

Office of Chief Counsel  
Internal Revenue Service  
**Memorandum**

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subject: Use of Credit Reports in Collection Cases with Indications of Fraud

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUES

1. May ACS share a taxpayer's full credit report with field Collection when the report was obtained without a summons under the F.C.R.A.'s collection exception and has potential indicators of fraud?
2. May ACS or field Collection share any information with CI obtained from the credit report, and if so, what information?
3. How should CI comply with its discovery obligations under the Federal Rules of Criminal Procedure if ACS or field Collection cannot share a copy of a full credit report with CI?

## CONCLUSIONS

1. So long as ACS obtained the credit report for collection purposes and is referring the report to the field for collection of the outstanding tax liabilities, ACS may share the report with field Collection.
2. ACS or field Collection may not share the contents of the full credit report with CI if the report was obtained under the collection exception to the Fair Credit Reporting Act, but ACS may share non-protected information.
3. If CI is obligated to provide a credit report to the defendant, it may obtain one under the summons exception to the F.C.R.A., and the defendant may also obtain a report under a separate exception to the F.C.R.A.

## FACTS

The Service often obtains and uses credit reports of taxpayers. The Service may obtain one of two credit reports from credit reporting agencies: a short report and a full consumer credit report. The short report is used primarily to verify contact information, while a full consumer credit report provides the Service with loan, employment, financial, and payment information about a taxpayer. The Service is allowed to obtain and use a full credit report, without a summons, for collection of an assessed liability. This use must meet certain criteria specified in the Internal Revenue Manual ("I.R.M."). See I.R.M. § 5.1.18.5. Some cases in ACS's collection inventory have at least one indicator of fraud, even though a formal referral to CI is never made in the vast majority of cases. Further, in certain cases where the balance due exceeds an established dollar criteria, ACS generally makes referrals to field Collection to work the case. This memorandum clarifies how ACS may use consumer credit reports in these cases, and it clarifies what information, if any, may be shared with CI.

## LAW & ANALYSIS

The Service's use of consumer credit reports is limited by the Fair Credit Reporting Act ("F.C.R.A."). 15 U.S.C. § 1681 *et seq.* In particular, the F.C.R.A. prevents consumer reporting agencies from furnishing credit reports to anyone, including the Service, unless one of the enumerated purposes set out in the statute is met. 15 U.S.C. § 1681b(a). These purposes include both furnishing a report in response to a summons issued by the Service and furnishing a report, without a summons, in connection with a review or collection of an account of the consumer. 15 U.S.C. §§ 1681b(a)(1), 1681b(a)(3)(A).

No one, including the Service, may use or obtain a credit report unless the report is obtained or used for one of the enumerated purposes. The person receiving the report must also certify that the information is being sought for one of the enumerated purposes and will be used for no other purpose. 15 U.S.C. §§ 1681b(f), 1681e(a). Courts interpret these restrictions in favor of the consumer. See *TRW, Inc. v. Andrews*,

534 U.S. 19, 23 (2001) (“Congress enacted the F.C.R.A. in 1970 to promote efficiency in the Nation’s banking system and *to protect consumer privacy.*”) (emphasis added); *Zamora v. Valley Fed. Sav. & Loan Ass’n of Grand Junction*, 811 F.2d 1368, 1370 (10th Cir. 1987) (“Accordingly, if a user requests information for a purpose not permitted by § 1681b while representing to the reporting agency that the report will be used for a permissible purpose, the user may be subject to civil liability for obtaining information under false pretenses.”); *Chester v. Purvis*, 260 F. Supp. 2d 711, 718 (S.D. Ind. 2003) (“No one questions that [the creditor] lawfully obtained the credit report. But [a creditor’s] receipt of the report does not, somehow, automatically extend to [the person seeking to use the report] . . . . Agency principles do not trump the statutory restrictions [of the F.C.R.A.]. Nor [was the report obtained from the creditor] for any purpose enumerated in 15 U.S.C. § 1681b(a).”).

1. May ACS share a taxpayer’s full credit report with field collection when the report was obtained without a summons under the F.C.R.A.’s collection exception and has potential indicators of fraud?

ACS may obtain and use a full credit report in cases with a taxpayer delinquent account balance in order to make a collection determination. Collection of an account is one of the enumerated purposes for which a consumer credit report may be obtained and used. 15 U.S.C. §§ 1681b(f), 1681e(a). Even if there are indications of fraud present in the case, so long as ACS only uses the consumer credit report for collection purposes, such as collecting an assessed tax liability, the F.C.R.A. will not be violated. Thus, when ACS wishes to refer a taxpayer delinquent account case to field Collection for collection action, ACS may include a copy of the full credit report without violating the terms of the F.C.R.A.

2. May ACS or field Collection share any information with CI obtained from the credit report?

As discussed above, the only permissible purpose for the IRS to use a full credit report under the F.C.R.A. without issuing a summons is for collection purposes. Any additional uses outside of the scope of collection purposes, including a fraud referral to CI, would violate the terms of the F.C.R.A. See Federal Trade Commission’s Statement of General Policy or Interpretation, Commentary on the Fair Credit Reporting Act, 16 C.F.R. § 600.2 (1990) (The Service must certify the purpose for which the report is sought, and certify that the report will be used for no other purpose.); see *also* I.R.M. § 25.5.4.4.6 (1). If CI wants access to the full report, it will have to use its summons power to do so. See 15 U.S.C. § 1681b(a)(1); see *also* Statement of General Policy or Interpretation, Commentary on the Fair Credit Reporting Act, 55 Fed. Reg. 18804, 18814 (May 4, 1990) (explaining that for purposes of the F.C.R.A., an IRS summons constitutes an order of the court).

Even though the full credit report may not be provided to CI, some information may be shared with them. Specifically, ACS or field Collection should be able to share

information so long as the actual report information itself is not disclosed. Thus, ACS or field Collection could share with CI the taxpayer's name, the fact that a full credit report was obtained and the date on which the full credit report was obtained in a fraud referral. ACS or field Collection, however, could not reveal the contents of the credit report itself in the referral.

3. How should CI comply with its discovery obligations under the Federal Rules of Criminal Procedure if ACS or field Collection cannot share a copy of a full credit report with CI?

ACS or field Collection may not disclose a full credit report obtained under the F.C.R.A. even when CI may have disclosure requirements. Federal Rules of Criminal Procedure ("FED. R. CRIM. P.") 16 requires various discovery disclosures to the defendant upon the defendant's request. See FED. R. CRIM. P. 16(a). Specifically, upon a defendant's request, the government must make available documents and objects "if the item is within the government's possession, custody, or control and: (i) the item is material to preparing the defense; (ii) the government intends to use the item in its case-in-chief at trial; or (iii) the item was obtained from or belongs to the defendant." FED. R. CRIM. P. 16(a)(1)(E). Only the first two reasons for disclosure would apply to a credit report obtained from a credit reporting agency. With respect to the first and second reasons listed in the Rule, CI should be able to obtain the report itself through its summons power, and it likely would have done so if it intends to use the credit report for its case-in-chief at trial. If CI has used its summons power to obtain a report, the report could be disclosed to the defendant. Furthermore, the defendant may always request a copy of his or her own credit report directly from the credit reporting agencies. See 15 U.S.C. § 1681b(a)(2) ("[A]ny consumer reporting agency may furnish a consumer report under the following circumstances and no other: (2) In accordance with the written instructions of the consumer to whom it relates").

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Please call (202) 283-0047 if you have any further questions.

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