Client Alert

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Déjà Vu: State AG Consumer Reporting Settlement Follows Landmark New York Agreement

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On May 20, 2015, 31 states' attorneys general settled with three major credit reporting agencies (CRAs) for six million dollars and commitments to make a number of changes to their business practices. With the exception of the relatively small monetary payments, the settlement largely mirrors the March 2015 agreement between the CRAs and the New York Attorney General. Collectively, these agreements require CRAs to comply with the Fair Credit Reporting Act (FCRA), and create a few new FCRA compliance procedures and substantive requirements. The new settlement requires, for example, CRAs to enhance their review of certain consumer disputes, increase consumer education on the dispute process, and stop reporting certain debts on credit reports. Reflecting increasing regulator skepticism about credit monitoring products, the settlement imposes new limits on CRAs' marketing of those products. And, expanding the reach of the AGs beyond CRAs, the agreements (1) require CRAs to collect data and report on data furnishers and (2) attempt to manage debt collectors by preventing the CRAs from reporting certain data.

REFRESHER: THE NEW YORK AG SETTLEMENT

The new 31-state AG settlement largely duplicates the CRAs' agreement with the New York Attorney General. The New York settlement introduced significant changes to CRAs' business practices. In summary, these changes are as follows.

1. Enhanced Procedures and Oversight

- **Furnisher Communication**: In addition to providing the required notice of a consumer dispute to furnishers, CRAs are also required to send a consumer's supporting documents to the data furnisher.
- **Furnisher Reporting**: CRAs must also maintain information about any problems they observe with furnishers of consumer reporting information, such as department stores, collection agencies, and banks. They must make this information available to the state AGs.
- **Mixed File Communication**: CRAs must notify each other if they encounter a mixed file (i.e., where the credit information of one person is erroneously assigned to another person's credit file).
- **Training**: The CRAs must use trained employees to review the documentation consumers submit when they believe there is an error in their files. If a creditor says its information is correct, an employee at the credit-reporting firm must still look into and resolve the dispute.
- **Dispute Review**: The CRAs agree to employ specially-trained teams to review all supporting information submitted by consumers for any dispute involving proven victims of identity theft and fraud, as well as those involved in mixed file situations.

2. Limits on Information That Can Be Added to a Consumer Report

- **Medical Debts**: CRAs cannot add medical debt to a consumer report until 180 days after the debts first reported delinquency. The CRAs must also remove previously reported medical debt that has been or is being paid by insurance.
- **Fines and Tickets**: CRAs are prohibited from adding information about fines and tickets to credit reports.
- **Furnishers Must Have Consumer Date of Birth**: Data furnishers will be prohibited from reporting authorized (i.e., additional) users on a tradeline without a date of birth for the user. CRAs will reject data that do not comply with this requirement.

3. Consumer Education and Benefits

- Consumers who dispute items on their credit reports will receive additional information from the credit bureaus along with the results of their dispute, including a description of what they can do if they are not satisfied with the outcome of their dispute.
- The website www.annualcreditreport.com, which permits consumers a free consumer report every twelve months, will now contain additional educational materials.
- Consumers are able to obtain an extra free credit report, if a charge the consumer disputes results in a change to the consumer's report.

NOTABLE ADDITIONS

While the new, 31-state agreement largely replicates the New York agreement, there are a few additions. The main additions are new limits on direct-to-consumer marketing of credit monitoring products:

- The settlement bars CRAs from marketing credit monitoring services during a dispute phone call until the dispute portion has ended.
- If the CRA opts to advertise an optional product after the dispute portion of the call has ended, it must inform consumers that purchasing the credit monitoring product is not a requirement for the dispute.
- CRAs must adopt trainings and policies and procedures, including mandated scripts in order to ensure compliance with this provision.

NOTABLE OMISSIONS

There were also several provisions that were part of the New York settlement and are absent from the more recent agreement.

- **No requirements about "Illegal Lenders."** The main substantive omission is that under the New York Attorney General agreement, CRAs are required to adopt policies and procedures both to identify "Illegal Lenders" (i.e. non-licensed non-bank entities that make illegal "usurious" loans) and to exclude their data from the CRAs' databases.

- **No additional credit educational campaign requirements.** Under the New York settlement, CRAs are required to create, design, and implement public service announcements designed to educate consumers on credit reporting for the next three years. The 31-state settlement omits this requirement.
- **No requirements to promote www.annualcreditreport.com**. While both settlements add additional requirements for the website, there was an additional requirement under the settlement with New York Attorney General that the CRAs include a clear and conspicuous link to the website on their landing page. The 31-state settlement omits this requirement.

WHAT'S NEXT

Under the settlement agreement, all changes must be completed within three years and 90 days following the effective date. The CRAs will implement these changes in three phases to allow the CRAs to update their IT systems and procedures with data furnishers.

Stuart Pratt, President and CEO of the Consumer Data Industry Association (CDIA)—the trade association that represents the three major CRAs—commented on the settlement: "In the interest of concluding the dialogue with the group of state attorneys general and with the goal of moving forward with the National Consumer Assistance Plan [the New York agreement], we have agreed to the settlement announced today. The three nationwide credit reporting agencies have been in compliance with federal and state law, but as we showed in launching the National Consumer Assistance Plan, we do not hesitate to make improvements beyond what the law requires when doing so will benefit consumers."

CONCLUSION

The new AG agreement is yet another reflection of the regulators' and consumers' heightened focus on credit reporting issues. For example, the requirement that CRAs collect and report on potentially problematic furnishers, and the indirect management of debt collectors in the agreements, reflect the broad-reaching scope of these agreements and the potential for wider future regulatory scrutiny in the consumer reporting area.

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