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Comments on CFR Credit Reporting Regulations

On behalf of the Maryland Consumer Rights Coalition and the CASH Campaign of Maryland, I appreciate the opportunity to comment on the proposed regulations on credit reporting.

The Maryland Consumer Rights Coalition is a statewide coalition that advances economic rights and financial inclusion through research, education, advocacy, and direct service. Our coalition includes state and local partners who work on older adult issues, housing, financial capability, and consumer protection as well as more than 8500 supporters across the state.

The CASH Campaign of Maryland promotes economic advancement for low-to-moderate income individuals and families in Baltimore and across Maryland. CASH accomplishes its mission through operating a portfolio of direct service programs, building organizational and field capacity, and leading policy and advocacy initiatives to strengthen family economic stability. CASH and its partners across the state achieve this by providing free tax preparation services through the IRS program 'VITA', offering free financial education and coaching, and engaging in policy research and advocacy.

The 2017 data breach by Equifax which revealed sensitive consumer information including names, birthdates, credit card, and Social Security numbers and affected 145.5 million American consumers exemplifies the need to modernize and expand protections of data privacy for consumers.

According to the Consumer Financial Protection Bureau (CFPB), the consumer reporting market comprises more than 400 companies, and the Consumer Data Industry Association reports that these companies issue three billion reports and make more than 36 billion updates to consumer files each



year . These credit reports are sold to third parties and used to make credit, employment, insurance,¹ and other decisions. According to a 2018 Department of the Treasury report, the three nationwide CRAs— Equifax, Experian, and TransUnion—maintain credit files on nearly 210 million Americans.

The federal regulations affecting credit reporting agencies are a floor and we commend the Commissioner of Financial Regulation for expanding data privacy and consumer protections through additional regulation of credit reporting agencies.

Our recommendations are below:

1. Licensing

We support requiring consumer reporting agencies (CRAs) to start registering via the National Mortgage Licensing System since this is consistent with CFR's requirement for other entities. Centralizing registration makes sense and enables CFR to coordinate more effectively and nimbly with other states. We also support the registration requirements including the listing of all websites and web applications, schedule of fees for all applicable products and services, total number of Maryland consumers, total number of complaints by Maryland consumers for the previous year, and total number of complaints by Maryland consumers for the prior year involving a claim of inaccurate information in their credit file or on their report.

2. Bond

We support the idea of requiring consumer reporting agencies to post a bond. The amount of the bond could be adjusted according to the size of the entity in addition. For very small consumer reporting agencies, such as those that are sole proprietorships or have one or two employees, \$1 million might be more than necessary. For the Big Three credit bureaus and other larger CRAs, \$1 million may be too little. After all, Experian earns \$2 billion in sales annually and CoreLogic (a specialty CRA) earned \$1.8 billion in revenue in 2018. We would suggest that the bond be calculated as a percentage of revenue, perhaps 0.1% of the revenue of sales of consumer reports to users and consumers.

¹ <https://www.gao.gov/assets/700/697026.pdf>



3. Prohibition against reporting of loans that are illegal in Maryland

We support the proposal in Section 0.4 Operational Procedures, paragraph (B)(2), that would prohibit the reporting of any new or existing loans that are usurious or otherwise void or unenforceable under Maryland law. If a loan is illegal under Maryland law, it should be treated as *void ab initio* and therefore a legal nullity. As such, it should not be reported in a consumer report regarding the borrower. However, unfortunately, at least one court has held that it is not unlawful under the federal Fair Credit Reporting Act (FCRA) for a consumer reporting agency to report an illegal loan on a borrower's credit report. *Reyes v. Experian Info. Sol., Inc.*, 2017 WL 4712075 (C.D. Cal. Oct. 13, 2017). Thus, we agree and support the proposal to protect Maryland consumers from the reporting of such illegal loans.

The proposed prohibition on reporting illegal loans should not run afoul of the federal FCRA's preemption provisions. Under the federal FCRA, the general rule at 15 U.S.C. § 1681t(a) is that a state law is not preempted if it offers greater protection for consumers, unless it is specifically preempted by a provision in § 1681t(b). There is no provision in § 1681t(b) that specifically addresses the reporting of illegal loans. The closest provision might be § 1681t(b)(1)(E), which preempts state laws concerning the subject matter of § 1681c of the FCRA. Section 1681c(a), in turn, restricts certain types of information that can be included in consumer reports. However, these restrictions all concern either the age of information (i.e. generally prohibiting negative information over 7 years old or bankruptcies over 10 years old) or medical information. None of the restrictions in § 1681c(a) relate to the reporting of information because it was based on an illegality.

4. Matching criteria for tax liens and judgments

Proposed Section 0.4 Operational Procedures, paragraph (B)(3), would require CRAs to use "personal information and publicly available information to match tax liens and judgments to the appropriate consumer file." This proposal seems overly non-specific, in that it does not specify what person or publicly information should be used, or how much is necessary. Should a CRA be required to use the consumer's entire full name? What about using an address, date of birth, or Social Security number (SSN)? The proposal does not require ALL items of such information to be used, but instead leaves it unclear. The proposal also does specify what amount of identifying information should be used, *i.e.*, whether the CRA should use the entire first name or is a partial name match acceptable? Must the CRA use all 9 digits of an SSN or is 7 out of 9 digits acceptable?

Also, the CFPB has set standards regarding this issue, at least for Equifax/Experian/TransUnion, requiring them to use a minimum of three items of identifying information for public records and tax



liens: (1) name, (2) address, and (3) SSN and/or date of birth. See Consumer Data Industry Association, *Statement on Reporting of Public Records, such as Civil Judgments and Tax Liens* (Mar. 13, 2017),

https://s3.amazonaws.com/rdcms-cdia/files/production/public/PDFs/FNL.3.13.CDIA_Media_Statement_Liens.pdf. *At a minimum, proposed Section 0.4, paragraph (b)(3), should require at least as much information as the CFPB standard requires for Equifax/Experian/TransUnion.*

6. Prohibition against CRAs providing a credit report to a lender that it knows or should know is making illegal loans

We support propose Section 0.6 which prohibits a CRA from furnishing a credit report to a lender that it knows or should know is making loans that are usurious or otherwise void or unenforceable under Maryland law. If a loan is illegal, the lender should not have a legitimate purpose to obtain a credit report for the purpose of making that loan. Thus, we agree and support the proposal to protect Maryland consumers. This proposed prohibition should not run afoul of the federal FCRA's preemption provisions, since it is more protective than the federal FCRA.

7. Making list of CRAs available to the public

Position: Proposed Section 0.7 would require the Commissioner of Financial Regulation to maintain a current listing of the names, addresses, and telephone numbers of CRAs that maintain information or provide consumer reports on Maryland residents through the NMLS Consumer Access website. We agree that consumers should be entitled to this information and support this proposal.

Sincerely,

Marceline White Robin McKinney

Maryland Consumer Rights Coalition CASH Campaign of Maryland