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September 8, 2022

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Re: Proposed Agency Rule Chapter 704 – Establishment of License and Renewal Fees for Maine's Fair Credit Reporting Act Licensing and Requiring Licensing Through the Nationwide Multistate Licensing System (NMLS) ("Proposed Chapter 704").

The Consumer Data Industry Association ("CDIA") offers its comments on the Bureau of Consumer Credit Protection's ("BCCP" or "Bureau") proposed rulemaking on the establishment of a registration system for consumer reporting agencies ("CRAs") through the Nationwide Multistate Licensing System ("NMLS"). Our experience with NMLS in Maryland – the only state to require CRAs to register via that system – offers a cautionary tale for Maine. The NMLS, as least for CRAs, is inefficient, time-consuming, and unwieldy. While the NMLS is not necessary for CRAs in Maine, if Maine chooses to register CRAs using NMLS, we hope that the Bureau weighs the experiences of our members here carefully. This comment is offered in the spirit of making the NMLS more workable for the state.

CDIA is the voice of the consumer reporting industry, including the nationwide consumer reporting agencies, regional and specialized consumer reporting agencies, background check and residential screening companies, and others. CDIA promotes the responsible use of consumer data to help consumers achieve their financial goals and to help businesses, governments, and volunteer organizations assess risk and avoid fraud. CDIA members help to ensure fair and safe transactions for consumers, facilitate competition, locate crime victims and fugitives, reunite consumers with lost financial assets, help keep workplaces and apartment tenants safe, and expand consumers' access to products suited to their needs.

CDIA recognizes the work of the BCCP in the drafting of the Proposed Chapter 704 and the way in which the Bureau has engaged with and considered the feedback of stakeholders. To that end, CDIA requests: **(a)** the BCCP correct an error in the legal terminology in Proposed Chapter 704 relating to licensing requirements, and **(b)** with respect to the NMLS application requirements, that the BCCP proactively tailor the components of the NMLS it will require, including by working with CRAs to make the process efficient for both CRAs and the BCCP. For example, the BCCP can achieve a more efficient process by, among other things, granting extensions for delays caused by mandatory NMLS requirements and waiving non-mandatory steps in the NMLS process that go beyond Maine's current registration requirements.

CRA's Are Not Required to Obtain a License in Maine

The current draft of Proposed Chapter 704 appears to contain a drafting error that mischaracterizes the nature of CRA obligations under the law. Throughout the draft, Proposed Chapter 704 uses the words “license” or “licensing” to describe what is actually a registration requirement. For example, Section I misstates the Maine FCRA’s grant of authority to the BCCP as being able to “establish, by rule, fees to apply for or renew consumer reporting agency licenses” and “to establish routine, technical rules to move consumer reporting agency licensing to the Nationwide Multistate Licensing System (NMLS) . . . and maintain license records” as well as to “establish routine, technical rules to establish fees for the initial licensing and renewal licensing of credit reporting agencies.” See Proposed Chapter 704, Section I (emphasis added). This error in terminology is repeated throughout the current draft of the proposed rule.¹

The Maine Fair Credit Reporting Act, Me. Rev. Stat. tit. 10, §§ 1306 *et seq.*, only permits the Department to require registration through the NMLS, not licensing:

The administrator, within the limits provided by law, may:

. . .

Require registration of consumer reporting agencies located in this State or serving users within this State through the nationwide mortgage licensing system and registry as defined in Title 9-A, section 13-102, subsection 8. The administrator is authorized to participate in the nationwide mortgage licensing system and registry.

Me. Rev. Stat. tit. 10, § 1310-A(1)(G). The Act does not impose a licensing requirement. It empowers the BCCP simply to “[r]equire registration of consumer reporting agencies” in Maine. Me. Rev. Stat. tit. 10, § 1310-A(1)(G) (emphasis added). Moreover, Proposed Chapter 704 itself acknowledges that it “does not modify the standards for licensing or the applicability of” its enabling statute. See Proposed Chapter 704, Section II. Given the clear statutory language regarding the BCCP’s authority, CDIA requests that this drafting error be corrected.

Transition to the NMLS

Based on our members’ experiences in Maryland, which is the only state that requires NMLS registration for CRA’s, CDIA is aware that NMLS registration can present complicated administrative burdens for its members with no countervailing benefits for either the state or CRA’s. We hope that the BCCP will work with stakeholders to ameliorate these issues during the transition to the NMLS and in optimizing the components of the NMLS application that the BCCP will require for CRA’s. CDIA outlines below several aspects of the NMLS application that have proven to be difficult for its members and requests that the BCCP: **(1)** Waive optional NMLS application requirements which are not already required for registration in Maine; and **(2)** for mandatory NMLS application components,

¹ The difference is meaningful. A “license” is “a privilege granted by a state or city upon the payment of a fee, the recipient of the privilege then being authorized to do some act or series of acts that would otherwise be impermissible.” LICENSE, Black’s Law Dictionary (11th ed. 2019). A “registration,” on the other hand, is simply “[t]he act of recording or enrolling.” REGISTRATION, Black’s Law Dictionary (11th ed. 2019).

remain flexible in granting exceptions or extensions to CRAs where the NMLS application requirements cause delays beyond applicants' control.

The current process for registering as a CRA in Maine is simple. Registration consists of the completion of an application form, the payment of a \$100.00 fee, and submission of samples of model language or forms for disclosure to consumers at the time of application and model denial forms.² In past discussions with the BCCP, the Bureau expressed pride in the simplicity of Maine's current registration system for CRAs, a sentiment shared by CDIA's members. While CDIA understands the impetus behind the transition to NMLS, that system was not designed for CRAs and presents significant and cumbersome administrative hurdles for some CRAs.

For instance, to register with the NMLS, a "control person" must personally complete the MU2, a step in the process where they must create a username and password, log into NMLS, answer numerous personal background questions, and then associate himself or herself with each relevant entity's NMLS entry, before answering additional questions which must be completed for each entity. While such a requirement may make sense for a mortgage broker or a small private company, it is needlessly onerous to require an executive at a CRA that is publicly traded (or a wholly owned subsidiary of a publicly traded company) to personally complete numerous lengthy and invasive administrative forms. A written attestation – which CRA executives complete routinely – could suffice in place of this needlessly onerous process.

In addition, the NMLS also requires the submission of financial statements, detailed business plans, and organization charts. The management charts must identify the applicant's directors, officers, managers, compliance reporting, and their internal audit structure. For CRAs that are publicly traded companies or wholly owned subsidiaries of publicly traded companies, it is unnecessary to require this information, as it is already publicly available. At the very least, the BCCP could provide that publicly filed financial statements and other documents already filed with the Securities and Exchange Commission will suffice for NMLS submissions, if the BCCP opts to require such documentation.

For application requirements which the NMLS considers mandatory, CDIA requests that the BCCP work with applicants to allow extensions of time where delays in obtaining NMLS-required information are for reasons beyond the applicant's control. For example, to create an account with NMLS, the entity must submit an SS-4 or 147-C letter from the Internal Revenue Service. The legal name on the IRS documentation must match the legal name listed on the application documentation precisely. The NMLS will not allow any exceptions—the *exact* name must appear on both the applicant's current records and the IRS letters, even if proper documentation can show a name change or an issue with the IRS being unable to provide this documentation with the exact entity name. For example, if an entity changed the suffix of their name from "Inc." to "LLC," such a difference will result in a rejection from NMLS if the IRS documentation does not reflect the updated name. The IRS is experiencing significant backlogs in sorting these issues out, and the NMLS does not allow an entity to get to the registration step until the account is created by providing this

² See https://www.maine.gov/pfr/consumercredit/industry/licensing/credit_reporting_agency/index.htm.

documentation. CDIA hopes the BCCP will remain flexible in granting extensions to applicants experiencing these difficulties.

Conclusion

CDIA appreciates the BCCP for the effort to receive and work through comments and feedback on issues concerning CRAs as part of this rulemaking. CDIA is grateful for the Bureau's consideration of the issues and suggestions discussed above to improve this rulemaking.

Please contact us if you have any questions concerning our comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "E. Ellman", with a long horizontal flourish extending to the right.

Eric J. Ellman
Senior Vice President, Public Policy & Legal Affairs