

UNITED STATES OF AMERICA
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING

File No. 2014-CFPB-0012

In the Matter of:

First Investors Financial Services Group, Inc.

CONSENT ORDER

The Consumer Financial Protection Bureau (Bureau) has reviewed the processes by which First Investors Financial Services Group, Inc. (Respondent, as defined below) furnishes consumer information to consumer reporting agencies and has identified the following law violations: (1) Respondent failed to establish and/or implement reasonable written policies and procedures regarding the “accuracy” and “integrity” of the information relating to consumers that it furnishes to consumer reporting agencies in violation of Subpart E of Regulation V, 12 C.F.R. § 1022.42(a), the implementing regulation of the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.* (FCRA); (2) Respondent’s representation regarding the accuracy of the information it furnishes is deceptive in violation of 12 U.S.C. §§ 5531, 5536. Under sections 1053 and 1055 of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5563, 5565, the Bureau issues this Consent Order (Consent Order).

I

Jurisdiction

1. The Bureau has jurisdiction over this matter under (a) Sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565; and (b) Section 621 of the FCRA, 15 U.S.C. § 1681s(b)(1).

II

Stipulation

2. Respondent has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated [] (Stipulation), which is incorporated by reference and is accepted by the Bureau. By this Stipulation, Respondent has consented to the issuance of this Consent Order by the Bureau under Sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565, without admitting or denying any of the below findings of fact or conclusions of law, except the facts necessary to establish the Bureau’s jurisdiction over Respondent and the subject matter of this action.

III

Definitions

3. The following definitions shall apply to this Consent Order:
 - a. “Board” shall mean Respondent’s duly elected and acting Board of Directors.
 - b. “Consumer Reporting Agencies” or “CRAs” shall mean any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, as defined in Section 603(p) of the FCRA, 15 U.S.C. § 1681a(p).
 - c. “Effective Date” shall mean the date on which the Consent Order is issued.
 - d. “Enforcement Director” shall mean the Assistant Director of the Office of Enforcement for the Consumer Financial Protection Bureau, or his/her delegee.
 - e. “Furnishers Rule” refers to Regulation V, Subpart E, 12 C.F.R. §§ 1022.40-43.

- f. “Furnishing Process” refers to the process Respondent uses to furnish information relating to consumers to the CRAs, including but not limited to any computer software application Respondent employs for that purpose.
- g. “Respondent” shall mean First Investors Financial Services Group, Inc., and its subsidiaries, successors and assigns.
- h. “Systemic Inaccuracy” refers to any aspect of Respondent’s Furnishing Process that results in inaccuracies in information furnished to CRAs, including but not limited to any failure by Respondent to correctly translate its customers’ account information into the standard industry-accepted format (*i.e.* “Metro 2”) before furnishing such information to CRAs.

BUREAU FINDINGS AND CONCLUSIONS

IV

The Bureau finds the following:

- 4. Respondent is a Texas-based company that extends credit to consumers to finance the purchase of motor vehicles. Such credit extensions take the form of indirect credit, where Respondent takes assignment of retail installment sales contracts from motor vehicle dealers, and direct loans to consumers. Respondent holds the resulting accounts for investment. Many of the consumers who obtain credit through Respondent have impaired credit profiles.
- 5. Respondent provides consumer report information, including information relating to the account payment history of its customers, to certain CRAs. That information is used or expected to be used in connection with decisions regarding the offering or provision of a consumer financial product or service.
- 6. Respondent is a “covered person” pursuant to 12 U.S.C. § 5481(6) and (15)(A)(i), (ix).

7. Furthermore, Respondent furnishes information relating to consumers to one or more consumer reporting agencies for inclusion in a consumer report. As such Respondent is a “furnisher” as that term is defined by Regulation V, 12 C.F.R. § 1022.41(c).
8. Since no later than January 2011, Respondent has been furnishing information to CRAs on the status of each of the accounts it services. For the period covered by the investigation leading to this Consent Order, Respondent furnished information to the CRAs on as many as 118,855 unique accounts.
9. Respondent furnishes information about its accounts in Metro 2 format. Metro 2 was developed by the Consumer Data Industry Association to serve as a standard industry-accepted format for the electronic reporting of credit information.
10. From at least March 2011 to the present, Respondent published an address through which its customers could send Respondent disputes related to credit reporting inaccuracies. Indeed, both directly and through the CRAs, Respondent received from its customers numerous disputes claiming that Respondent was reporting to the CRAs inaccurate consumer account information. In general, Respondent timely responded to disputes and corrected information when necessary.
11. No later than March 2011, Respondent learned it was inaccurately reporting to one CRA its customers’ payment history profile. The payment history profile contains up to 24 months of consecutive payment activity for the 24 months prior to the date of account information being reported. In one example, the information Respondent furnished to the CRA indicated eleven historical delinquencies when in fact the consumer had only been delinquent twice.
12. In approximately November 2011, Respondent negotiated with the one CRA to implement a workaround that stopped the misreporting of payment history profile information.

However, during the nine month period between the discovery of the problem and the implementation of the workaround, Respondent continued to furnish payment history profile information it knew to be inaccurate for between 11,804 and 14,622 customer accounts on a monthly basis.

13. No later than April 2011, Respondent learned it was inaccurately reporting to the CRAs many of its customers' date of first delinquency. In most cases, Respondent was reporting the date of first delinquency to be more recent than it in fact was. That error exposed Respondent's customers to the risk that the delinquency in question would remain on their credit reports beyond the statutorily-allowed 7-year period.
14. Respondent learned no later than April 2011 that it was inaccurately reporting dates of first delinquency and, in April 2011, notified its furnishing service provider of the inaccuracy. Respondent took no further action to address the problem until December 2012, after Respondent received from the Bureau a Civil Investigative Demand relating, in part, to Respondent's Furnishing Process.
15. Respondent continued to inaccurately report its customers' dates of first delinquency until at least December 2013.
16. During the approximately thirty month period between April 2011, when Respondent discovered the date of first delinquency inaccuracies and December 2013, Respondent reported date of first delinquency information it knew to be inaccurate for between 1,620 and 7,950 customer accounts on a monthly basis.
17. No later than April 2011, Respondent learned it was systematically overstating to CRAs the dollar amount by which its customers were past due on their accounts.
18. Respondent learned no later than April 2011 that it was inaccurately reporting the amount by which its customers were past due and, in April 2011, notified its furnishing service

provider of the inaccuracy. Respondent took no further action to address the problem until December 2012, after Respondent received from the Bureau a Civil Investigative Demand relating, in part, to Respondent's Furnishing Process.

19. Respondent continued to inaccurately report the amount its customers were past due until at least June 2013.
20. During the approximately 26 month period between April 2011, when Respondent discovered it was inaccurately reporting the amount by which its customers were past due and June 2013, Respondent reported information about the amount its customers were past due that Respondent knew to be inaccurate for between 1,326 and 2,747 customer accounts on a monthly basis.
21. No later than December 2012, Respondent learned it was systematically understating to the CRAs the dollar amount many of its customers were paying every month while also reporting the correct account status and correct outstanding balance for those customers.
22. Respondent continued to inaccurately report its customers' payment amounts until at least June 2013.
23. During the approximately 7 month period between December 2012, when Respondent discovered it was inaccurately reporting payment amounts and June 2013, Respondent reported payment amount information it knew to be inaccurate on monthly basis for between 4,151 and 9,920 customer accounts.
24. When a consumer defaults or is otherwise unable to make payments on a loan, lienholders often have the option to take possession of any collateral given for the loan. In the auto loan market, the autos themselves are often used as collateral.

25. Metro 2 standards distinguish between involuntary repossession of an auto and voluntary surrender of an auto and thus provide different account status codes for furnishers to use when reporting such information to CRAs.
26. The customer account information system Respondent uses to furnish information to the CRAs was configured such that it did not distinguish between voluntary surrenders and involuntary repossessions. As a result, Respondent reported repossessions of its customers' autos as "involuntary" in cases where the auto was in fact surrendered voluntarily.
27. Respondent became aware of its failure to accurately report voluntary surrenders to the CRAs no later than August, 2012 but allowed the error to persist.

Findings and Conclusions as to Violations of the Furnishers Rule

28. The Furnishers Rule requires furnishers of information to the CRAs to "establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a consumer reporting agency." 12 C.F.R. § 1022.42(a).
29. As set forth in paragraphs 9-27, Respondent was systematically furnishing inaccurate information to the CRAs regarding how its customers were performing on their accounts.
30. Upon learning of the inaccuracies, Respondent did not suspend its furnishing for the customer accounts affected by the inaccuracies; instead, it continued to furnish information about those accounts Respondent knew to be inaccurate.
31. Instead of moving to address inaccuracies it learned about, Respondent in several cases allowed them to persist.
32. The Systemic Inaccuracies that plagued Respondent's furnishing operations; Respondent's decision to continue to furnish information it knew to be inaccurate; and Respondent's failure to require its service provider to correct the issues causing inaccuracies within a

reasonable time once Respondent learned of them all demonstrate Respondent's failure to implement reasonable policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a consumer reporting agency, in violation of the Furnishers Rule.

**Findings and Conclusions as to Misrepresentation
Regarding the Accuracy of Furnished Information**

33. Section 1036(a)(1)(B) of the CFPA prohibits "unfair, deceptive, or abusive" acts or practices. 12 U.S.C. § 5536(a)(1)(B).
34. On its website, Respondent provides answers to a series of "frequently asked questions." One such question was: "What if I have a dispute about information appearing on my credit report?" The answer the Company offers was as follows:

Please be advised that it is the policy of First Investors to comply with the requirements of the Fair Credit Reporting Act when we furnish information about a consumer to a consumer reporting agency. Therefore, we only furnish accurate information relating to a consumer to the consumer reporting agencies and will promptly correct any inaccurate information. If you believe that we have reported inaccurate information concerning your account to any consumer reporting agency, then please send us a dispute notification indicating the specific information you believe is inaccurate and containing all of the relevant information as to why you believe that information is inaccurate. Please send the dispute notification to: First Investors Servicing Corporation Attn: Compliance Department U.S. Mail/Delivery: 380 Interstate North Parkway, Suite 300, Atlanta, GA 30339 Facsimile: 866-390-2947 Email: compliance@fifsg.com. You may also use our Courtesy Dispute Form.

35. In fact, as set forth in Paragraphs 9-27, some of the information Respondent furnished during the Relevant Period was inaccurate for many customer accounts, and Respondent did not promptly correct information it knew to be inaccurate.
36. Respondent's representation was material to its customers.

37. Therefore, Respondent's representation, as set forth in Paragraph 34 constitutes a deceptive act or practice in violation of Sections 1031(a) and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

CONDUCT PROVISIONS

V

Order to Cease and Desist and to Take Other Affirmative Action

IT IS ORDERED, under Sections 1053 and 1055 of the CFPA, that:

38. Respondent and its officers, agents, servants, employees, and attorneys are deemed to have actual notice of this Consent Order, and whether acting directly or indirectly, shall cease and desist from any violations of the Furnishers Rule and Sections 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531 and 5536, and in particular:
- a. No later than fifteen days from the Effective Date, Respondent shall cease furnishing information to the CRAs about consumer accounts potentially affected by any Systemic Inaccuracy that Respondent (a) is currently aware of; and (b) has not yet resolved.
 - b. Within 90 days of the Effective Date, Respondent shall identify all inaccurate information it has furnished to the CRAs as a result of known Systemic Inaccuracies. Within 120 days of the Effective Date, Respondent shall notify the CRAs of the inaccuracies and either i) provide to the CRAs the correct information or ii) delete the associated tradeline if accurate information is not available. Respondent will not thereafter re-furnish the inaccurate information.
 - c. No later than fifteen days from the Effective Date and until such time as Respondent resolves all Systemic Inaccuracies, Respondent shall cease and desist from making any representation regarding the accuracy or integrity of information it furnishes to CRAs.

- d. To the extent any affected customers are ineligible for a free credit report, Respondent shall arrange means by which such customers may obtain a credit report free of charge from one or more of the credit reporting agencies to which Respondent furnishes information. Respondent shall ensure the option to obtain the free credit report is available to such customers for 180 days after they receive the notice specified in paragraph 38(e).
- e. Within 90 days of the Effective Date, Respondent shall post prominently on its website for a period of 90 days, and send to each of its customers affected by the known Systemic Inaccuracies identified using the process set forth in subparagraph 38(b) at all addresses associated with their accounts (including email addresses) a notice (Notice) that has been approved by the Enforcement Director advising of at least the following:
 - i. Since 2011, Respondent has been providing inaccurate information about some of its customers to the CRAs;
 - ii. As a result of those inaccuracies, Respondent is the subject of an Enforcement Action by the Bureau;
 - iii. The inaccuracies may have had an adverse effect on the affected customers' credit;
 - iv. Consumers have a statutory right to receive a free credit report annually from each of the nationwide consumer reporting agencies.
 - v. The process for obtaining a free credit report;
 - vi. To the extent the affected customers have already obtained a free credit report this year, Respondent will inform such customers of the means by which a credit report can be obtained free of charge so long as they apply for such report within 180 days of receiving a Notice; and

- vii. The process consumers may use to dispute inaccuracies in their credit report.
 - f. Within 30 days of the Effective Date, Respondent shall update its policies and procedures to include a specific process for identifying Systemic Inaccuracies (“Audit Program”). At a minimum, the policies and procedures for the Audit Program shall require that Respondent: (i) examine a randomly selected sample of accounts for furnishing inaccuracies on a monthly basis using industry-accepted standards for selection and testing; (ii) monitor and evaluate disputes it receives from the CRAs and its customers for indications of a Systemic Inaccuracy; and (iii) cease furnishing information for all consumer accounts potentially affected by a Systemic Inaccuracy until such time as the Systemic Inaccuracy is resolved.
 - g. Respondent shall fully implement the Audit Program within 60 days of the Effective Date.
 - h. Within 90 days of the Effective Date, Respondent shall retain an independent consultant (Consultant) to assess Respondent’s compliance with this Order. The Consultant shall prepare an Audit Report summarizing its findings, and provide a copy of the Audit Report to Respondent’s Board and to the Enforcement Director no later than 180 days from the Effective Date.
 - i. Respondent shall sufficiently provide the staffing, facilities, systems, and information necessary to timely and completely respond to consumer disputes in compliance with the FCRA.
39. For purposes of Paragraph 38 (as it relates to the furnishing of information about Respondent’s use of an automobile as collateral), the following definitions apply:
- a. “Repossession Conditions” refers all steps required by applicable state law to effectuate the seizure of an automobile as collateral;

- b. “Voluntary Surrender” refers to Respondent’s taking possession of a customer’s automobile as collateral with the customer’s consent and prior to satisfying all Repossession Conditions.
- c. “Repossession” refers to the Respondent’s taking possession of a customer’s automobile as collateral after satisfying all Repossession Conditions.
- d. In the event the Consumer Data Industry Association provides Metro 2 guidance inconsistent with the definitions in this paragraph, such guidance shall control.

VI

Order to Pay Civil Money Penalties

IT IS FURTHER ORDERED that:

- 40. Under Section 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law set forth in Section IV of this Consent Order, and taking into account the factors set forth in 12 U.S.C. § 5565(c)(3), Respondent shall pay a civil money penalty of \$2.75 million to the Bureau, as directed by the Bureau and as set forth herein.
- 41. Within 10 days of the Effective Date, Respondent shall pay the civil money penalty in the form of a wire transfer to the Bureau or to such agent as the Bureau may direct, and in accordance with wiring instructions to be provided by counsel for the Bureau.
- 42. The civil money penalty paid under this Consent Order shall be deposited in the Civil Penalty Fund of the Bureau in accordance with Section 1017(d) of the CFPA, 12 U.S.C. § 5497(d).
- 43. Respondent shall treat the civil money penalty paid under this Consent Order as a penalty paid to the government for all purposes. Regardless of how the Bureau ultimately uses those funds, Respondent shall not:

- a. Claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty paid under this Consent Order; or
 - b. Seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, with regard to any civil money penalty paid under this Consent Order.
44. In the event of any default on Respondent's obligations to make payment under this Consent Order, interest, computed under 28 U.S.C. § 1961, as amended, shall accrue on any outstanding amounts not paid from the date of default to the date of payment, and shall immediately become due and payable.
45. Respondent shall relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law and no part of the funds shall be returned to Respondent.
46. In accordance with 31 U.S.C. § 7701, Respondent, unless it already has done so, shall furnish to the Bureau its taxpayer identifying numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.

COMPLIANCE PROVISIONS

VII

Reporting Requirements

IT IS FURTHER ORDERED that:

47. Within one year after the Effective Date, Respondent shall submit to the Enforcement Director an accurate written compliance progress report (Compliance Report), which has been approved by the Board, which, at a minimum:
- a. Describes in detail the manner and form in which Respondent has complied with this Order; and

- b. Attaches a copy of each Order Acknowledgment obtained under Section VIII of this Consent Order, unless previously submitted to the Bureau.
- 48. After the one-year period, Respondent shall submit to the Enforcement Director additional Compliance Reports within 30 days of receiving a written request from the Bureau.

VIII

Order Distribution and Acknowledgment

IT IS FURTHER ORDERED that,

- 49. Within 30 days of the Effective Date, Respondent shall deliver a copy of this Consent Order to each of its board members and executive officers, as well as to any managers, employees, Service Providers, or other agents and representatives who have responsibilities related to the subject matter of the Consent Order.
- 50. For 5 years from the Effective Date, Respondent shall deliver a copy of this Consent Order to any business entity resulting from any change in structure, any future board members and executive officers, as well as to any managers, employees, Service Providers, or other agents and representatives who will have responsibilities related to the subject matter of the Consent Order before they assume their responsibilities.
- 51. Respondent shall secure a signed and dated statement acknowledging receipt of a copy of this Consent Order, with any electronic signatures complying with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.*, within 30 days of delivery, from all persons receiving a copy of this Consent Order under this Section.

IX

Recordkeeping

IT IS FURTHER ORDERED that Respondent shall create, for at least 5 years from the Effective Date, and then retain, for at least 5 years, and make available to the Bureau upon request,

all documents and records necessary to demonstrate full compliance with each provision of this Consent Order, including all submissions to the Bureau.

X

Notices

IT IS FURTHER ORDERED that:

52. Unless otherwise directed in writing by the Bureau, all submissions, requests, communications, consents, or other documents relating to this Consent Order shall be in writing and shall be sent by overnight courier (not the U.S. Postal Service), as follows:

Assistant Director for Enforcement
Consumer Financial Protection Bureau
ATTENTION: Office of Enforcement
1700 G Street, N.W.
Washington D.C. 20552

The subject line shall begin: *In re* First Investors Financial Services Group, Inc., File No. 2012-CFPB-0005-02.

Provided however that Respondent may send such reports or notifications by first-class mail, but only if Respondent contemporaneously sends an electronic version of such report or notification to Enforcement_Compliance@cfpb.gov.

XI

Cooperation with the Bureau

IT IS FURTHER ORDERED that:

53. Respondent shall fully cooperate with the Bureau in this matter and in any investigation related to or associated with the conduct described in Section IV. Respondent shall provide truthful and complete information, evidence, and testimony. For 60 months following the Effective Date, Respondent shall cause its officers, employees, representatives, or agents to

appear for interviews, discovery, hearings, trials, and any other proceedings that the Bureau may reasonably request upon reasonable notice, at such places and times as the Bureau may designate, without the service of compulsory process.

XII

Compliance and Extensions of Time

IT IS FURTHER ORDERED that:

54. Upon a written showing of good cause, the Enforcement Director may, in his/her discretion, modify any non-material provisions of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements). Any such modification by the Enforcement Director shall be in writing.

ADMINISTRATIVE PROVISIONS

XIII

Administrative Provisions

55. The provisions of this Consent Order shall not bar, estop, or otherwise prevent the Bureau, or any other governmental agency from taking any other action against Respondent.
56. This Consent Order is intended to be, and shall be construed to be, a final Consent Order issued under Section 1053 of the CFPA, 12 U.S.C. § 5563, and expressly does not form, and may not be construed to form, a contract binding the Bureau or the United States.
57. This Consent Order shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Consent Order shall have been amended, suspended, waived, or terminated in writing by the Bureau or its designated agent.

58. Calculation of time limitations shall run from the Effective Date and shall be based on calendar days, unless otherwise noted.
59. The provisions of this Consent Order shall be enforceable by the Bureau. Any violation of this Consent Order may result in the imposition by the Bureau of the maximum amount of civil money penalties allowed under Section 1055(c) of the CFPA, 12 U.S.C. § 5565(c).
60. This Consent Order and the accompanying Stipulation contain the complete agreement between the parties. No promises, representations, or warranties other than those set forth in this Consent Order and the accompanying Stipulation have been made by any of the parties. This Consent Order and the accompanying Stipulation supersede all prior communications, discussions, or understandings, if any, of the parties, whether oral or in writing.
61. Nothing in this Consent Order or the accompanying Stipulation shall be construed as allowing the Respondent, its Board, officers, or employees to violate any law, rule, or regulation.

IT IS SO ORDERED, this 19th day of August, 2014.



Richard Cordray
Director
Consumer Financial Protection Bureau