

IN THE MATTER OF
CONTROL DATA CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 8940. Complaint, Oct. 3, 1973—Decision, Jan. 9, 1981

This consent order requires, among other things, two Bloomington, Minn. sellers of training courses to cease misrepresenting the purpose, significance or results of entrance examinations or aptitude tests; the qualifications or prerequisites necessary to obtain employment in the computer field or in any other field; and the cost and effectiveness of their job-placement services. Respondents are required to give prorated refunds to students who fail to complete their courses, or to compute the amount of money owed to them by students on a prorated basis. Students having unresolved complaints against the companies must be provided, on a shared-cost basis, with an impartial arbitration service empowered to order payment of refunds to those eligible. Additionally, the order requires that individuals selling training courses display nameplates identifying them as "Sales Representatives"; and that the companies institute a surveillance program designed to detect those parties who fail to comply with the terms of the order.

Appearances

For the Commission: *Steven D. Newburg-Rinn, Sharon S. Feather, Robert D. Friedman, Peter Greene and Edward Steinman.*

For the respondent: *Charles Price, Oppenheimer, Wolff, Foster, Shepard & Donnelly, St. Paul, Minn., and James H. Hogg, in-house counsel.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Control Data Corporation, a corporation, and Automation Institute of America, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Control Data Corporation (hereinafter sometimes referred to as CDC) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at

8100 34th Ave. South, in the City of Bloomington, State of Minnesota. Respondent CDC is now, and for some time last past has been, engaged in the formulation, development, offering for sale, sale and distribution of courses of instruction intended to prepare graduates thereof for entry-level employment as computer operators, computer programmers or computer technicians. Respondent's volume of business in said courses of instruction has been, and is, substantial.

Respondent Automation Institute of America, Inc. (hereinafter sometimes referred to as AIA) is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 8100 34th Ave. South, in the City of Bloomington, State of Minnesota. It is a wholly-owned subsidiary of respondent Control Data Corporation. It is primarily engaged in the business of offering for sale, sale and distribution of courses of instruction intended to prepare graduates thereof for entry-level employment as computer programmers. Respondent AIA carries out its business aforesaid through franchisees which are authorized to solicit and write enrollments in said courses of instruction under the trade names "Automation Institute" or "Control Data Institute".

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. In the course and conduct of their business of offering for sale, sale and distribution of courses of instruction, respondents, through individuals and entities who have entered into franchise agreements with AIA, and through resident training facilities organized as branches of CDC's unincorporated division Career Entry Institutes, have induced members of the general public to enroll in various courses of instruction.

Respondents, through their said franchisees and branch facilities, place into operation and implement a sales program whereby members of the general public by means of advertisements placed in broadcast and printed media of general circulation, and by means of brochures, pamphlets and other promotional literature disseminated through the United States mails or by other means, and through the use of salesmen and sales personnel, and by means of statements, representations, acts and practices as hereinafter set forth, are induced to sign contracts or enrollment agreements for a course of resident training of a stated length of time and for a stated tuition cost.

Respondents arrange or assist in the arrangement of credit and deferred payment terms for the financing of said executed contracts and accept the proceeds thereof or derive substantial income

therefrom in the form of royalty payments made by franchisees to AIA and in the form of interest payments made to respondent CDC's wholly-owned subsidiary, Commercial Credit Corporation.

Respondents arrange or assist in the arrangement of credit and deferred payment terms for the financing of said executed contracts and accept the revenues flowing from said executed contracts or derive substantial income therefrom in the form of royalty payments made by franchisees to AIA.

In the manner aforesaid, respondent CDC dominates, controls, furnishes the means, instrumentalities, service and facilities for, and condones, approves, and accepts the pecuniary and other benefits flowing from the acts and practices hereinafter set forth of respondents' branch facilities and franchisees of AIA.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents now cause, and for some time last past have caused, said aforementioned courses of instruction to be distributed from their places of business to said aforementioned branch facilities and franchisees located in various States of the United States other than the state of origination of said courses. Respondents transmit and receive, and cause to be transmitted and received, in the course of the sale of, distribution of and financing of their courses of instruction by said branch facilities and franchisees among and between the several States of the United States, retail installment contracts, royalty reports, checks, monies or other commercial paper. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said courses of instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and to induce the purchase of their courses of instruction by members of the general public, respondents and their branch facilities and franchisees and the salespersons at the branch facilities and franchisees have disseminated, or caused the dissemination of, via the United States mail or other means, radio, television, newspaper, print media or other forms of advertising, or other means and instrumentalities which are furnished, approved or condoned by respondents. In conjunction therewith, respondents and their branch facilities and franchisees and the salespersons at the branch facilities and franchisees have made certain statements and representations respecting the large and growing demand for graduates of respondents' courses, the ease with which respondents' graduates are placed in positions for which they are trained, the lack of a need for formal education beyond high school in attaining employment,

the meaning of aptitude test results, the types of positions and salaries attained by graduates of respondents' courses, and projections of occupational demand and the future growth of employment in the field of electronic data processing derived from the biennial publication of the United States Department of Labor entitled "Occupational Outlook Handbook".

Typical of the statements and representations in said advertisements, but not all inclusive thereof, are the following:

A. Radio and Television

Computers are revolutionizing society . . . predicting elections, controlling traffic, figuring bank statements. *Most* businesses will be computerized, many of today's jobs will disappear. *Millions* of men and women will be involved with computers. So think of *your future* . . . You don't need college. If you are a *high school* grad and practical, you'll probably make it."

* * * * *

If you're losing more than your share, could be all you need is a little adjustment . . . like in baseball—a change-up. And one sure way is a short course at Control Data Institute . . . A course in computer programming or computer technology. You'll be surprised! Why, in a matter of months, you could become a valuable holdout the next time you sign, in whatever career you choose . . . In industry, business, even science.

* * * * *

The great thing about C.D.I. is that we care about you. So we don't waste your time. We give you a free career appraisal so you'll know out front if you can make it in the computer industry.

B. Newspaper and Direct Mail

Computer programming students receive training to qualify you for scientific and business programming on the latest computers and related equipment.

* * * * *

Enter the Professional ranks of Computer specialists.

- customer engineer
- field service representative
- computer programmer
- checkout technician
- systems analyst
- computer operator

* * * * *

Our institute offers bright young men and women a free computer aptitude test to determine their qualifications for the profession of computer programmer or technician.

Complaint

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If you had answered one of our ads a year ago, you'd now have a chance to double your present salary. It's a fact. The computer industry is booming and many graduates of Control Data Institute now earn twice as much as they did in their old jobs.

* * * * *

How to catch up with college graduates in less than a year. College graduates used to have it over everybody else. In salaries, prestige, prospects for the future. Now, at Control Data Institute you can qualify for a position in the computer industry that matches or exceeds the salary of most recent college graduates.

* * * * *

Most people think it's pretty tough to crack into the computer business. That gives our graduates a chuckle. Graduates of Control Data Institute have plenty of reason to smile. When they graduate, major companies will come from all over the country to interview and hire them.

* * * * *

Think, for a moment, about the computer industry—a high-paying industry where the demand for competent people far exceeds the supply.

* * * * *

You never hear anyone saying it's rough to make a living in the computer industry. That's because trained computer personnel are so much in demand. Thousands of new high-paying job opportunities open up every year. And there simply aren't enough men and women around with the kind of training today's industries are looking for.

* * * * *

Why consider a career in the computer industry? There has probably never before been a field offering men and women so many opportunities for good salaries and rapid promotion. Positions are opening up in many job classifications . . . exciting and challenging jobs in a wide variety of industries. It takes trained personnel to fill these jobs, and providing these personnel is our job at Control Data Institute.

* * * * *

Computer technology is one of the fastest growing, highest paying, most challenging, and rapidly advancing sciences in the country today. In such a climate, the demand is greater than the supply. Both men and women are in demand—with the proper training. In fact, if you act now, in less than a year you could be on your way to a successful career in computers. Hundreds of employers actively seek our students. Our placement service can introduce you to one of them after you graduate.

* * * * *

According to the U.S. Department of Labor, thousands of people will be needed to fill new jobs created by the rapidly expanding use of computers in business, industry

and government. Most industry experts, in fact, predict that the number of data processing jobs will more than double in the next five years.

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning, but not expressly set out herein, respondents and their branch facilities and franchisees and the salespersons of the branch facilities and franchisees have represented, directly or by implication, that:

1. There is an urgent need or demand for all or most of respondents' graduates in positions for which respondents train such persons.

2. Respondents had a reasonable basis from which to conclude that:

- (a) there was at the time such representations were made, or

- (b) would be at the time that persons then enrolling graduated from respondents' courses,

an urgent need or demand for all or most of respondents' graduates in positions for which respondents train such persons.

3. All or substantially all of respondents' graduates are able, on graduation, to secure the positions for which respondents have trained them.

4. Respondents had a reasonable basis from which to conclude:

- (a) that at the time such representations were made a substantial number of respondents' graduates were being hired, or

- (b) that a substantial number of persons then enrolling in respondents' courses would upon graduation, be hired

by certain large, well-known industrial corporations or government agencies in the positions for which respondents train such persons.

5. College education is not necessary or advantageous for the placement of respondents' graduates in positions for which respondents train such persons.

6. The position of systems analyst is an entry-level employment objective of respondents' course of instruction.

7. All that is necessary for the placement of respondents' graduates as programmers in scientific applications is the completion of respondents' course in computer programming.

8. Respondents' entrance examination aptitude tests determine whether or not a person has the aptitude to work as a computer programmer or technician and to succeed in such positions.

9. Respondents had a reasonable basis from which to conclude

that most people who take respondents' aptitude tests either do not qualify or show that they have much less aptitude for respondents' courses than the particular applicant being tested.

10. Respondents had a reasonable basis from which to conclude that a substantial percentage of

(a) persons graduating from respondents' courses, at the time such representations were made, were earning; or

(b) persons then enrolling in respondents' courses would earn when they graduated,

twice as much as they did at the time they enrolled in respondents' courses.

11. Respondents had a reasonable basis from which to conclude that a substantial percentage of

(a) persons graduating from respondents' courses, at the time such representations were made, were earning; or

(b) persons then enrolling in respondents' courses would earn when they graduated,

salaries that match or exceed the salaries of most recent college graduates, even though such persons were not college graduates.

12. The placement assistance furnished by respondents is free.

13. Respondents' graduates who seek employment in the field of electronic data processing do not find it necessary, in many instances, to seek said employment through sources other than respondents' placement office.

PAR. 6. In truth and in fact:

1. At the time it was so represented there was not an urgent need or demand for all or most of respondents' graduates, in positions for which respondents train such persons.

2. Respondents had no reasonable basis from which to conclude that:

(a) there was at the time such representations were made, or

(b) would be at the time that persons then enrolling graduated from respondents' courses,

an urgent need or demand for all or most of respondents' graduates in positions for which respondents train such persons.

3. All or substantially all of respondents' graduates are not able, on graduation, to secure the positions for which respondents have trained them.

4. Respondents had no reasonable basis from which to conclude:

- (a) that at the time such representations were made a substantial number of respondents' graduates were being hired, or
- (b) that a substantial number of persons then enrolling in respondents' courses would upon graduation, be hired

by certain large, well-known industrial corporations or government agencies in the positions for which respondents train such persons.

5. In most instances college education is advantageous for the placement of respondents' graduates as programmers and in many instances college education is necessary for such placement.

6. The position of systems analyst is not an entry-level employment objective of respondents' course of instruction.

7. In many instances a college degree in a science or mathematical discipline is necessary for the placement of respondents' graduates as a programmer in scientific applications.

8. Respondents' entrance examination aptitude tests do not determine whether or not a person has the aptitude to work as a computer programmer or technician and to succeed in such positions. Respondents' entrance examination aptitude tests are designed only to determine whether or not a person will be likely to complete any of the courses of instruction offered by respondents.

9. Respondents had no reasonable basis from which to conclude that most people who take respondents' aptitude tests either do not qualify or show they have much less aptitude for respondents' courses than the particular applicant being tested.

10. Respondents had no reasonable basis from which to conclude that a substantial percentage of

(a) persons graduating from respondents' courses, at the time such representations were made, were earning; or

(b) persons then enrolling in respondents' courses would earn when they graduated,

twice as much as they did at the time they enrolled in respondents' courses.

11. Respondents had no reasonable basis from which to conclude that a substantial percentage of

(a) persons graduating from respondents' courses, at the time such representations were made, were earning; or

(b) persons then enrolling in respondents' courses would earn when they graduated

salaries that match or exceed the salaries of most recent college graduates, even though such persons were not college graduates.

12. The placement assistance furnished by respondents is not free, but rather included in the tuition cost of respondents' courses.

13. Respondents' graduates who seek employment in the field of electronic data processing do find it necessary, in many instances, to seek said employment through sources other than respondents' placement office.

Therefore, the statements and representations set forth in Paragraphs Four and Five hereof were, and are, false, misleading or deceptive acts or practices.

PAR. 7. In the further course and conduct of their business, and in furtherance of their purpose of inducing the purchase of their courses by the general public, respondents and their branch facilities and franchisees, directly or indirectly have held out commissioned salespersons to be qualified or trained vocational counselors, or instructed their salespersons to create a "counseling" atmosphere during selling sessions. Respondents thereby have falsely and deceptively represented that such persons were in a position to give disinterested advice to prospective students as to the best career choice for them, when in fact such persons had a direct or indirect economic interest in whether the applicants enrolled at the CDI or AIA.

Therefore, respondents' statements, representations, acts and practices, as set forth herein were, and are, false, misleading, deceptive and unfair acts or practices.

PAR. 8. Through the use of the aforesaid advertisements and otherwise, respondents have represented directly or by implication, that there was at the time of the representation or would be at the time of graduation from respondents' courses an urgent need or demand for respondents' graduates in positions for which respondents train such persons; that substantial numbers of respondents' graduates were being hired by certain large, well-known, industrial corporations or government agencies; that graduates of respondents' courses of instruction earn upon graduation twice as much as they did at the time they enrolled in respondents' courses; and that such graduates earn upon graduation salaries that match or exceed the salaries earned by recent college graduates. At the time of the said representations respondents had no reasonable basis adequate to support such representations. Therefore, the aforesaid acts and practices were, and are, unfair acts or practices.

PAR. 9. Respondents and their branch facilities and franchisees,

and the salespersons of the branch facilities and franchisees, have represented directly or by implication, through the use of misleading course names and descriptions, that the primary course objectives of their Programming Technology, Computer Programming and Systems Analysis, Computer Technology, and similarly named courses are the achievement of entry-level employment as a computer programmer, systems analyst and computer technician.

In truth and in fact:

The actual course objectives of the aforesaid courses include many positions which are less prestigious and for which the pay is less than the entry-level positions which respondents represent to be the course objectives of these courses. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

PAR. 10. Respondents offered for sale courses of instruction intended to prepare graduates thereof for entry-level employment as computer operators, computer programmers or computer technicians without disclosing in advertising or through their sales representatives: (1) the percentage of recent graduates of each school for each course offered, that were able to obtain employment in the positions for which they were trained; (2) the employers that hired any such recent graduates for each course offered; (3) the initial salary any such recent graduates received for each course offered; and (4) the percentage of recent enrollees of each school for each course offered that have failed to complete their course of instruction. Knowledge of such facts would be an indication of the probability of graduating from respondents' courses and would indicate the possibility of securing future employment upon graduating and the nature of such employment. Thus, respondents have failed to disclose material facts, which if known to a consumer would be likely to effect his or her consideration of whether or not to purchase such courses of instruction. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

PAR. 11.

(a) Respondents as aforesaid, have been, and are now failing to disclose material facts while using other false, misleading, deceptive or unfair acts or practices, to induce persons to pay over to respondents substantial sums of money to purchase courses of instruction whose value to the said persons for future employment in the jobs for which training was offered was virtually worthless. Respondents have received the said sums and have failed to offer to

refund and refuse to refund such money to such purchasers of their course.

The use by respondents of the aforesaid practices and their continued retention of the said sums, as aforesaid, is an unfair act or practice.

(b) In the alternative and separate from subparagraph (a) above, respondents, who are in substantial competition in commerce, with corporations, firms and individuals engaged in the sale of courses of vocational instruction, have been and are now, as aforesaid, failing to disclose material facts while using false, misleading, deceptive or unfair acts or practices, to induce persons to pay over to respondents substantial sums of money to purchase courses of instruction.

The effect of using these aforesaid acts and practices to secure substantial sums of money is or may be to substantially hinder, lessen, restrain or prevent competition between the respondent and the aforesaid competitors.

PAR. 12. By and through the use of the aforesaid acts and practices, respondents place in the hands of others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove alleged.

PAR. 13. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of courses of instruction covering the same or similar subjects.

PAR. 14. The use by respondents of the aforesaid false, misleading, unfair or deceptive statements, representations, acts and practices, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true, and to induce a substantial number thereof to purchase respondents' courses by reason of said erroneous and mistaken belief.

PAR. 15. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of

Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Control Data Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 8100-34th Ave. South, in the City of Bloomington, State of Minnesota.

2. Respondent Automation Institute of America, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California with its offices and principal place of business located at 8100-34th Ave. South in the City of Bloomington, State of Minnesota.

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

ORDER

Definitions

The terms "*course*," "*course of study*," or "*course of study, training or instruction*," as used in this order, shall be defined as any entry-level vocational course of instruction, which shall mean the following: any course of instruction designed to prepare the graduates of such course for positions of employment available to persons who

possess no prior training or experience other than that gained from the course of instruction. This definition of "course," "course of study," or "course of study, training or instruction" shall not constitute, nor be deemed to constitute, an interpretation or evidence of interpretation of any definition contained in the Commission's Trade Regulation Rule governing proprietary, vocational and home study schools (16 C.F.R. 438.1 (1979)). The definition of "course," "course of study," or "course of study, training or instruction," for purposes of the Order, shall not include any course offered or sold to employers for the use of their employees or their families.

The term "*respondents*," as used herein, shall mean Control Data Corporation and Automation Institute of America, Inc.

I

It is ordered. That respondents Control Data Corporation, a corporation, and Automation Institute of America, Inc., a corporation, their successors, assigns, officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, franchisee, licensee, distributor or other device, in connection with the creating, advertising, promoting, offering for sale, sale or distribution of any course of study, training or instruction in the field of electronic data processing or any other course offered to the public in any field in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, orally, visually, in writing or in any manner, directly or by implication, that:

(a) College education or training beyond a high school diploma is not necessary or advantageous for the placement of any person as a programmer in the field of electronic data processing, or that any person with only a high school education or its equivalent may achieve employment as a programmer in the electronic data processing field, unless in each and every such instance it is disclosed, in immediate and conspicuous conjunction therewith, that college education or training beyond a high school diploma may be advantageous for placement as programmer in the field of electronic data processing because some employers require such education or training for programming; or misrepresenting, orally, in writing or in any manner, any qualification or prerequisite necessary to achieve employment in any field or position;

(b) Any entrance examination or aptitude test determines whether or not a person will achieve employment in the field of electronic data processing; or misrepresenting, orally, in writing, or in any

manner the meaning, purpose, benefit, significance or use of any entrance examination, aptitude test or the results thereof;

(c) Most people who take any entrance examination or aptitude test do not achieve a passing or qualifying grade or score, or score lower on such test than the particular applicant, unless such respondent so representing has, in each and every instance, statistically valid data to verify such representation; or misrepresenting, orally, in writing, or in any manner the pass or fail rate of any such entrance examination or aptitude test, or the score attained by any individual relative to, or compared with, grades or scores attained by any other or all other persons taking such entrance examination or aptitude test;

(d) Systems Analysis is an entry-level employment objective of any course of instruction offered by either respondent, unless such is the fact; or misrepresenting, orally, in writing, or in any manner, including the use of course names, descriptions or occupational objectives, the nature or type of position for which a graduate of any course of instruction may be qualified or in which such a graduate may achieve employment upon completion of the course of instruction;

(e) It is unnecessary for any graduate of any course of instruction offered by either respondent actively to seek employment through any source other than that made available by such respondent's placement service; or misrepresenting, orally, in writing, or in any manner, the capabilities, functions or performance of any placement service, or the duties, obligations or responsibilities of any person who seeks placement assistance;

(f) The placement assistance furnished by either respondent is free or without cost; or misrepresenting, orally, in writing, or in any manner, the cost of any placement assistance or service;

(g) Any graduate of any course of instruction offered by either respondent is assured of employment in any position for which training has been offered; or misrepresenting orally, in writing, or in any manner, the degree of ease or difficulty associated with obtaining employment or the effectiveness of any placement service in obtaining employment for either respondent's graduates;

(h) Any person engaged in connection with the promotion, offering for sale, sale, distribution or other marketing function for any course of instruction is a vocational counselor or is in any position not associated with marketing such course of instruction; or misrepresenting orally, in writing, or in any manner, the manner of compensation, training, experience, title, status, qualifications, or functions of any such person so engaged; or misrepresenting in any

manner the nature of the relationship between anyone associated with the marketing of any course of instruction and any prospective student of such course of instruction.

II

It is further ordered, That, if the provisions of Sections 438.4 through 438.6 of the Commission's Trade Regulation Rule for Proprietary Vocational and Home Study Schools (16 C.F.R. 438 (1979)), pertaining to "Cancellation and Refund Procedures After Cooling-Off Period" are not effective when this Order becomes effective, or are subsequently set aside or otherwise annulled by any court of law or Congressional Act, those provisions, as set forth in Appendix A,* shall immediately be incorporated into this Order. Additionally, if the provisions of Section 438.3(f) of the Rule are not effective when this Order becomes effective, or are subsequently set aside or otherwise annulled by any court of law or Act of Congress, those provisions, as also set forth in Appendix A, shall immediately be incorporated into this Order but only to the extent that the Section applies to express jobs or earnings claims. The foregoing provisions will remain a part of this Order only for such periods as they, or any requirements which pertain to refunds in the event of cancellation after cooling-off, are not part of any Trade Regulation Rule which may be in effect thereafter. With the exception of the definition of "course" (Section 438.1(c)), all definitions in the Rule necessary to carry out the purpose of the provisions above will be incorporated into the Order in the same manner as set forth above. The requirements of this Part shall be subject to, and governed by, the understandings expressed in Appendix B* attached hereto.

III

It is further ordered, That:

1. Each respondent shall agree, in writing, in any enrollment contract, or other agreement to furnish educational instruction services, with each enrollee in each course covered by this Order, to and shall:

A. Provide each such enrollee with the right to request, at any time during the period beginning with the date of enrollment and ending ninety (90) days following such enrollee's disenrollment, termination, or graduation from such course of instruction, informal

* Not reproduced herein for reasons of economy.

resolution of a claim, filed in the form of a completed, signed Student Complaint Questionnaire, a blank copy of which is attached hereto as Appendix C,* which questionnaire must be received by respondent at the address designated on the Questionnaire within such ninety (90) day period, when:

(i) Such claim is based upon an alleged representation or promise, either express or implied, made by a representative of such respondent in connection with such enrollee's enrollment, which representation or promise was allegedly a significant factor in leading such enrollee to enroll in such course of instruction; and

(ii) Such representation or promise allegedly was not fulfilled by such respondent and allegedly resulted in a serious diminution of a significant value or benefit of such course of instruction to such enrollee.

B. Arbitrate, at the election and upon the demand of such enrollee, such claim under the supervision of the American Arbitration Association and in accordance with and subject to the Rules and Procedures for Arbitration, and to the extent not inconsistent therewith, the Rules of the American Arbitration Association, as may be amended from time to time, both attached hereto as Appendix D,* under the circumstances and subject to the conditions set forth therein;

C. Provide the right, in the event such arbitration results in an award favorable to such enrollee, to have judgement entered upon such award by any court of competent jurisdiction, subject to the right of judicial review.

2. Contemporaneous with the making of the agreement required by Paragraph 1 of this Part of this Order, each respondent shall provide each enrollee in any course described in said Paragraph 1 with the following information in a complete, clear and concise manner (a copy of the document containing such information is attached hereto as Appendix E*):

(i) the method for initiating the complaint resolution procedures described in Paragraphs 1 and 3 of this Part of this Order;

(ii) the cost and consequence of such complaint resolution procedures;

(iii) the designation of the location where the "Student Complaint

* Not reproduced herein for reasons of economy.

Questionnaire" form, described in said Paragraph 3, may be obtained;

(iv) the name and mailing address of the person or persons designated by such respondent to receive such completed, signed Questionnaire;

(v) the instruction that any Questionnaire submitted to such designee or any acceptance of alternative or partial relief should be submitted, via certified mail, return receipt requested, to provide such enrollee with a record of the date such correspondence was received by such designee; and

(vi) the complete text of the Rules and Procedures for Arbitration, and to the extent not inconsistent therewith, the Rules of the American Arbitration Association, as may be amended from time to time, both attached hereto as Appendix D.

3. A. Each respondent shall (i) provide, upon request, such Student Complaint Questionnaire to any enrollee in any course of instruction described in Paragraph 1 of this Part of this Order and (ii) make available for such enrollee's inspection and copying the instructions and explanation, attached hereto as Appendix E, and a copy of the Rules and Procedures for Arbitration, and to the extent not inconsistent therewith, the Rules of the American Arbitration Association, as may be amended from time to time, both attached hereto as Appendix D, at a designated, accessible location at each of their educational facilities offering any such course of instruction.

B. In the event a designated representative of either respondent receives a completed, signed Questionnaire from any such enrollee, such respondent shall, within five (5) business days following such designee's receipt of such Questionnaire, mail a written acknowledgement of receipt to such enrollee stating the date on which such Questionnaire was received.

C. Within thirty (30) days of said designee's receipt of a completed, signed Questionnaire, such respondent shall elect to grant and/or deny in whole or in part the relief requested by such enrollee and shall mail to such enrollee a written statement of its decision. In the event said decision denies the relief requested, either in whole or in part, and/or offers a form of relief other than that requested, said written statement shall also include a brief statement of the reasons for such denial and/or offer of alternative relief. In the event such respondent elects to grant part of the requested relief or a form of relief other than that requested, such respondent shall grant such enrollee at least fifteen (15) days within which to place in the mail written notification of his or her acceptance of such proffered relief

in full satisfaction of such enrollee's claim, and shall so inform such enrollee.

D. In the event such respondent elects to grant all of the relief requested by such enrollee, such respondent shall effect the granting or, as the facts require, commence the granting of such relief within forty-five (45) days of its designee's receipt of the completed, signed Questionnaire. In the event such enrollee elects to accept partial or alternative relief, such respondent shall effect or, as the facts require, commence the granting of such relief within fifteen (15) days of receipt of such enrollee's acceptance of such relief.

4. Neither respondent shall fail to:

A. Within the time periods provided in this Part of this Order, make refund, effect cancellation of future monetary obligation(s), or provide such other relief as such respondent may offer and which the enrollee accepts:

(i) to any enrollee who complies with the procedures for filing a claim as set forth in this Part, and to whom such respondent agrees to provide relief; or

(ii) to any student who invokes arbitration pursuant to this Order, and who receives an award pursuant thereto which is not moved for judicial review by either party within the time limit prescribed by applicable state law; or

B. Adhere to the Rules and Procedures for Arbitration, and to the extent not inconsistent therewith, the Rules of the American Arbitration Association, as may be amended from time to time, both attached hereto as Appendix D, which are incorporated by reference within the terms of this Order.

C. Create and maintain, for a period ending three (3) years after the use of the enrollment contract or agreement described below is terminated, or after an enrollee executes a document acknowledging receipt of the instructions and explanation described below, and during such time period make available for inspection and copying by Commission staff members upon reasonable notice and during regular business hours, and after compliance with any federal law concerning the privacy or confidentiality of student records when applicable and necessary to do so:

(i) a copy of each different form of enrollment contract, or other agreement to furnish educational instruction services, for each course covered by Parts I and II of this Order;

(ii) a copy of each different document containing any information

incorporated by reference in such contract or agreement pertaining to the requirements of this Part of this Order; and

(iii) for each enrollee in each such course of instruction, a copy of the document executed by such enrollee at the time of enrollment acknowledging receipt of the instructions and explanation, described in Paragraph 2 of Part III of this Order and attached as Appendix E, for initiating the complaint resolution procedures set forth in this Part of this Order.

D. Create for each enrollee who has initiated the complaint resolution procedures set forth in this part of this Order each adequate record described below, where applicable to fully document each action taken in such complaint resolution procedure, and maintain such records for a period of three (3) years after the last action taken in connection with such enrollee's initiation of such procedures, and within said time period make each such record available for inspection and copying by Commission staff members upon reasonable notice and during regular business hours and after compliance with any federal law concerning the privacy or confidentiality of student records, when applicable and necessary to do so:

(i) which reveal the full and complete content of:

- a) the completed, signed Student Complaint Questionnaire submitted by such enrollee to either respondent as described in Paragraph 3.B. of this Part of this Order, and
- b) each item of correspondence required or described in this Part of this Order respecting such Questionnaire, and which reveal the dates each such item of correspondence was mailed and/or received, as required by this Part of this Order;

(ii) which demonstrate that any relief granted in connection with such Questionnaire pursuant to Paragraph 3.D. of this Part of the Order was effected or commenced within the time periods prescribed in said Paragraph;

(iii) which reveal the full and complete content of the notice of initiation of arbitration proceedings by such enrollee pursuant to this Part of this Order received by such respondent from the American Arbitration Association, including full and complete content of the copy of the Student Complaint Questionnaire submitted by such enrollee to initiate arbitration and of all documents attached thereto;

(iv) which reveal the full and complete content of each document submitted to the arbitrator by such respondent in connection with

such arbitration proceeding and, when a copy is provided to such respondent, each document submitted by such enrollee to the arbitrator in connection with such arbitration proceeding;

(v) which reveal the full and complete content of the written award of the arbitrator concluding such arbitration proceeding, including any simple statement of reasons accompanying such award;

(vi) which reveal the full and complete content of each petition filed by such respondent or such enrollee to have such award reviewed by any court of competent jurisdiction, and the final decision of such court in disposition of such petition; and

(vii) which demonstrate that such respondent has timely effected the granting of the relief awarded to such enrollee by the arbitrator in such arbitration proceeding.

IV

1. *It is further ordered, That:*

(a) Respondents herein deliver a copy of this decision and order to each of their present and future franchisees, licensees, employees, sales representatives, agents, solicitors, independent contractors and any other person who promotes, offers for sale, sells or distributes any course of instruction included within the scope of this Order, *provided, however*, that respondents shall have no obligation to deliver a copy of this Decision and Order to:

(i) Any public or non-profit, degree-granting educational institution; any professional or trade association; any federal, state or local governmental agency; or any employer when and to the extent that a course is offered or sold to employers for the use of employees or their families; or

(ii) Any person or entity whose sales, marketing, advertising and promotional practices are not directed, controlled or approved by either respondent or subject to either respondent's direction, control, or approval; or

(iii) Any person or entity that does not receive any sales, marketing, advertising or promotional advice, instrumentalities, training or materials from either respondent, directly or indirectly, *excepting* sales, marketing, advertising and promotional advice, instrumentalities, training and materials solely relating to and concerning (A) the technical aspects, features, characteristics or properties of any equipment, including any programming materials, received from either respondent, or (B) the content, organization or

educational purpose (other than achieving or obtaining employment) of any course of instruction, including any tests or other similar teaching or educational materials, received from either respondent;

provided, further, however, and notwithstanding the foregoing exemptions, that respondents shall deliver a copy of this Decision and Order to:

(i) Any person or entity, other than those referenced in subparagraph 1(a)(i) above, that either respondent licenses to use any of the names Control Data Corporation, Control Data, Control Data Institute, or Automation Institute, or any other name either respondent may designate its corporate entity or any franchised educational facility offering a course of study, training, or instruction, as all or part of the name of such person's or entity's educational institution; or

(ii) Any person, or any entity formed by any such person or persons, who purchases any of respondents' Control Data Institutes, Automation Institutes or any other facility offering any course covered by Parts I and II of this Order, and who prior to such purchase was engaged as an employee or agent of either respondent in managing, controlling, administering, or in selling, marketing, advertising, or promoting for the headquarters management or any facility of Control Data Institute or Automation Institute.

(b) Respondents herein provide each person or entity not exempted from subparagraph (a) of this Paragraph with a form statement, a copy of which shall be signed by such person or on behalf of such entity and returned to respondents, clearly stating their intention to be bound by and to conform their business practices to the requirements of this Order; retain such statement during the period such person or entity is so engaged; and, upon reasonable notice and during regular business hours, make such statement available to the Commission's staff for inspection and copying;

(c) Respondents herein inform each of the persons or entities subject to subparagraph (a) of this Paragraph that respondents will not use or engage or will terminate the use or engagement of the services relating to matters within the scope of this Order of any such person or entity unless such person or entity agrees to and does file notice with respondents that they will be bound by the provisions contained in this Order;

(d) If any person or entity subject to subparagraph (a) of this Paragraph fails to agree to file the form provided for in subparagraph (b) of this Paragraph with respondents and be bound by the

provisions of this Order, respondents shall not use or engage, or continue the use or engagement of, said person or entity to promote, offer for sale, sell or distribute any course of instruction included with the scope of this Order;

(e) Respondents herein inform each of the persons or entities subject to subparagraph (a) of this Paragraph that respondents are obligated by this Order to discontinue dealing with or to terminate the use or engagement of persons or entities, to provide, offer for sale, sell or distribute any course of instruction within the scope of this Order, who continue the use of any deceptive acts or practices prohibited by this Order;

(f) Respondents herein institute a program of continuing surveillance designed to reveal whether the business practices of each such person or entity subject to subparagraph (a) of this Paragraph conform to the requirements of this Order; and

(g) Respondents herein discontinue dealing with or terminate the use or engagement of any person or entity subject to subparagraph (a) of this Paragraph, to promote, offer for sale, sell or distribute any course of instruction within the scope of this Order, as revealed by the aforesaid program of surveillance, who continues any act or practice prohibited by this Order.

2. *It is further ordered*, That respondents, in connection with the advertising, promotion, offer for sale, sale or distribution of any course of study, training or instruction:

(a) provide each of their sales representatives with a name plate clearly and conspicuously bearing the sales representative's name and legend "Sales Representative," and place said name plate in each such sales representative's office in a conspicuous manner so that it will be clearly visible to any applicant communicating with such sales representative; and

(b) present to each applicant or prospective student, immediately prior to the commencement of the initial interview or sales presentation with any sales representative of either respondent during which the purchase of or enrollment in any such course of instruction offered by either respondent is discussed, a business card containing, in a clear and conspicuous manner, located in the approximate center of said card, in eleven-point type of the same style and in the same color ink, the following information and none other:

- (i) the name of the sales representative; and
- (ii) the designation, "Sales Representative,"

except that such card may also contain in the approximate lower half of such card, the logo-type of the appropriate respondent and, in not more than eight-point type, the name of such respondent and the name, address and telephone number of the educational facility.

3. *It is further ordered*, That Part I of this Order shall become effective immediately upon this Order becoming final; and that all other parts of this Order shall become effective 90 days after this Order becomes final.

4. *It is further ordered*, That the respondents shall forthwith distribute a copy of this Order to each of their domestic operating divisions.

5. *It is further ordered*, That the respondents notify the Commission at least thirty (30) days prior to any proposed change in either of the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the respondents which may affect compliance obligations arising out of this Order.

6. *It is further ordered*, That, in addition to all other reports required by this Order, the respondents, within sixty (60) days after service upon them of this Order, shall file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Commissioner Pitofsky did not participate.

IN THE MATTER OF
CHRYSLER CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9072. Complaint, Feb. 10, 1976—Decision, Jan. 9, 1981

This consent order requires, among other things, Aurora Chrysler-Plymouth, Inc., a Seattle, Wash. automobile dealership, to adopt and adhere to the "Reposessed Vehicle Surplus/Deficiency system" established by Chrysler Corporation pursuant to the disposition of Docket 9072 as to Chrysler Corporation. The firm is further required to establish to the reasonable satisfaction of the Commission that it has paid all surpluses realized from February 10, 1973 from reposessed vehicles returned to the company; corrected all prior erroneous credit reports; and provided credit reporting agencies with corrected information.

Appearances

For the Commission: *Dean Fournier, Bruce D. Carter, Sharon S. Armstrong, David Bricklin and Stevan Phillips.*

For the respondent: *Louis D. Peterson, Hillis, Phillips, Cairncross & Martin, Seattle, Wash.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Chrysler Motors Corporation, Chrysler Credit Corporation, and Aurora Chrysler-Plymouth, Inc., corporations, have violated the provisions of the Federal Trade Commission Act, as amended, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint.

PARAGRAPH 1. *Respondents.* Respondent Chrysler Motors Corporation ("Chrysler Motors") is a Delaware corporation with its office and principal place of business at 12000 Oakland Ave., Highland Park, Michigan. It is a wholly-owned subsidiary of Chrysler Corporation.

Respondent Chrysler Credit Corporation ("Chrysler Credit") is a Delaware corporation with its office and principal place of business at 16250 Northland Drive, Southfield, Michigan. It is a wholly-owned subsidiary of Chrysler Financial Corporation, which is wholly-owned by Chrysler Corporation.

Respondent Aurora Chrysler-Plymouth, Inc. ("Aurora") is a Delaware corporation with its office and principal place of business