

## **H.2.4 In re Equifax Credit Information Services, Inc.**

### **H.2.4.1 Agreement Containing Consent Order to Cease and Desist**

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

	)	
In the Matter of Equifax Credit	)	
Information Services, Inc., a	)	File No. 902 3149
corporation	)	
	)	

#### **AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST**

The Federal Trade Commission having initiated an investigation of certain acts and practices of Equifax Credit Information Services, Inc., a corporation, hereinafter sometimes referred to as Equifax, and it now appearing that Equifax is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

IT IS HEREBY AGREED by and between Equifax Credit Information Services, Inc., by its duly authorized officers, and its attorney, and counsel for the Federal Trade Commission that:

1. Equifax Credit Information Services, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 1600 Peachtree Street, N.W., Atlanta, Georgia 30309.

2. Equifax is a consumer reporting agency as defined in Section 603(f) of the Fair Credit Reporting Act.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Equifax, and the proceeding is in the public interest.

4. Equifax admits all the jurisdictional facts set forth in the draft complaint here attached.

5. Equifax waives:

- (a) Any further procedural steps;
- (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;
- (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered into pursuant to this agreement; and
- (d) Any claim under the Equal Access to Justice Act, 5 U.S.C. § 50 *et seq.*

6. This agreement and the order contemplated hereby is for settlement purposes only and neither its execution by the parties hereto, acceptance by the Commission nor entry of the agreed-to order shall constitute any admission by Equifax that any law has been violated. Equifax specifically denies that it has violated the Fair Credit Reporting Act in any respect whatsoever.

7. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in

respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Equifax, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to Equifax, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to Equifax's address as stated in this agreement shall constitute service. Equifax waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

9. Equifax has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Equifax further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

### ORDER

For the purpose of this order, the following definitions apply:

"Commission" means the Federal Trade Commission.

"Equifax" means Equifax Credit Information Services, Inc., its successors and assigns, and its officers, agents, and employees acting in such capacity on its behalf, directly or through any corporation, subsidiary, division or other device.

"FCRA" means the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et. seq.*, as the same from time to time may be amended or modified by statute or by regulations having the effect of statutory provisions.

The terms "Person," "Consumer," "Consumer Report," "Consumer Reporting Agency," "File," and "Employment Purposes" are defined as set forth in Sections 603(b), (c), (d), (f), (g), and (h), respectively, of the FCRA, 15 U.S.C. §§ 1681a(b), 1681a(c), 1681a(d), 1681a(f), 1681a(g), and 1681a(h).

"Permissible Purpose" means any of the purposes listed in Section 604 of the FCRA, 15 U.S.C. § 1681b, for which a Consumer Reporting Agency may lawfully furnish a Consumer Report.

"Subscriber" means any Person who, pursuant to an agreement with Equifax, furnishes Credit Information to Equifax or who requests or obtains a Consumer Report from Equifax, excluding Consumers, public record sources, and independent contractors who provide public record information.

"Prescreening" means the process whereby Equifax, utilizing Credit Information, compiles or edits for a Subscriber a list of Consumers who meet specific criteria and provides this list to the Subscriber or a third party (such as a mailing service) on behalf of the Subscriber for use in soliciting those Consumers for an offer of credit.

"Credit Information" means information described by Section 603(d) of the FCRA, which Equifax maintains with respect to any Consumer, that Equifax obtains from Subscribers, public records or any other sources and from which Equifax creates Consumer Reports.

"Mixed File" means a Consumer Report in which some or all of the information pertains to Consumers other than the Consumer who is the subject of that Consumer Report.

"Consumer DTEC Report" means a type of Consumer Report, by whatever name, containing only Consumer identifying information such as name, telephone number, mother's maiden name, address, zip code, year of birth, age, any generational designation, Social Security number or substantially similar identifiers, or any combination thereof, together with information showing employment or employment status.

"Mixed-use Subscriber of Consumer DTEC Reports" means the following Subscribers who obtain Consumer DTEC Reports: attorneys, law firms, detective agencies, private investigators, and protective services firms.

"Joint User" means a user of a Consumer Report jointly involved with a Subscriber in a decision for which there is a Permissible Purpose to obtain the Consumer Report and for which the Consumer Report was initially obtained.

"Approval Date" means the date on which the Associate Director for Enforcement of the Bureau of Consumer Protection of the Commission notifies respondent that the methodologies required by Paragraph II.1. of this Order have received final approval.

### I

IT IS ORDERED that Equifax, in connection with the collection, preparation, assembly, maintenance and furnishing of Consumer Reports and Files, forthwith cease and desist from failing to:

1. Maintain reasonable procedures designed to limit the furnishing of Consumer Reports to Subscribers that have Permissible Purposes to receive them under Section 604 of the FCRA, as required by Section 607(a) of the FCRA. Such procedures shall include but are not limited to:

- a. Continuing to require in Equifax's contracts that those who obtain Consumer Reports from Equifax in the form of lists developed through Prescreening make a firm offer of credit to each Consumer on the lists and take reasonable steps to enforce those contracts; and
- b. Reasonable procedures to avoid (i) including in a Consumer Report information identifiable as pertaining to a Consumer other than the Consumer for whom a Permissible Purpose exists as to such report; and (ii) displaying Files identifiable as pertaining to more than one Consumer in response to a Subscriber request on one Consumer.

2. Maintain reasonable procedures designed to limit the furnishing of Consumer DTEC Reports to Subscribers under the circumstances described by Section 604 of the FCRA, as required by Section 607(a) of the FCRA. Such procedures shall include, with

respect to prospective Subscribers of Consumer DTEC Reports, before furnishing any Consumer DTEC Report to such Subscribers, and with respect to current Consumer DTEC Subscribers, within six months after the effective date of this order:

- a. Adoption of procedures requiring all Consumer DTEC Subscribers to provide written certification that Subscribers will not share or provide Consumer DTEC Reports to anyone else, other than the subject of the report or to a Joint User;
- b. Continuation of procedures requiring all Consumer DTEC Subscribers to provide written identification of themselves; written certification of the Permissible Purpose(s) for which the Consumer DTEC Reports are sought; and written certification that the Consumer DTEC Reports will be used for no other purpose(s) than the purpose(s) certified;
- c. With respect to each entity that becomes a Consumer DTEC Report Subscriber on or after the effective date of this order, visitation to its place of business to confirm the certifications made pursuant to Paragraphs I.2.a. and I.2.b. of this order;
- d. Refusing to furnish Consumer DTEC Reports to Subscribers who fail or refuse to provide the certifications required in Paragraphs I.2.a. and I.2.b. of this order;
- e. Requiring each Mixed-use Subscriber of Consumer DTEC Reports to provide a separate certification as to the Permissible Purpose for each Consumer DTEC Report it requests before the Consumer DTEC Report is furnished to it; and
- f. Terminating access to Consumer DTEC Reports by any Subscriber who Equifax knows or has reason to know has obtained, after the effective date of this order, a Consumer DTEC Report for any purpose other than a Permissible Purpose, unless that Subscriber obtained such Report through inadvertent error—*i.e.*, a mechanical, electronic, or clerical error that the Subscriber demonstrates was unintentional and occurred notwithstanding the maintenance of procedures reasonably designed to avoid such errors.

3. Maintain reasonable procedures as required by Section 607(a) of the FCRA to avoid including in any Equifax Consumer Report, other than a Consumer Report described in Section 605(b) of the FCRA, any information, notice or other statement that indicates directly or indirectly the existence of items of adverse information, the reporting of which is prohibited by Section 605(a) of the FCRA.

4. Follow reasonable procedures to assure maximum possible accuracy of the information concerning the Consumer about whom the Consumer Report relates, as required by Section 607(b) of the FCRA. Such procedures shall include but are not limited to reasonable procedures:

- a. To detect, before Credit Information is available for reporting by Equifax, logical errors in such Credit Information.
- b. To prevent reporting to Subscribers that Credit Information pertains to a particular Consumer unless Equifax has identified such information by at least two of the following identifiers: (i) the Consumer's name, (ii) the Consumer's Social Security number, (iii) the Consumer's date of birth, (iv) the Consumer's account number with a Subscriber or a similar identifier unique to the Consumer; provided however that,
  - (A) for public record information only, if such public record information does not contain at least two of the above identifiers, Equifax may identify such public record information by the Consumer's full name (including

middle initial and suffix, if available) together with the Consumer's full address (including apartment number, if any); and

- (B) in the future Equifax may alternatively identify Credit Information (including public record information) by a discrete identifier that is (i) unique to the Consumer, (ii) not utilized by Equifax at the time of execution of this agreement, and (iii) not susceptible of data entry error.
  - c. To assure that information in a Consumer's File that has been determined by Equifax to be inaccurate is not subsequently included in a Consumer Report furnished on that Consumer;
  - d. To prevent furnishing any Consumer Report containing information that Equifax knows or has reason to believe is incorrect, including information that the Consumer or the source or repository of the information has stated is not accurate (including that it does not pertain to the Consumer) unless Equifax has reason to believe that the statement is frivolous or irrelevant or, upon investigation, not valid;
  - e. To avoid the occurrence of Mixed Files, including but not limited to mixing of Files as the result of entry of data by Subscribers when seeking Consumer Reports; and
  - f. To avoid reporting in a Consumer Report public record information that pertains to Consumers other than the Consumer who is the subject of the Consumer Report, or which does not accurately reflect information concerning such subject as it appears on public records, including but not limited to following reasonable procedures to sample, verify or otherwise corroborate public record information furnished by Equifax.
5. Maintain reasonable procedures so that information disputed by a Consumer that is deleted or corrected upon reinvestigation by Equifax, does not subsequently appear in uncorrected form in Consumer Reports pertaining to that Consumer; provided, however, that if after Equifax has deleted such information from the File, Equifax reverifies such information, Equifax may reinsert such information in the File and report such information in subsequent Consumer Reports concerning that Consumer if, and only if, Equifax advises the Consumer in writing that the information has been reinserted.
6. Make disclosure of the nature and substance of all information (except medical information) in its Files on the Consumer at the time of the request for disclosure, as required by Sections 609 and 610 of the FCRA, to any Consumer who has requested disclosure, has provided proper identification as required under Section 610 of the FCRA, and has paid or accepted any charges that may be imposed under Section 612 of the FCRA.

7. Reinvestigate and record the current status of items of information the completeness or accuracy of which is disputed by a Consumer, when the Consumer directly conveys the dispute to Equifax, and Equifax does not have reason to believe the dispute is frivolous or irrelevant. Such reinvestigation shall include but not be limited to:

- a. Completing any reinvestigation, *i.e.*, verifying, deleting, or modifying all disputed items in the Consumer's File, within thirty (30) days of receipt of the Consumer's dispute; provided, however, that if Equifax in good faith cannot determine the nature of the Consumer's dispute, Equifax shall attempt to determine the nature of the dispute by contacting the Consumer by mail or telephone within five (5) business days of receiving the Consumer's dispute, and complete its reinvestigation within thirty (30) days of the Consumer's

response if Equifax in good faith can then determine the nature of the Consumer's dispute;

- b. Communicating to the source used to verify the disputed information, a summary of the nature and substance of the Consumer's dispute;
  - c. Accepting the Consumer's version of the disputed information and correcting or deleting the disputed information, when the Consumer submits to Equifax documentation obtained from the source of the information in dispute which confirms that the disputed information on the Consumer Report was inaccurate or incomplete, unless Equifax in good faith has reason to doubt the authenticity of the documentation, in which case Equifax need not accept the Consumer's version of the dispute if it reinvestigates the dispute by contacting the source of the information and verifies that the documentation is not authentic; and
  - d. Employing reasonable procedures designed specifically to resolve (i) Consumer disputes that Equifax has reason to believe arise from Mixed Files, and (ii) Consumer disputes that indicate the repeated inclusion in Consumer Reports of previously disputed inaccurate or incomplete items.
8. Reinvestigate Consumer disputes in accordance with Section 611 of the FCRA. In connection therewith, Equifax shall impose no requirements beyond those in Section 611 of the FCRA, including but not limited to requirements that the Consumer:
- a. Pay a fee for updating and recording the current status of disputed information;
  - b. Provide copies of identifying documentation, including but not limited to driver's license, Social Security card, and utility bills; and
  - c. Provide a written authorization before reinvestigating information the Consumer has disputed.
9. Continue, upon completion of the reinvestigation of information disputed by a Consumer, to write the Consumer and provide the following:
- a. The results of the reinvestigation conducted by Equifax; and
  - b. A statement advising the Consumer of the Consumer's right to request that Equifax furnish notification that information has been deleted, or furnish a copy or codification or summary of any Consumer statement of explanation of the dispute that has been filed by the Consumer, to any Person specifically designated by the Consumer who has within the preceding two years received a Consumer Report for Employment Purposes, or within the preceding six months received a Consumer Report for any other purpose, which contained the deleted or disputed information.

## II

IT IS FURTHER ORDERED that Equifax shall, annually for the five (5) year period following the Approval Date, measure, monitor, and test the extent to which changes in its computer system, including its algorithms, reduce the incidence of Mixed Files.

1. In complying with this Section, Equifax shall submit, within one hundred eighty (180) days of the effective date of this Order, for approval to the Associate Director for Enforcement, Bureau of Consumer Protection, of the Federal Trade Commission ("ADE"):

- a. A proposed methodology for establishing a baseline against which changes may be measured, monitored, and tested; and
- b. A proposed methodology for accurately measuring, monitor-

ing, testing, and reporting the effects of changes made against the baseline established under the preceding paragraph.

2. For five (5) years following the Approval Date, Equifax shall submit annually to the ADE, in writing, the results of its comparison using the methodologies approved by the ADE as specified in Paragraph II.1. above, and to the extent not otherwise provided, shall include with such reports the results of a statistically significant analysis to determine the incidence of Mixed Files.

## III

IT IS FURTHER ORDERED that Equifax shall, annually for five (5) years following the effective date of this order, submit the following information to the ADE within sixty (60) days of the anniversary of the effective date of this order and with respect to the preceding twelve (12) month period:

1. The total number of File disclosures to Consumers by Equifax;
2. The number of occasions on which Consumers have informed Equifax that they dispute information in Files maintained by Equifax;
3. The number of such disputes where the disputed information was verified as accurate;
4. The number of such disputes in which information disputed was deleted from, or modified in, the disputing Consumer's File, after reinvestigation response; and
5. The number of such disputes in which information disputed was deleted from the disputing Consumer's File because no response to Equifax's verification inquiry was received within thirty days.

## IV

IT IS FURTHER ORDERED that, except for Section III above, Equifax shall, until the expiration of five (5) years following the effective date of this order, maintain and upon request make available to the ADE for inspection and copying, all documents demonstrating compliance with this order. Such documents shall include, but are not limited to, representative copies of each form of agreement or contract governing Subscriber access to or use of Credit Information, each periodic audit or similar report concerning the testing or monitoring of its systems for preparation, maintenance, and furnishing of Consumer Reports and Files, instructions given to employees regarding compliance with the provisions of this order, and any notices provided to Subscribers in connection with the terms of this order.

## V

IT IS FURTHER ORDERED that Equifax shall deliver a copy of this order to all of its present and future management officials having administrative or policy responsibilities with respect to the subject matter of this order.

## VI

IT IS FURTHER ORDERED that Equifax shall notify the ADE at least thirty (30) days prior to any proposed change in Equifax that might affect compliance obligations arising out of this order such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries.

*Enforcement Orders Against Consumer Reporting Agencies*

**VII**

IT IS FURTHER ORDERED that Equifax shall, within one hundred eighty (180) days of service of this order, deliver to the ADE a report, in writing, setting forth the manner and form in which it has complied with this order as of that date. The Commission shall keep such report and its contents, or any report, document, or other information provided under Sections II, III, or IV above, or any notification provided under Section VI above, strictly confidential, in accordance with the Commission's Rules of Practice.

**VIII**

IT IS FURTHER ORDERED that if the FCRA is amended (or other similar federal legislation enacted) or the Commission issues any interpretation of the FCRA, relating to any obligation imposed on Equifax herein, which creates any new requirement for compliance with the FCRA that directly conflicts with any obligation imposed on Equifax by this order, Equifax may conform the manner in which it conducts its business as a Consumer Reporting Agency or its use of Credit Information to the requirements of such statutory provision or interpretation; provided, however, that Equifax shall notify the ADE promptly if it intends to change its conduct as provided for in this Section, and provided further that nothing in this provision shall limit the right of the FTC to challenge any determination of direct conflict by Equifax hereunder and to seek enforcement of Equifax's obligations under this order to the extent such determination is erroneous. For purposes of this order, and by way of example only, a "direct conflict" between this order and a new statutory amendment or interpretation shall include a requirement in any such amendment or interpretation that a Consumer Reporting Agency complete a task or obligation addressed in this order in a greater period of time than is specified in the order.

**IX**

This order does not address the issue of disclosure under Section 609 of Credit Information (whether or not separately maintained in any File), including but not limited to Credit Information utilized for fraud alert or similar application verification services, which categorizes the identifiers on the Consumer or categorizes any other data on the Consumer and is susceptible of being furnished to a Subscriber, and the order does not in any way limit the right of the Commission to take any appropriate action after entry of this order relating to this issue, nor does it limit in any way Equifax's defenses to any such action.

Signed this \_\_\_\_ day of \_\_\_\_\_, 1994.

FOR EQUIFAX CREDIT INFORMATION SERVICES, INC.

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