



January 29, 2014

FTC ORDERS COMPANIES TO PAY \$3.5 MILLION FOR FCRA VIOLATIONS

The Federal Trade Commission recently ordered Telecheck Services, Inc., a check authorization service, along with its affiliated debt collection entity TRS Recovery Services, Inc., to pay \$3.5 million to settle FTC charges that they violated the Fair Credit Reporting Act and the Federal Trade Commission Act.

The FTC's complaint alleged that Telecheck, which provides recommendations to merchants throughout the United States as to whether to accept consumers' checks, is a "consumer reporting agency" under the FCRA that violated Section 611 of the FCRA. That section requires consumer reporting agencies to take certain steps with respect to disputes over the accuracy of information set forth in a consumer report. Specifically, the FTC charged that Telecheck failed to, among other things, complete a reasonable reinvestigation in the required time period, provide prompt notice of disputes to furnishers upon receipt of notice of the dispute from consumers, provide notice of a determination that a dispute is frivolous or irrelevant, promptly delete inaccurate, incomplete or unverifiable information, promptly notify the furnisher that information has been modified or deleted, maintain reasonable procedures designed to prevent the reappearance of deleted information in a consumer's file, and provide prompt notice to the consumer of the results of its investigation. The FTC also alleged that Telecheck failed to use reasonable procedures to assure maximum possible accuracy of consumer report information, as required by Section 607(b) of the FCRA.

The FTC's complaint also alleged that TRS, which it found to be a "furnisher of information" to credit reporting agencies under the FCRA, violated the "Furnisher Rule" under the FCRA because it "regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about the person's transactions or experiences with any consumer." The Furnisher Rule, originally issued as the Duties of Furnishers of Information to Consumer Reporting Agencies Rule and recodified as Duties of Furnishers of Information, requires furnishers to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that they furnish to consumer reporting agencies and to consider the guidelines set forth in Appendix E of the rule. Specifically, the FTC

alleged that TRS failed to consider the guidelines in Appendix E of the Furnisher Rule in its written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnished to Telecheck.

Each of these violations, according to the FTC, also constituted unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act.

In addition to civil penalties, both Telecheck and TRS were ordered to change their business practices to comply with the FCRA and the Furnisher Rule.

The FTC noted that the case was part of a broader initiative to target the practices of data brokers. Data brokers (and other consumer reporting agencies) should review their processes to assure compliance with the FCRA. Additionally, furnishers of information should review the guidelines in Appendix E and the Furnisher Rule. Last year the Consumer Financial Protection Bureau issued a bulletin regarding a furnisher's obligations under the FCRA. See CFPB Bulletin 2013-09 (Sept. 4, 2013) and our Alert, dated Sept. 11, 2013. □

✦ *Mike Tomkies and Margaret Stolar*

FTC SETTLES ACTION INVOLVING INTERNATIONAL SAFE HARBOR PRIVACY FRAMEWORK

The Federal Trade Commission announced that it has agreed to settle its actions under Section 5 of the Federal Trade Commission Act against twelve United States companies. The companies include those in the retail and debt collection industries that reportedly handle a variety of consumer information. The FTC alleged that each of the companies falsely claimed that they held current certifications under the U.S.-EU Safe Harbor Framework and, in some cases, under the U.S.-Swiss Safe Harbor Framework. Specifically, the FTC says that each company represented, through statements in their privacy policies or display of the Safe Harbor certification mark on their websites, that they held current Safe Harbor certifications, even though each of their certifications had lapsed. According to the FTC, the Safe Harbor Frameworks allow U.S. companies to transfer personal data from the European Union to the U.S. in a manner consistent with the EU Data Protection

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Directive and the Swiss Federal Act on Data Protection. Self-certification by U.S. companies of compliance with the Frameworks is enforced by the FTC.

Companies should subject their websites to periodic review and ensure that all statements of fact are substantiated. We can assist you with such reviews

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