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Mark E. Susi, Acting Superintendent
Bureau of Consumer Credit Protection
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Re: Proposed Agency Rule Chapter 704 – Establishment of Registration and Renewal Fees for Maine's Fair Credit Reporting Act Licensing and Requirement for Registration Through the Nationwide Multistate Licensing System (NMLS) ("Proposed Chapter 704").

Dear Mr. Susi:

The Consumer Data Industry Association ("CDIA") offers its comments on the Bureau of Consumer Credit Protection's ("BCCP" or "Bureau") revised 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, at least for CRAs, is inefficient, time-consuming, and unwieldy.

CDIA appreciates the BCCP's solicitation for feedback on issues concerning CRAs as part of this rulemaking.¹ We submitted comments on September 8, 2022 on the previous version of the proposed rule, and appreciate the BCCP's correction of the typographical error in the initial proposed rule referring to the registration requirement as a "licensing" requirement. The current proposal has added a new section titled "Application Requirements" which we believe would benefit from additional clarification by the BCCP. 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.

¹ By way of background, we note that the March 8, 2023 cover memo we received from the BCCP appears to have accidentally appended the new Proposed Chapter 709—applicable to money transmitters—rather than the new Proposed Chapter 704, which applies to consumer reporting agencies. Our comments here are directed at the latter, which is posted on the BCCP's website at:
https://www.maine.gov/pfr/consumercredit/laws_rules/proposedrule_ch704_cra.docx.

CDIA recognizes the work of the BCCP in the drafting of Proposed Chapter 704 and appreciates the way in which the Bureau has engaged with and considered the feedback of stakeholders. To that end, CDIA believes 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.

Transitioning to the NMLS

Based on our members’ experiences in Maryland, CDIA is aware that NMLS registration can present complicated administrative burdens for its members with no countervailing benefits for either the state or CRAs. 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 CRAs.

The revised Proposed Chapter 704 sets forth a list of “Application Requirements” in a new Section IV, subsection 5 that we believe is a promising start. CDIA requests that the BCCP: **(1)** clarify whether the list of application requirements in the current proposal are intended to supersede optional NMLS application requirements; and **(2)** for mandatory NMLS application components, 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. As we have outlined previously, 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. The control person’s account is personal to them. If the CRA’s officers change, the NMLS record for the entity must be updated and a new individual must complete this onerous and highly personal form. The MU2 is not appropriate for CRAs. We submit that a written attestation—which CRA executives complete routinely—would be much more suitable than this needlessly onerous process.

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

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. If the list of application requirements in the current Proposed Chapter 704, section IV(5), is not intended to supersede optional NMLS requirements, we respectfully request that the BCCP 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. As we have raised in previous comments to the Bureau, 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 documentation. CDIA hopes the BCCP will remain flexible in granting extensions to applicants experiencing these difficulties.

We also note that the current Proposed Chapter 704, section IV(5), state that applicants "shall" provide "[a] credit denial form or suggested language the company provides to creditor clients for them to give to consumers who are denied credit." This form is not required to be provided to consumers by CRAs under either the federal Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.* or the Maine Fair Credit Reporting Act, Me. Rev. Stat. tit. 10, §§ 1306 *et seq.*, so we suggest either striking this sub-provision, or adding the language "if provided" to this sentence.

Timeframe for Transitioning

The revised Proposed Chapter 704 sets a transitional period of November 1, 2023 through December 31, 2023, with a one-month late transitional period extending to January 31, 2024 (entailing a \$100 late fee), and provides that renewal applications will not be accepted after January 31, 2024. Given the complexity of the NMLS, in particular its unwieldy nature for CRAs, we believe a longer transition period would be appropriate and hope the BCCP takes our experience in Maryland into account. It is particularly concerning given that factors outside our members' control—such as the IRS backlog in processing SS-4 and 147-C letters—makes the timing of initial NMLS registration unpredictable. The NMLS is used by thousands of entities. November and December of every year are periods where many more renewal applications than average are processed and this leads to backlogs. For example, telephone wait times for questions directed at NMLS about the process can be three hours or longer during this time of year, with no guarantee that applicants will make

contact with any person who can answer their questions without leaving a message and hoping for a call back.

We believe that allowing CRAs to use the existing registration process with the option to begin registering throughout 2023—with the NMLS requirement becoming fully effective in November 2024—would strike a reasonable balance between the BCCP’s policy goals and the practical realities of the consumer reporting industry.

Conclusion

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