

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from First American Real Estate Solutions, LLC ("FARES"). The proposed order would settle charges that First American CREDCO ("CREDCO"), which is now a division of FARES, violated the Fair Credit Reporting Act ("FCRA"). The FCRA requires, *inter alia*, that consumer reporting agencies such as CREDCO reinvestigate items that consumers dispute on their consumer reports and correct or delete items that are inaccurate.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

According to the complaint, one of the consumer report products that CREDCO produces is the Instant Merge Report ("IMR"). IMRs contain blended consumer account information from two or three of the national consumer reporting agencies ("repositories"), Trans Union, Equifax, and Experian. The complaint alleges that, in connection with its IMRs, CREDCO (1) failed to reinvestigate disputed information, (2) failed to correct or delete information in consumers' files that CREDCO found to be inaccurate or obsolete or whose accuracy can no longer be verified, and (3) failed to include in subsequent IMRs a notation that a consumer disputes an item and a statement by the consumer setting forth the nature of the dispute or a codification or summary of that statement. According to the complaint, these practices violated Section 611 of the FCRA, 15 U.S.C. § 1681i.

The complaint also alleges that CREDCO failed to follow reasonable procedures to prevent information that CREDCO has found to be inaccurate or obsolete, or whose accuracy could not be verified, from appearing on subsequent IMRs. According to the complaint, these practices violated Section 607(b) of the FCRA, 15 U.S.C. § 1681e(b).

Pursuant to Section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), all violations of the FCRA constitute unfair or deceptive acts or practices in commerce in violation of Section 5(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a). Thus, the complaint also alleges that CREDCO violated Section 5(a).

The proposed order contains injunctive provisions designed to remedy the violations charged and to prevent respondent FARES from engaging in similar acts and practices in the future. Specifically, the order would require that FARES (1) reinvestigate consumer report items that consumers dispute and record the current status of the items or delete them; (2) within five business days after receiving a consumer dispute, notify the furnisher that the item is disputed; (3) "review and consider" all relevant information submitted by consumers in connection with their disputes; (4) maintain reasonable procedures designed to prevent the reappearance in a consumer's file, and in consumer reports on the consumer, of information that has been deleted;

and (5) notify a consumer, within five business days after it completes a reinvestigation, (a) that the consumer has the right to file a dispute statement, and (b) that the consumer has the right to request that FARES provide either a notice that the item has been corrected or deleted, or the consumer's dispute statement, to any person specifically designated by the consumer who has received a consumer report that contained the deleted or disputed information within two years prior to the consumer's request, for employment purposes, or within six months prior to the consumer's request, for any other purpose.

The proposed order also would require FARES to permit a consumer to file a dispute statement if its reinvestigation does not resolve the consumer's dispute. If the dispute statement is neither frivolous nor irrelevant, the proposed order would require FARES to include the statement, or a codification or summary of the statement, in all subsequent consumer reports that FARES prepares concerning the consumer that contain the disputed item. The proposed order also would require FARES, at the request of a consumer, to provide a notification that a disputed item has been corrected or deleted, or the consumer's dispute statement or a codification or summary of the statement, to any person specifically designated by the consumer who has received a consumer report that contained the deleted or disputed information within two years prior to the consumer's request, for employment purposes, or within six months prior to the consumer's request, for any other purpose.

The proposed order also includes a number of recordkeeping and reporting requirements designed to assist the Commission in monitoring FARES's compliance.

Congress amended the FCRA in September 1996; the amendments became effective in September 1997. Because the practices of CREDCO that allegedly violated the FCRA occurred prior to September 1997, the complaint alleges violations of the pre-amendment FCRA only. The proposed order, however, requires FARES to comply with the post-amendment FCRA and any future FCRA amendments.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way its terms.