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Credit Reporting Agencies' Deal Could Impose Additional Investigation Rules on Companies that Furnish Credit Information

These “furnishers” – companies that provide consumer data to the Consumer Reporting Agencies (the “CRAs”) – will be required to more fully investigate consumers’ disputes and report their findings to the Agencies. The three Agencies involved with the Settlement announced by New York’s Attorney General, Experian Information Solutions, Inc., Equifax Information Services, LLC, and TransUnion LLC, will set up what is being called a National Credit Reporting Working Group to develop “best practices” and other policies to help the CRAs monitoring and data accuracy. The Working Group also will develop metrics for analyzing furnisher data, including: the number of disputes related to particular furnishers or categories of furnishers; furnishers’ rates of response to disputes; and dispute outcomes. Each CRA will also implement policies to monitor furnishers’ performance and take corrective action against furnishers that fail to comply with their obligations.

The Settlement was reached after a 2012 study by the Federal Trade Commission found that 26% of study participants identified at least one potentially material error in their credit reports, and that 13% of study participants experienced a change for the better in their credit score as a result of modification to their credit report after a dispute to a credit reporting agency. These findings suggest that millions of consumers have material errors on their credit reports.

Other important aspects of the settlement agreement reached with the New York Attorney General’s Office that will be instituted during the next three years include:

1. Improving the Dispute Resolution Process

The agreement requires that the CRAs employ specially trained employees to review all supporting documentation submitted by

consumers for all disputes involving mixed files, fraud or identity theft. The agreement also requires that, for all categories of disputes, when a creditor verifies a disputed credit item through the automated dispute resolution system, the individual CRA will not automatically reject the consumer's dispute, but rather, an Agency employee with discretion to resolve the dispute must review the supporting documentation.

2. Medical Debt

The CRAs will institute a 180-day waiting period before medical debt will be reported on a consumer's credit report. This waiting period will provide extra time to permit resolution of delinquencies that result from insurance delays or disputes. In addition, while delinquencies ordinarily remain on credit reports even after a debt has been paid, the CRA is to remove all medical debts from a consumer's credit report after the debt is paid by insurance.

3. Increasing the Visibility of AnnualCreditReport.com

The agreement requires the CRAs to include a prominently-labeled hyperlink to the AnnualCreditReport.com website on the CRAs' homepages. The hyperlink must appear directly on the CRAs' homepages or via a drop-down menu visible on the homepages.

4. Additional Free Annual Credit Report

In addition to the free credit report that already is mandated, the agreement requires the CRAs to provide a second free credit report to consumers who experience a change in their credit report as a result of initiating a dispute. This requirement will permit consumers to verify that the CRA made the correction to their credit report, without have to pay for a second credit report.

5. Payday Loan Debt

Apparently specific to New York only for the time being, the agreement prohibits the CRAs from including debts from lenders who have been identified by the New York Attorney General as operating in violation of New York lending laws on New York consumers' credit reports. It was not yet apparent if this will have national reach.

For furnishers of information to CRAs, the Fair Credit Reporting Act generally defines the duties to investigate and correct upon knowledge of a consumer's dispute as to accuracy. Those rules arise from the Act's Section 1681s-2(b), and even negligent violations can lead to civil liability under the Act's Section 1681n. For those furnishers operating in the States found within the Sixth Circuit Court of Appeals, this Financial Services Blog's article discussing the Boggio v. USAA Federal Savings Bank is useful reading.

For more information on this topic, please contact Bart Greenwald at bgreenwald@fbtlaw.com or (502) 568-0318.

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