorized (e.g., to see if a neighbor owes child support). Fleming said in the past concerns have been expressed about doing 'most wanted' posters.

Some states see the posters as public shaming and that it encourages obligors to pay support. Goetz feels information about who owes arrears should be advertised.

Fleming said arrears could be docketed every month now but that would require going to the court house monthly. Bachmeier said that now she does three searches. She would need the payoff in writing. Schwindt said that some states address this by posting once a day. Bachmeier asked if there would be a 'not found' to print off if there were not arrears. What if an obligor has multiple obligations? Fleming said there would be a 'not found' message if there were no arrears. Also, arrears are by person not case. The arrears are tied to the obligor, not the family. Bachmeier asked if exemptions would continue. Fleming said yes.

Haake asked if there was consideration given to moving this function from the counties to the state. Fleming said not all liens are to the counties. He mentioned personal property. Goetz mentioned agricultural liens. Representative Weisz said this function provides employment for small counties. Counties do not want to lose this function.

Fleming said each month's child support is a mini-judgment. Bachmeier asked questions about the payoff amount CSE provides. Fleming said it is the payoff of docketed arrears only. All the arrears may not have been docketed. In response to what debts are paid first Fleming said federal law governs which debts are paid first. Interest is part of the judgment. Current support is paid first. Representative Weisz asked which arrears are paid first. Fleming said it depends on whether arrears are assigned. If the arrears have never been assigned, the oldest arrears are paid first.

Bachmeier gave a scenario where an obligor went to finance a mortgage. The obligor had arrears which the obligor paid at that time. After financing the obligor stopped paying support. Later the obligor goes to refinance. Will CSE re-file a lien right away? Fleming said the mortgage would come before the child support lien. Bachmeier asked if a legal subordination agreement will be created. Fleming said he needs to think about that. Schwindt said this will be researched. Representative Weisz gave a scenario where the obligor owes $1,500 arrears. Someone else files a lien. Now the obligor owes $10,000 in arrears. Fleming said this is the aging concept. Representative Weisz asked when the lien will kick in.

Fleming will investigate how Wisconsin handles these issues.

Action Steps – Areas for Change (cont.)

- Proposals from Task Force
    - Investigate how Wisconsin handles these issues

<u>Discussion</u>
Bachmeier asked that future Task Force meetings not be scheduled for the 1st, 15th, or 30th, Monday or Friday.

Public Utilities

Goal

- Periodic, industry-wide matching for electric, telephone, water, cable, and cellular service providers to identify any public utility customers for whom CSE is looking
- Periodic identification of customers of member-owned public utilities who are on the arrears registry and interception of payments that the public utility plans to make to those customers (e.g. refund, rebate, credit, patronage dividend, capital distribution)

Areas for Improvement

- CSE is currently looking for some parents (or potential parents, in the case of paternity actions) for whom a public utility has a current, good address
- Public utilities are currently making payments to delinquent obligors that could be intercepted and applied to the customer's unpaid child support

Action Steps – Areas for Change

- Data match agreements with:
    - Electric – cooperatives and member-owned
    - Telephone – cooperatives and member-owned
    - Water – cooperatives and municipal
    - Cable
    - Cellular – state or national-level matches
- Mandatory, not voluntary
- Procedures for matches conducted by CSE or by the public utility
    - Secure information exchange
    - Use of Administrative Subpoenas
    - Minimum information disclosed as needed to match customers
        - SSN as common identifier
    - Retain confidentiality and use of information only for permitted purposes
- Methods for exchanging information electronically
    - Subpoena
    - Data file
    - Notice of Lien
    - Written demand letter
    - Electronic payment

- Proposals from Task Force
    - No additional recommendations beyond those included in other areas

<u>Discussion</u>
Fleming said member-owned, not investor-owned, utilities (i.e., cooperatives) are being discussed. As a general rule, these member-owned cooperatives annually pay capital

credits. In these matches CSE is looking for obligor addresses and payments that can be seized.

Fleming said the statutes provide CSE with authority to get this information. Water utilities are on the horizon. Cell phone information access is being addressed at a national level. Cell phone companies require the person to provide his or her SSN to get a cell phone number. SSNs are a great assistance for the match process. Other utilities don't necessarily require that SSNs be provided. This makes matching more difficult. CSE needs to get enough information from the utility company to be able to do a match.

Fleming said the electric cooperatives in ND are all members of an association and use the same software vendor. CSE is working with Fuglesten's association regarding sharing software costs. Initial costs will be shared, with no future cost to CSE. All electric cooperatives will be participating in the match process. CSE is also working with this same vendor who provides services for most of the telephone cooperatives in ND.

Fleming said CSE will time actions to the time chosen by the association. Locate information is useful but is only part of equation. Intercepting payments is another part of the equation. Next on the list are water and cable utilities.

Fuglesten said two percent of water utilities are municipal utilities. Graveline said there are 14 or 16 municipal utilities. Does the current law apply to them? Fleming said there are laws covering access to government agency information. Graveline said these are political subdivisions. Schwindt said CSE has access to government municipality information. Graveline said PSC doesn't deal with municipalities. Goetz asked if matching with investor-owned utilities is being considered. Fleming said there are not assets to seize.

Fleming talked about match options. Who goes first (i.e., should CSE give the obligor file to a private company, does a private company send information about all their customers to CSE)? Fuglesten said this issue was solved by doing a reverse match. Fleming mentioned a current situation involving a traffic violations-related class action. The Judge said CSE needs to coordinate with the city of Fargo. The standard financial institution agreement lets financial institutions pick their match type (i.e., CSE does the match or the financial institution does the match).

Next Meeting

The next meeting is tentatively scheduled for February 9, 2010.