

Regulatory Impact Statement for Proposed New 23 NYCRR 201.

1. Statutory Authority: Section 102 of the New York Financial Services Law (the “Financial Services Law” or “FSL”) declares that the purpose of the FSL is “to ensure the continued safety and soundness of New York’s banking, insurance and financial services industries, as well as the prudent conduct of the providers of financial products and services, through responsible regulation and supervision.”

Pursuant to FSL Section 201, the Department of Financial Services (“DFS”) has broad authority to take such actions as are necessary to ensure the continued solvency, safety, soundness and prudent conduct of the providers of financial products and services; to protect users of financial products and services from financially impaired or insolvent providers of such services; and to eliminate financial fraud, other criminal abuse and unethical conduct in the industry.

FSL Section 301 gives DFS broad power “to protect users of financial products and services.” In addition, FSL Section 302 provides DFS with equally broad authority to adopt regulations relating to “financial products and services,” which are broadly defined in the Financial Services Law to mean essentially any product or service offered by a DFS-regulated entity. Accordingly, DFS has ample authority to adopt the proposed rule.

FSL Section 202 creates the office of the Superintendent of Financial Services (the “Superintendent”) and confers on the Superintendent all “the rights, powers, and duties in connection with financial services and protection in this state, expressed or reasonably implied by [the FSL] or any other applicable law of this state.”

FSL Section 408 empowers the Superintendent to levy civil penalties for violations of the FSL or regulations promulgated thereunder amongst other things.

2. Legislative Objectives: The Financial Services Law is intended to ensure the safe and sound operation of the financial system and adequate protection of consumers of financial services. Consumer credit reporting agencies, themselves the purveyors of a financial service, play a role in the provision of nearly every other type of financial services offered in this state. As the recent cyber intrusion of Equifax, Inc. has demonstrated,

vulnerabilities of consumer credit reporting agencies can present serious dangers to New York consumers of financial services that may become identity theft or fraud, and could experience disruptions in their use of credit and other financial services. As other entities regulated by DFS rely heavily on consumer credit reporting agencies in operating their own businesses in a safe and sound manner, problematic practices at those agencies represent a threat not only to consumers, but also to the stability and efficiency of New York markets.

The proposed rule is intended to ensure that consumer credit reporting agencies operate in a safe and sound manner, including by meeting certain minimum cybersecurity standards, in order to protect consumers and financial markets.

3. Needs and Benefits: The proposed rule is necessary to ensure that consumers and markets are protected from unsafe and unsound practices of any consumer credit reporting agencies and to ensure that those agencies are effectively addressing ever-growing cybersecurity risks. Presently there is no state or federal agency adequately regulating consumer credit reporting agencies, and cyber-attacks on at least one of those entities has resulted in an estimated 143 million consumers' personal information, including social security numbers, birth dates, addresses, and driver's license numbers being accessed by parties unknown.

4. Costs: Consumer credit reporting agencies will be responsible for ensuring that they are in compliance with the proposed rule, which will impose some costs on their operations. For consumer credit reporting agencies currently operating in a safe and sound manner the costs to come into compliance should be limited. The proposed rule contemplates the filing of a registration and annual reporting, both of which will impose some cost in compiling the submissions. Compliance with the cybersecurity requirements may also impose some costs in reporting of cyber events to DFS, or where a consumer credit reporting agency does not currently have an adequate cybersecurity program. It is also anticipated that the costs of compliance will be offset to varying degrees when, as a result of complying with the proposed rule, entities avoid or mitigate cyber-attacks that might otherwise have caused financial and other losses.

There should be no costs to any local governments as a result of the proposed rule.

5. Local government mandates: The proposed rule does not impose any new programs, services, duties or responsibilities on local government.

6. Paperwork: The proposed rule requires registration with and annual reporting to DFS. Additionally, consumer credit reporting agencies may need to comply with any further reporting the Superintendent deems necessary on an individual or market-wide basis. In as far as the proposed rule requires compliance with 23 NYCRR 500, the proposed rule requires such further paperwork as is required under that regulation.

7. Duplication: To the extent that the regulation requires compliance with 23 NYCRR 500 but provides separate transition periods for consumer credit reporting agencies to come into compliance, the proposed rule will overlap, but not conflict, with 23 NYCRR 500.

8. Alternatives: None.

9. Federal Standards: The proposed rule will, in some respects, overlap with the concurrent authority of the federal Consumer Financial Protection Bureau (“CFPB”) to regulate consumer credit reporting agencies. The proposed rule will exceed, but not conflict with, federal standards concerning the cybersecurity of consumer credit reporting agencies. CFPB has not to date enforced any cybersecurity standard against consumer credit reporting agencies. The proposed rule holds consumer credit reporting agencies operating with respect to New York consumers to the same standard to which other regulated parties that consumer reporting agencies act as vendors to are held. The recent cybersecurity event at Equifax, Inc. further highlights the need for more stringent standards.

10. Compliance Schedule: The proposed rule requires registration be made on or before February 1, 2018 for any consumer credit reporting agency operating with respect to New York consumers before that date. Consumer credit reporting agencies that wish to begin operating with respect to New York consumers after that date will be required to register before beginning those operations. The first annual report will not be required

until July 1, 2019. Required compliance with regulation of 23 NYCRR 500, regarding cybersecurity, is phased in over time until October 1, 2019, when all aspects of the cybersecurity regulation must be complied with.

## Regulatory Flexibility Analysis for Small Businesses and Local Governments for Proposed New 23 NYCRR 201.

1. Effect of the Rule: The proposed rule applies to every consumer credit reporting agency that assembles, evaluates, or maintains a consumer credit report on one or more consumers located in New York State. The Department of Financial Services (“DFS”) does not anticipate that any small business is a consumer credit reporting agency, but to the extent that any such small business exists the proposed rule will apply uniformly to them as to any other consumer credit reporting agency.

The proposed rule does not apply to local governments and will not impose any adverse economic impact or any reporting, recordkeeping or other compliance requirements on local governments.

2. Compliance Requirements: To the extent that any consumer credit reporting agency is a small business, all the requirements of the proposed rule will apply. It is anticipated that the costs to any small business of complying with the regulation will be similar, relative to its size, to any other consumer credit reporting agency.

3. Professional Services: A consumer credit reporting agency that is a small business will not necessarily need any professional services to comply with the proposed rule. A consumer credit reporting agency may wish to seek the advice of an attorney to ensure compliance with the regulation or to submit required reports to DFS; however, retention of outside legal representation is not required by the regulation. A consumer credit reporting agency, in complying with the cybersecurity regulation as required by the proposed rule, may seek an outside vendor to act as Chief Information Security Officer, but this is merely permitted, and not required, by the proposed rule.

The proposed rule does not apply to local governments.

4. Compliance Costs: Like all businesses subject to the proposed rule, small businesses will be responsible for ensuring that they are in compliance with the proposed rule, which will impose some costs on their operations. DFS believes that the need for compliance outweighs any such costs.

5. Economic and Technological Feasibility: DFS believes that it will be economically and technologically feasible for small businesses to comply with the requirements of the proposed rule.

6. Minimizing Adverse Impacts: The proposed rule was designed to have the minimum impact necessary to ensure that New York consumers and financial markets are adequately protected from consumer credit reporting agencies that operate in an unsound or unsafe manner. To the extent that the proposed rule will apply to any small business, the impacts of the proposed rule on a small business will not be greater than on any other entity subject to the rule, and are necessary to effectuate the purpose of the regulation.

7. Small Business and Local Government Participation: The proposed rule will be published publicly, including on DFS's website, for notice and comment, which will provide small businesses with the opportunity to participate in the rule making process.

The proposed rule does not impact local governments.

## Rural Area Flexibility Analysis for Proposed New 23 NYCRR 201.

1. Types and Estimated Numbers of Rural Areas: The Department of Financial Services (“DFS”) does not believe that any entity subject to the regulation operates in a rural area. To the extent that a consumer credit reporting agency does operate in a rural area, or a consumer credit reporting agency were to begin operating in a rural area, the proposed rule would then apply to such entity.

2. Reporting, Recordkeeping and Other Compliance Requirements; Professional Services: Consumer credit reporting agencies subject to the proposed rule will be required to register with DFS and report information annually with DFS. Consumer credit reporting agencies subject to the proposed rule will further need to keep and maintain the records required by 23 NYCRR 500. Consumer credit reporting agencies subject to the proposed rule will be subject to any additional information requests and/or examinations that the Superintendent determines to be necessary.

3. Costs: Consumer credit reporting agencies subject to the proposed rule will be responsible for ensuring that they are in compliance with the proposed rule, which will impose some costs on their operations. The costs are not expected to be any higher for consumer credit reporting agencies in rural areas than for any other entity subject to the proposed rule.

4. Minimizing Adverse Impact: The proposed rule is not expected to have an adverse impact on public or private sector interests in rural areas as it applies uniformly across the state. The proposed rule is likely to have a positive impact on interests in rural areas as the proposed rule protects consumer data and protects financial services firms that provide services to consumers.

5. Rural Area Participation: The proposed rule will be published publicly, including on DFS’s website, for notice and comment, which will provide public and private interests in rural areas with the opportunity to participate in the rule making process.

A Job Impact Statement Is Not Being Submitted for Proposed New 23 NYCRR 201.

The Department has determined based on the nature and purpose of the proposed rulemaking that it will not have a substantial adverse impact on jobs and/or employment opportunities.