Maryland General Assembly
Department of Legislative Services

Proposed Regulations
Maryland Department of Labor

(DLS Control No. 20-081)

Overview and Legal and Fiscal Impact

These regulations implement new statutory requirements for consumer credit reporting agencies and make various changes to enhance consumer rights and protections.

The regulations present no legal issues of concern.

There is no material impact on State or local agencies.

Regulations of COMAR Affected

Maryland Department of Labor:
Commissioner of Financial Regulation: Credit Reporting Agencies:
COMAR 09.03.07.02-.07

Legal Analysis

Background

These regulations are similar to regulations previously published in the *Maryland Register* as a proposed action on January 17, 2020 (47:2 Md. R. 53–142). For a detailed discussion of that proposal, please see the legal and fiscal analysis for DLS Control No. 19-247P. In announcing the current proposal, the Commissioner of Financial Regulation simultaneously withdrew the previous proposal.

Summary of Regulation

Regulation .02 alters and adds certain definitions.

Regulation .03 repeals existing registration requirements for a consumer reporting agency and replaces them with provisions requiring each consumer reporting agency to register with the Nationwide Mortgage Licensing System and Registry (NMLS). Specifically, the regulation:

- requires the Commissioner to establish a time period that is not less than 2 months after the effective date of these regulations within which a registrant must transfer registration information to NMLS;

- requires the Commissioner to notify all registrants of the transfer period and provide instructions for the transfer of registration information to NMLS at least 30 days before the transfer period begins;

- requires each consumer reporting agency submitting an initial registration or registration renewal to apply through NMLS on or after November 1;

- requires each consumer reporting agency to provide all information required by the Commissioner through NMLS; and

- makes conforming changes related to reporting information through NMLS.

Regulation .04 establishes bond requirements and standards for a consumer reporting agency. Specifically, the regulation provides the amount of a consumer reporting agency surety bond under the bonding requirement and how the amount shall be determined. The regulation authorizes the Commissioner to grant an exemption to a consumer reporting agency from the surety bond requirement if the Commissioner determines that certain conditions are met.

Regulation .05 repeals the existing requirement that a consumer reporting agency inform its business customers of inaccuracies discovered in information in consumer credit information, correct the errors, and prevent them from occurring in the future. Instead, the regulation requires a consumer reporting agency to comply with 15 U.S.C. §§ 1681i. The regulation provides that a consumer reporting agency (1) may not include in a consumer's file any loan that has been determined to be usurious or otherwise void or unenforceable by a certain determination and (2) shall use personal information and publicly available information to match tax liens and judgments to the appropriate consumer file. Additionally, a consumer reporting agency is required to pay the actual cost per day for each investigator engaged in an investigation by the Commissioner.

Regulation .06 requires a consumer reporting agency to provide a simple and easy-to-understand notice to consumers of their right to restrict the sale or transfer of information in their file. The regulation requires the notice to include certain information, to be provided and displayed in a certain manner.

Regulation .07 authorizes the Commissioner to issue a written order to a consumer reporting agency not to furnish credit reports after a certain finding and requires consumer reporting agencies to comply with a written order issued by the Commissioner within 30 days of receipt of the written order.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites § 2-105 of the Business Regulation Article and §§ 14-1216(b), 14-1217(b)(9) and (10), 14-1217(d), 14-1226(f) and (g) of the Commercial Law Article as authority for the regulations. Section 2-105 of the Business Regulation Article generally authorizes the Secretary of Labor to adopt regulations for the Office of the Secretary. Section 14-1216(b) of the Commercial Law Article requires the consumer reporting agency registration to include any information that the Commissioner requires by regulation. Section 14-1217(b)(9) requires the Commissioner to consider the conditions the Commissioner establishes by regulation when granting an exemption from the bonding requirement. Section 14-1217(b)(10) requires the Commissioner to consider the conditions the Commissioner establishes by regulation when determining the amount of the bond. Section 14-1217(d) requires the Commissioner to adopt regulations establishing the conditions under which the Commissioner may grant an exemption from the bonding requirement to a consumer reporting agency and the factors the Commissioner shall consider in determining the amount of the bond. Section 14-1226(f) requires the Commissioner to adopt regulations necessary to administer enforcement and penalties relating to consumer credit reporting agencies. Section 14-1226(g) requires a consumer reporting agency to pay the Commissioner a per-day fee set by the Commissioner for each of the Commissioner's employees engaged in any investigation of the consumer reporting agency conducted that the Commissioner considers necessary.

The relevant cited authority is correct and complete. The regulations comply with the legislative intent of the law.

Fiscal Analysis

There is no material impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The regulations implement a provision of Chapter 480 of 2018, which expanded regulation of consumer reporting agencies under the Maryland Credit Reporting Act. The department advises the regulations *require* consumer reporting agencies to register through NMLS. The department anticipates paying a $100 NMLS registration fee for about 57 consumer reporting agencies (thus, incurring about $5,700 in expenditures). The Department of Legislative Services agrees with this estimate but notes that it reflects a higher amount than was projected in the fiscal and policy note for Chapter 480 (House Bill 848 of 2018); that amount was assumed to total about $4,100 annually because only 41 consumer reporting agencies were known to be doing business in Maryland in 2018. Thus, the Department of Legislative Services advises that most of the fiscal impact has already been assumed under the fiscal and policy note for House Bill 848.

Impact on Budget

There is no material impact on the State operating or capital budgets.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have a meaningful impact on small businesses. The Department of Legislative Services disagrees that the regulations have a meaningful impact on small businesses; any impact on small businesses has already been accounted for in the fiscal and policy note for House Bill 848. These implementing regulations should not have any additional, independent impact. The fiscal and policy note for House Bill 848 assumed that the four major consumer reporting agencies (Equifax, Experian, TransUnion, and Innovus) do not qualify as small businesses. However, other national consumer reporting agencies may qualify as small businesses; to the extent they do, they may be minimally affected by increased costs related to more stringent registration and investigation reimbursement requirements.

Contact Information

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