

**State of Rhode Island and Providence Plantations
DEPARTMENT OF BUSINESS REGULATION
Division of Insurance
1511 Pontiac Avenue, Bldg. 69-2
Cranston, Rhode Island 02920**

Public Notice of Proposed Rule-Making

Pursuant to the provisions of R.I. Gen. Laws §42-14-16, and in accordance with the Administrative Procedures Act Chapter 42-35 of the General Laws, the Department of Business Regulation hereby gives notice of its intent to adopt Insurance Regulation 116 – Use of Credit – Extraordinary Life Events and Insufficient Credit.

The purpose of this adoption is to provide restrictions on an insurers use of credit and credit score in the underwriting and rating of homeowner and/or private passenger automobile insurance policies.

The proposed regulation is available for public inspection at www.dbr.ri.gov , in person at Department of Business Regulation, 1511 Pontiac Avenue, Cranston, Rhode Island 02920, or requested by email edwyer@dbr.state.ri.us or by calling Elizabeth Kelleher Dwyer at (401) 462 9520.

In the development of the proposed adoption consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

All interested parties are invited to submit written or oral comments concerning the proposed regulations by September 22, 2010 to Elizabeth Kelleher Dwyer, Department of Business Regulation, 1511 Pontiac Avenue, Cranston, Rhode Island 02920, edwyer@dbr.state.ri.us. A public hearing to consider the proposed adoption shall be held on September 22, 2010 at 2:00 pm at 1511 Pontiac Avenue, Cranston, Rhode Island 02920 at which time and place all persons interested therein will be heard. The room is accessible to the disabled and interpreter services for the hearing impaired will be provided if requested 48 hours prior to the hearing. Requests for this service can be made in writing or by calling (401) 462 9520 or TDD 711.

A. Michael Marques
Director, Department of Business Regulation

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INSURANCE REGULATION 116

Use of Credit - Extraordinary Life Events and Insufficient Credit

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Section 1 *Authority*

This regulation is promulgated in accordance with R.I. Gen. Laws §§ 27-6-1 *et seq.*, 27-9-1 *et seq.*; 27-44-1 *et seq.* and 42-14-17.

Section 2 *Scope*

This Regulation shall apply to all insurers that issue homeowners and/or private passenger automobile insurance to residents of Rhode Island. An insurer that chooses to utilize credit and insurance scores in the underwriting and rating of these policies must comply with the requirements of this regulation.

Section 3 *Purpose*

The purpose of this Regulation is to establish guidelines regarding insurer's use of credit in underwriting and rating of homeowners and/or private passenger automobile insurance when a consumer experiences an extraordinary life event as defined in this Regulation and/or to address the absence of or insufficient credit history for an applicant or insured.

Section 4 *Definitions*

As used in this Regulation:

- A. “Consumer” shall mean either an applicant for insurance or an existing insured.
- B. “Department” shall mean the Insurance Division of the Department of Business Regulation.
- C. “Extraordinary Life Event” shall mean an event identified in Section 6 that directly influences a consumer’s credit history.
- D. “Homeowners Insurance” shall mean any personal lines insurance policy providing coverage to a domicile.
- E. “Insurance Score” shall mean a number, rating or any categorization that is derived from an algorithm, computer application, model or other process that is based in whole or in part on credit history for the purposes of predicting the future insurance loss experience of an individual applicant or insured.
- F. “Private Passenger Automobile” shall mean any vehicle insured by a personal automobile insurance policy.
- G. "Renewal" or "to renew" shall mean the issuance and delivery by an insurer of a policy superseding at the end of the policy period a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term; provided, however, that any policy with a policy period or term of less than twelve (12) months shall for the purpose of this section be considered as if written for a policy period or term of twelve (12) months. Provided, further, that for purposes of this Regulation any policy written for a term longer than one (1) year or any policy with no fixed expiration date shall be considered as if written for successive policy periods or terms of one (1) year and any termination by an insurer effective on an anniversary date of such policy shall be deemed a failure to renew.

Section 5 *Absence of or Insufficient Credit*

- A. An insurer may use insurance scoring for underwriting and rating of homeowners and/or private passenger automobile insurance only under the following conditions:
 - 1. If an insurer issuing or delivering a policy is unable to obtain credit information from a consumer report or in cases where an insured or applicant has insufficient credit to produce an insurance credit score, the insurer shall underwrite, tier, or rate the individual risk in one of the following ways:
 - (i) as if the risk received a neutral (or average) insurance credit score, as defined by the insurer,

- (ii) by excluding the use of credit information as a factor and using only other underwriting, tiering, or rating criteria; or
 - (iii) in accordance with established underwriting guidelines or filed tiering or rating criteria.
 - 2. The application and definition of a neutral or average insurance credit score; the manner in which credit information is excluded; and the use of other underwriting, tiering, or rating criteria are subject to the Department's review and approval. Any such established underwriting guidelines or filed tiering or rating rules shall consider other actuarially justified factors associated with the risk in addition to the inability to obtain credit information or the insufficiency of the credit information.
 - 3. The absence of or inability to obtain an insurance score or insufficient credit information does not include situations where an applicant or insured refuses to allow the insurer access to the customer's credit history. Insurers are not required to provide a quote, or issue or renew a policy should a customer or existing insured refuse to provide access to a customer's credit history.
- B. The provisions of this regulation are in addition to the requirements of R.I. Gen. Laws §§ 27-6-53 and 27-9-56 and Insurance Regulations 16 and 25 where applicable.

Section 6 *Extraordinary Life Events*

- A. Notwithstanding any other law or regulation, an insurer that uses credit information shall, on written request from an applicant for insurance coverage or an insured, provide reasonable exceptions to the insurer's rates, rating classifications, company or tier placement, or underwriting rules or guidelines for a consumer who has experienced and whose credit information has been directly influenced by any of the following events:
- 1. Catastrophic event, as declared by the federal or state government;
 - 2. Serious illness or injury, or serious illness or injury to an immediate family member;
 - 3. Death of a spouse, child, or parent;
 - 4. Divorce or involuntary interruption of legally-owed alimony or support payments;
 - 5. Identity theft;
 - 6. Temporary loss of employment for a period of 3 months or more, if it results from involuntary termination;

7. Military deployment overseas; or
 8. Other events, as determined by the insurer
- B. If an applicant or insured submits a request for an exception as set forth in Section 6(A) of this Regulation, an insurer may, in its sole discretion:
1. Require the consumer to provide reasonable written and independently verifiable documentation of the event. Such documentation may be submitted electronically;
 2. Require the consumer to demonstrate that the event had direct and meaningful impact on the consumer's credit information; and/or
 3. Require that the request from the consumer be made no more than 60 days from the date of the application for insurance or the policy renewal;
- C. Section 6(B) is not mandatory. Insurers may grant the exception whether or not the consumer provides the information allowed in 6(B). Insurers may also grant an exception even if the initial request for an exception is not in writing or where the consumer asks for consideration of repeated events or the insurer has considered the event previously.
- D. Notice requirements. Insurers are required to establish internal procedures for notifying an applicant or insured of the availability of Extraordinary Life Event exceptions as provided for in above subsection 6(A), including customer notices. These notices shall be provided by the insurer at time of application, at policy issuance and at each renewal. Notices are not required to be filed with the Department for approval.
- E. If the insurer grants an exception, an insurer may consider only credit information not affected by the event if such score can be reasonably recalculated, or shall assign a neutral or average credit score as defined by the insurer and subject to the Department's review and approval.
- F. The provisions of this regulation are in addition to the provisions provided for in R.I. Gen. Laws §§ 27-6-53 and 27-9-56 and Insurance Regulations 16 and 25 where applicable.

Section 7 **Policy Forms, Rules and Rates**

Insurers are required to review existing policy forms, rules and rates and bring all filings into compliance with the provisions of this Regulation. Revised filings must be submitted to the Department via SERFF no later than December 31, 2010. Underwriting guidelines are not required to be filed.

Section 8 **Severability**

If any provision of this regulation or the application thereof to any person or circumstance is held invalid or unconstitutional, the invalidity or unconstitutionality shall not affect other provisions or applications of this Regulation which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Regulation are severable.

Section 9 **Effective Date**

This regulation is effective as indicated below.

EFFECTIVE DATE: April 1, 2011