NEW YORK STATE
INSURANCE DEPARTMENT

REGULATION NO. 182
11 NYCRR 221
LIMITATIONS UPON AND REQUIREMENTS FOR THE USE OF CREDIT INFORMATION FOR PERSONAL LINES INSURANCE

I, Howard Mills, Superintendent of Insurance of the State of New York, pursuant to the authority granted by Sections 201, 301 and Article 28 of the Insurance Law, do hereby promulgate Part 221 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 182), to take effect upon publication in the State Register, to read as follows:

(ALL MATERIAL IS NEW)

Section 221.0 Purpose.

This Part implements, interprets, and clarifies chapter 215 of the Laws of 2004, which added a new article 28 to the Insurance Law entitled “Use of Credit Information”. Article 28 establishes limitations upon, and requirements for, the permissible use of credit information by insurers doing business in this State to underwrite or rate risks for personal lines insurance business.

Section 221.1 Applicability and Scope.

(a) This Part applies to the use of credit information to underwrite and rate personal lines insurance policies applied for, or renewed, on and after April 23, 2005.

(b) Nothing in this Part or in article 28 shall be construed to alter any requirement or limitation contained in the Insurance Law, including cancellation, non-renewal, and tier placement requirements under Insurance Law sections 2349 or 3425; this Title; or the rules of the New York Automobile Insurance Plan or New York Property Insurance Underwriting Association.

Section 221.2 Definitions.

(a) The definitions contained in article 28 of the Insurance Law (“article 28”) shall apply to this Part.

(b) The definitions contained in section 107 of the Insurance Law shall also apply to article 28 and this Part except as provided in article 28.

(c) “Adverse action” as defined in section 2801(a) includes the non-renewal of a policy of personal lines insurance.

Section 221.3 Use of credit information to underwrite or rate risks for personal lines insurance.

(a) An insurer that uses credit information to underwrite or rate risks for personal lines insurance shall not:

(1) use an insurance score that is calculated using income, gender, address, zip code, ethnic group, religion, marital status, or nationality of the consumer as a factor;

(2) deny a policy of personal lines insurance solely on the basis of credit information, without consideration of any other applicable underwriting factor(s) independent of credit information;

(3) use credit information to cancel a policy or as a basis for taking an adverse action against a current insured. However, an insurer may place the insured in a higher rated tier or reclassify that insured due to factors other than credit information in accordance with section 2349 or 2351 of the Insurance Law and its rates and rules filed with the superintendent;

(4) take an adverse action against a consumer solely because he or she does not have a credit card account;

(5) consider, for any given program of insurance, an absence of credit information or an inability to calculate an insurance score in underwriting or rating personal lines insurance, unless the insurer does one of the following:

(i) treats the consumer as if the consumer had neutral credit information, as defined by the insurer;

(ii) excludes the use of credit information as a factor and uses only other underwriting criteria; or

(iii) makes a filing with the superintendent with respect to an individual consumer that shall be subject to approval by the superintendent. The insurer shall present satisfactory information applicable to the consumer that the absence of credit information or the inability to calculate an insurance score relates to the risk for the insurer; or

(6) use any of the following factors as a negative factor in any insurance scoring methodology or in reviewing credit information:

(i) credit inquiries not initiated by the consumer or inquiries requested by the consumer for the consumer’s own credit information;

(ii) inquiries identified on the consumer's credit report as relating to insurance coverage;

(iii) collection accounts that have been identified with a medical industry code on a consumer's credit report;

(iv) multiple lender inquiries made within 30 days of one another and coded on the consumer's credit report as being from the home mortgage industry; however, an insurer may consider only one such inquiry; or

(v) multiple lender inquiries made within 30 days of one another and coded on the consumer's credit report as being from the automobile lending industry; however, an insurer may consider only one such inquiry.

(b) An insurer may use credit information:

(1) in conjunction with any other applicable underwriting factors independent of credit information, upon application to deny the issuance of a new policy of personal lines insurance. The offer by an affiliate insurer to write the coverage or by the insurer to write the coverage through one of its tiers shall not constitute a denial of a policy but shall constitute an adverse action if the premium or policy conditions of the policy offered are less favorable to the insured due to the use of credit information; and

(2) upon renewal, if such use reduces the premium for the insured in accordance with the insurer's filed rates and rules.

Section 221.4 Requirements for obtaining current credit information.

(a) An insurer shall not use credit information to take an adverse action against a consumer unless, the insurer obtains and uses a credit report issued, or an insurance score calculated, no more than 90 days prior to the date the policy is first written.

(b)(1) An insurer shall not use credit information unless, at least once every 36 months, upon the request of the consumer or the producer, the insurer shall re-underwrite and re-rate the policy based upon a current credit report or insurance score and shall make any necessary adjustments, including moving the insured to the appropriate tier, effective as of the date of the report or score. The re-underwriting and re-rating shall not result in a premium increase for the insured.

(2) If upon consideration of the current credit information, the insured is eligible for placement in an affiliate of the insurer at a lower rate in accordance with the affiliate's current underwriting rules and the insured was previously ineligible for placement with that affiliate due to the prior credit information, then the affiliate shall offer the insured a new policy with substantially equivalent coverage. If the offer is

accepted by the insured and a new policy is issued, the affiliate may not exercise any right that it otherwise may have under Section 3425(b) to cancel the policy within the first sixty days other than for a reason specified in Section 3425(c).

(c) Notwithstanding subdivision (b)(1) of this section, an insurer may decline the request to obtain current credit information for an insured because:

(1) the insurer had obtained a current credit report within the last 36 month period;

(2) the insured is in the most favorably-priced tier of the insurer or the most favorably priced company within a group of affiliated insurers; or

(3) credit was not used for underwriting or rating the insured when the policy was initially written.

(d) An insurer may obtain and use current credit information upon renewal, in accordance with its underwriting guidelines applied consistently to all insureds in a program of insurance provided that such information may be used only to reduce the premium for the insured.

Section 221.5 Disclosure requirements.

(a) An insurer that uses credit information in underwriting or rating a consumer shall disclose to the consumer that it may obtain credit information on the consumer. The contents of the disclosure shall be in accordance with the statutory requirements contained in section 2804(b) of the Insurance Law.

(b) The insurer shall provide the disclosure at the time of application and on renewal to each consumer.

(c) The method for providing the disclosure shall be as follows:

(1) Written Application for New Business

(i) The disclosure shall be made in writing, in at least 12 point type, upon receipt of the application for insurance.

(ii) The disclosure notice shall be provided to the consumer in a separate written document, on company letterhead or that identifies the insurer, and shall include the address and a toll-free telephone number of the insurer.

(2) Telephone Application for New Business

(i) For applications taken over the telephone, the disclosure as enumerated in section 2804(d) of the Insurance Law may be provided either orally at the time the

application is taken or in writing, in at least 12 point type, upon receipt of the application. If in writing, the disclosure notice shall comply with the written application requirements in paragraph (1) of this subdivision.

(ii) If the policy is issued, the disclosure notice shall then also be provided to the consumer, as specified in section 2804(b) of the Insurance Law, in a separate written document, in at least 12 point type, upon policy issuance.

(3) Other Medium for New Business

(i) For new business that is not applied for on the telephone or in writing, the disclosure shall be provided either in the same medium as the application for insurance or in writing, in at least 12 point type. The disclosure shall be provided upon the insurer's receipt of the application.

(4) Renewal Business

(i) On all renewals, a written disclosure notice, in at least 12 point type, shall be provided at least 10 days prior to the effective date of the renewal policy.

(ii) The disclosure notice shall be provided to the consumer in a separate written document, on company letterhead or that identifies the insurer, and shall include the address and a toll-free telephone number of the insurer.

(d) Where an insurance producer or other entity has been designated by an insurer to issue the disclosure on its behalf, the insurer shall provide the insurance producer or other entity with the form of the disclosure notice. In addition, the insurer shall use a reasonable means to verify that the disclosure has been provided to the consumer by the insurance producer or other entity.

(e) Documentation that the required notification has been provided to the consumer shall be maintained by the insurer in accordance with section 243.2 of this Title (Regulation No. 152).

Section 221.6 Adverse action notification.

(a) Section 2805(a) of the Insurance Law provides that an insurer that takes an adverse action based upon credit information shall provide notification to the consumer that an adverse action has been taken, in accordance with the requirements of the federal Fair Credit Reporting Act, 15 USC 1681m(a).

(b) The notification shall be provided within 30 days of taking the action and shall explain the reasons the insurer took the adverse action in clear and specific language and shall include a description of up to four credit related factors that were the primary influences of the adverse action. If one of the factors identified in the notification is a credit score, the notification shall include an explanation of the score

that may include a standardized credit explanation provided by a consumer reporting agency or other third party vendor.

(c) Where an insurance producer or other entity has been designated by an insurer to issue the notification on its behalf, the insurer shall provide the insurance producer or other entity with the form of the adverse action notification. In addition, the insurer shall use a reasonable means to verify that the notice has been provided to the consumer by the insurance producer or other entity.

(d) Documentation that the required notification has been provided to the consumer shall be maintained by the insurer in accordance with section 243.2 of this Title (Regulation No. 152).

Section 221.7 Dispute resolution and error correction.

If a current insured obtains a determination, pursuant to the process for dispute resolution and error correction referred to in section 2803 of the Insurance Law, that the credit information used by an insurer was incorrect or incomplete, and the insurer receives notice of the determination from either the credit reporting agency or from the insured, the insurer shall, within 30 days after receiving the notice:

(a) re-underwrite and re-rate the insured;

(b) refund to the insured the amount of any overpayment, applicable to the last 36 months of coverage provided by the insurer, calculated back from the date of determination of the overpayment. The overpayment shall be the difference between the rate that was actually charged and the rate that would have been charged by the insurer or its affiliate for which the insured was previously ineligible due to the incorrect or incomplete credit information; and

(c)(1) make any adjustments necessary, consistent with its underwriting guidelines and rating rules, for the current period; including moving the insured to the appropriate tier, starting as of the date of determination of the overpayment. The reunderwriting and re-rating shall not result in a premium increase for the insured.

(2) If upon consideration of the corrected or complete credit information, the insured is eligible for placement in an affiliate of the insurer at a lower rate in accordance with the affiliate's current underwriting rules, and the insured was previously ineligible for placement with that affiliate due to the incorrect or incomplete credit information, then the affiliate shall offer the insured a new policy with substantially equivalent coverage. If the offer is accepted by the insured and a new policy is issued, the affiliate may not exercise any right that it otherwise may have under Section 3425(b) to cancel the policy within the first sixty days other than for a reason specified in Section 3425(c).

Section 221.8 Filing of scoring models (or other scoring processes).

(a) An insurer that uses insurance scores to underwrite or rate risks must file its scoring models (or other scoring processes) with the superintendent. On or after August 15, 2005, an insurer shall file its scoring models (or other scoring processes) with the superintendent at least 45 days prior to use.

(b) Each scoring model (or other scoring processes) filing shall include the following information:

(1) the name, version and the edition date of the scoring model;

(2) a detailed description of the credit information and insurance data that were used in the development of the scoring model, including but not limited to the source(s) of the credit information and insurance data, and the time periods associated with such information and data;

(3) a list of all the factors, and the relative importance of such factors, that are used in the scoring model (or other scoring processes);

(4) the actual algorithms, computer programs, models, or other processes that is used to produce an insurance score; and

(5) at least three distinct and detailed examples of insurance score calculations using the filed scoring models (or other scoring processes).

(c) A scoring model (or other scoring processes) shall not include as negative factors any of the items listed in section 221.3(a) of this Part.

(d) The filed scoring model (or other scoring processes) may also include loss experience justifying the use of credit information.

(e) An insurer that wishes to revise one of its previously filed scoring models (or other scoring processes) shall file a summary of the revision with the superintendent no later than 45 days after its use. The superintendent may request additional information if the summary does not provide adequate information.

(f) A third party may file scoring models or a revision thereof on behalf of an insurer. A filing by a third party shall clearly identify those insurers on whose behalf the filing is being made and the programs of insurance to which each scoring model applies.

(g) Pursuant to section 2806(b), a filing made pursuant to section 2806(a) remains the property of the insurer and is not subject to disclosure or production under Article 6 or 6-A of the Public Officers Law or any other law of this State which authorizes or requires the superintendent to disclose or produce records to an outside party. This information is privileged and is not discoverable or admissible in any legal action in any

civil, criminal or administrative proceeding but nothing in this Part or article 28 shall be construed as preventing the superintendent from utilizing any such information in an administrative proceeding enforcing this Part or article 28.

Section 221.9 An insurer's use of scoring model(s), other scoring processes, or any other credit information in the underwriting or rating of personal lines insurance policies.

(a) Each scoring model filing made with the superintendent shall include the date upon which the insurer intends to implement a new or revised scoring model (or other scoring processes) in its underwriting or rating of personal lines insurance policies.

(b) An insurer shall file a summary of how any existing, new or revised scoring model (or other scoring processes) is used with respect to underwriting. This explanation shall encompass the following:

(1) the acceptance of the applicant as an insured; and

(2) where appropriate, the initial placement with an insurer within a group of affiliated insurers, and/or the initial tier placement that occurs immediately after the acceptance of the applicant as an insured.

(c) An insurer shall maintain its underwriting rules and guidelines governing the use of credit information, and a record of all changes thereto, in writing at the insurer's offices in accordance with section 243.2 of this Title (Regulation No. 152) and they shall be made available to the superintendent upon request.

(d) An insurer that uses credit information in the rating of its personal lines insurance policies shall also file with the superintendent its classifications, rating factors, and tier movement rules, applicable to the use of credit information, in accordance with article 23 of the Insurance Law.

Section 221.10 Insurer certification.

(a) An insurer that uses credit information in the underwriting and rating of personal lines insurance shall complete and submit to the superintendent an Insurer Credit Information Compliance Certification along with each and every scoring model (or other scoring processes) filing, and every summary of revisions thereto, that it, or a third party acting on its behalf, files with the superintendent, verifying that it is in full compliance with article 28 of the Insurance Law and this Part.

(b) The Insurer Credit Information Compliance Certification required by subsection (a) of this section shall be in a form prescribed by the superintendent.

I, Howard Mills, Superintendent of Insurance of the State of New York, do hereby certify that the foregoing is Part 221 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation 182), entitled “Limitations Upon and Requirements for the Use of Credit Information for Personal Lines Insurance”, promulgated by me on October 3, 2006, pursuant to the authority granted by Sections 201, 301, and Article 28 of the Insurance Law, to take effect upon publication in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed amendment was published in the State Register on August 2, 2006. No other publication or prior notice is required by statute.

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Howard Mills
Superintendent of Insurance

October 3, 2006