

**Analysis of Proposed Consent Order to Aid Public Comment**  
***In the Matter of Equifax Information Services LLC, File No. 102 3252***

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The Federal Trade Commission has accepted, subject to final approval, a consent agreement from Equifax Information Services LLC (“Equifax”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

According to the Commission’s proposed complaint Equifax is a “consumer reporting agency” (“CRA”) that sells “prescreened lists,” which are lists of consumers that meet certain pre-selected criteria such as consumers who were, among other things, 30, 60, or 90 days late on their mortgage payments. Such prescreened lists are “consumer reports” because information such as whether a consumer is 30, 60, or 90 days late on a mortgage payment bears on, among other things, a consumer’s credit worthiness and credit standing and is used or expected to be used as a factor in determining a consumer’s eligibility for credit. The only permissible purpose under the Fair Credit Reporting Act (“FCRA”) for using a prescreened list is to make a “firm offer of credit or insurance.” A firm offer of credit is one that will be honored, subject to limited exceptions, if the consumer continues to meet the selection criteria.

First, the Commission’s proposed complaint alleges that Equifax violated Section 604(c) of the FCRA by furnishing consumer reports to persons that it did not have reason to believe had a permissible purpose to obtain a consumer report. The proposed complaint alleges that from January 1, 2008 through early 2010, Equifax sold prescreened lists to Direct Lending Source, Inc. or its affiliates, Bailey & Associates Advertising, Inc. and Virtual Lending Source, LLC (collectively “Direct Lending”) which included, among other things, consumers’ credit scores and whether they were 30, 60, or 90 days late on their mortgage payments. The proposed complaint further alleges that in many instances, Direct Lending did not have a permissible purpose to obtain consumer reports under the FCRA but rather, Direct Lending used and sold these lists for the purpose of marketing products and services to consumers in financial distress. For example, the complaint alleges Direct Lending sold lists to marketers for the purpose of targeting consumers in financial distress for loan modification, debt relief, and foreclosure relief services.

Second, the proposed complaint alleges that Equifax violated Section 607(a) of the FCRA by failing to maintain reasonable procedures to limit the furnishing of consumer reports to the purposes listed under section 604(c) of the FCRA, failing to make reasonable efforts to verify the identity of each new prospective user of consumer report information, and failing to make reasonable efforts to verify the uses certified by each prospective user prior to furnishing such user a consumer report. According to the proposed complaint, Equifax failed to maintain reasonable procedures to limit the furnishing of the prescreened lists it sold to Direct Lending by: (1) failing to investigate promptly or fully on certain occasions when it learned that Direct

Lending was violating Equifax's internal policies relating to prescreening; and (2) furnishing prescreened lists to Direct Lending although it knew or should have known that Direct Lending resold the prescreened lists, in multiple instances, without identifying the end user to Equifax. The complaint alleges that, given Direct Lending's failures, Equifax had reason to believe that the entities to whom its prescreened lists were being sold did not have a permissible purpose for obtaining the lists. Nonetheless, Equifax continued to sell prescreened lists to Direct Lending. The proposed complaint further alleges that Equifax provided prescreened lists to Direct Lending through an online portal and also provided access to the portal to third parties in connection with Direct Lending's prescreening operations, but did not make reasonable efforts to verify the identity of these entities, and accordingly, could not ensure that these entities would only use the lists for a permissible purpose.

Finally, the proposed complaint also alleges Equifax violated Section 5(a) of the FTC Act by failing to employ reasonable and appropriate measures to control access to the sensitive consumer financial information it maintains and sells for prescreening services. The complaint alleges that Equifax's failures resulted in prescreened lists being sold to a number of entities that were ultimately the subject of actions or warnings by law enforcement and that Equifax's lack of reasonable procedures caused or is likely to cause substantial consumer injury that is not reasonably avoidable by consumers and is not outweighed by benefits to consumers or competition.

The proposed order contains provisions designed to prevent Equifax from engaging in the future in practices similar to those alleged in the complaint.

Part I of the proposed order prohibits Equifax from: (1) furnishing a prescreened list to any person which Equifax does not have reason to believe has a permissible purpose under section 604(c) of the FCRA; (2) failing to maintain reasonable procedures designed to limit the furnishing of prescreened lists to the purposes listed under section 604(c) of the FCRA; and (3) furnishing consumer reports pursuant to section 604(c) of the FCRA, in connection with solicitations for debt relief products or services, or mortgage assistance relief products or services offered by entities that respondent has reasonable grounds for believing charge advance fees for such services, unless: (a) the product or service is the refinancing of a dwelling loan; or (b) the entity offering the product or service is an attorney.

Part II of the proposed order requires Equifax to pay \$392,803 in disgorgement.

Part III through VII of the proposed order are reporting and compliance provisions. Part III requires that Equifax retain for a period of five (5) years: (1) files containing the names, addresses, telephone numbers, and all certifications made by persons seeking to obtain prescreened lists from Equifax in order to finance the product or service provided by a third party, and all materials considered by Equifax in connection with its verification of the identity of those persons and verification of the certifications made by those persons; (2) copies of all training materials and marketing materials that relate to Equifax's prescreening activities as alleged in the complaint and Equifax's compliance with the provisions of this order; and (3) all

records necessary to demonstrate full compliance with each provision of this order, including all submissions to the Commission.

Part IV requires dissemination of the order now and in the future to principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of the order. Part V ensures notification to the FTC of changes in corporate status. Part VI mandates that Equifax submit an initial compliance report to the FTC and make available to the FTC subsequent reports. Part VII is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

The purpose of the analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.