

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
PROPOSED
23 NYCRR 201**

**REGISTRATION REQUIREMENTS & PROHIBITED PRACTICES FOR CREDIT REPORTING
AGENCIES**

I, Maria T. Vullo, Superintendent of Financial Services, pursuant to the authority granted by sections 102, 201, 202, 301, 302 and 408 of the Financial Services Law, do hereby promulgate Part 201 of Title 23 of the Official Compilation of Codes, Rules, and Regulations of the State of New York, to take effect upon publication of the Notice of Adoption in the State Register, to read as follows:

(ALL MATTER IS NEW)

Section 201.0 Introduction.

The New York State Department of Financial Services (“DFS”) has been monitoring the deficient practices of consumer credit reporting agencies including (1) the failure of consumer credit reporting agencies to safeguard consumer data; (2) the failure of consumer credit reporting agencies to maintain accurate consumer credit data; and (3) the failure of consumer credit reporting agencies to appropriately investigate consumer disputes of alleged inaccuracies in credit reports.

Pursuant to Section 301(c) of the financial services law, the Superintendent of Financial Services has “the power to protect users of financial products and services, including: (1) taking such actions as the superintendent deems necessary to educate and protect users of financial products and services.” The Superintendent also has “the power to prescribe ... rules and regulations ... (1) effectuating any power given to the superintendent under [the financial services law], the insurance law, the banking law, or any other law to prescribe forms or make regulations.”

Further, pursuant to the banking law, the insurance law, and the financial services law, DFS has supervisory and regulatory responsibilities with respect to all New York State chartered and licensed financial institutions to ensure that the business and operations of those institutions are conducted in a safe and sound manner.

Under Section 1036 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, it is illegal for any purveyor of financial services, including consumer credit reporting agencies, “to engage in any unfair, deceptive, or abusive act or practice.”

To address the deficient practices of consumer credit reporting agencies, this Part contains regulations requiring all consumer credit reporting agencies reporting on any consumers located in the state to register with the Superintendent, to comply with certain prohibited practices, and to further comply the cybersecurity rules in Part 500 of these regulations. This regulation is designed to protect user of financial services in the state and the markets for those services.

Section 201.01 Definitions.

For purposes of this Part only, the following definitions shall apply:

(a) The term “consumer” means an individual.

(b)(1) The term “consumer report” means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or part for the purpose of serving as a factor in establishing the consumer's eligibility for (i) credit or insurance to be used primarily for personal, family, or household purposes, (ii) employment purposes, or (iii) other purposes authorized under section three hundred eighty-b of the General Business Law.

(2) The term “consumer report” does not include (i) any report containing information solely as to transactions or experiences between the consumer and the person making the report, (ii) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device, or (iii) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required under section three hundred eighty-i of the General Business Law.

(c) The term “consumer reporting agency” means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports or investigative consumer reports to third parties.

(d) The term “consumer credit reporting agency” means a consumer reporting agency that regularly engages in the practice of assembling or evaluating and maintaining, for the purpose of furnishing consumer credit reports to third parties bearing on a consumer's credit worthiness, credit standing, or credit capacity, public record information and credit account information from persons who furnish that information regularly and in the ordinary course of business.

(e) The term “consumer credit report” means a consumer report assembled, evaluated or maintained by a consumer credit reporting agency, bearing on a consumer's credit worthiness, credit standing, or credit capacity.

(f) The term “regulated person” means any person operating under or required to operate under a license, registration, charter, certificate, permit, accreditation or similar authorization under the Banking Law, the Insurance Law or the Financial Services Law.

Section 201.02 Registration.

(a) Every consumer credit reporting agency that assembles, evaluates, or maintains a consumer credit report on one or more consumers located in New York State shall register with the superintendent in a form and manner acceptable to the superintendent.

(b) For each business entity, the officer or officers and director or directors named in the registration application shall be designated responsible for the business entity's compliance with the financial services, banking, and insurance laws, rules and regulations of this state.

(c) Every consumer credit reporting agency that assembles, evaluates, or maintains a consumer credit report on any consumers located in New York State at any time between September first, two thousand seventeen and February first, two thousand eighteen, shall make the registration required by subsection (a) of this section on or before February first, two thousand eighteen. Any other consumer credit reporting agency shall make the registration required by subsection (a) of this section prior to assembling, evaluating, or maintain a consumer credit report on a consumer located in New York State.

(d) Each consumer credit reporting agency shall renew its registration by February first, two thousand nineteen for the two thousand nineteen calendar year, and by February first of each successive year for the calendar year thereafter.

(e) The superintendent may refuse to renew a consumer credit reporting agency's registration if, in the superintendent's judgment, the applicant or any member, principal, officer or director of the applicant, is not trustworthy and competent to act as or in connection with a consumer credit reporting agency, or that any of the foregoing has given cause for revocation or suspension of such registration, or has failed to comply with any minimum standard.

(f) Registrants under this section shall be subject to examination by the superintendent as often as the superintendent may deem it necessary. The superintendent may promulgate regulations establishing methods and procedures for facilitating and verifying compliance with the requirements of this article and such other regulations as necessary to enforce the provisions of this article.

Section 201.03 Acting Without a Registration.

(a) No individual, firm, association, corporation or other entity may assemble, evaluate, or maintain a consumer credit report on any consumers located in New York State without having a valid registration as a consumer credit reporting agency filed with Section 201.02 of this Part.

(b) No regulated person may pay any fee or other compensation to any consumer credit reporting agency that is required to be registered pursuant to Section 201.02 of this Part but fails to possess the required registration.

(c) No regulated person may transmit any information about a consumer located in New York State to a consumer credit reporting agency that is required to be registered pursuant to Section 201.02 of this Part but fails to possess the required registration.

Section 201.04 Information Reporting Requirements.

(a) On or before July first of each year, beginning in two thousand nineteen, every consumer credit reporting agency that assembles, evaluates, or maintains a consumer credit report on any consumers located in New York State shall report to the superintendent, in a statement subscribed and affirmed as true under penalties of perjury, the information requested by the superintendent. The superintendent also may require the filing of quarterly or other statements, which shall be in such form and shall contain such matters as the superintendent shall prescribe.

(b) The superintendent also may address to any consumer credit reporting agency that assembles, evaluates, or maintains a consumer credit report on any consumers located in New York State, or its officers, any inquiry in relation to the assembly, evaluation, or maintenance of any consumer credit report on any consumers located in

New York. Every consumer credit reporting agency or person so addressed shall reply in writing to such inquiry promptly and truthfully, and such reply shall be, if required by the superintendent, subscribed by such individual, or by such officer or officers of the consumer credit reporting agency, as the superintendent shall designate, and affirmed by them as true under the penalties of perjury.

(c) All information disclosed by a consumer credit reporting agency shall be deemed confidential and not subject to disclosure unless the superintendent determines that such disclosure is necessary to carry out the powers and duties conferred upon the superintendent by the Insurance Law, the Banking Law, or the Financial Services Law or to allow the department to perform examinations or investigations authorized by law.

Section 201.05 Revocation and Suspension of a Registration.

(a) The superintendent may refuse to renew, revoke, or may suspend for a period the superintendent determines the registration of any consumer credit reporting agency if, after notice and hearing, the superintendent determines that the registrant or any member, principal, officer, director, or controlling person of the registrant, has:

(1) violated any insurance, financial service, or banking laws or violated any regulation, subpoena or order of the superintendent or of another state's insurance or banking commissioner or of any other state or federal agency with authority to regulate consumer credit reporting agencies, or has violated any law in the course of his or her dealings in such capacity;

(2) provided materially incorrect, materially misleading, materially incomplete or materially untrue information in the registration application;

(3) failed to comply with the requirements of this Part, including but not limited to, section 201.07 concerning cybersecurity;

(4) (A) used fraudulent, coercive or dishonest practices;

(B) demonstrated incompetence;

(C) demonstrated untrustworthiness; or

(D) demonstrated financial irresponsibility in the conduct of business in this state or elsewhere;

(5) improperly withheld, misappropriated or converted any monies or properties received in the course of business in this state or elsewhere;

(6) has been convicted of a felony;

(7) admitted or been found to have committed any unfair trade practice or fraud;

(8) had a consumer credit reporting agency registration, or its equivalent, denied, suspended or revoked in any other state, province, district or territory; or

(9) failed to pay state income tax or comply with any administrative or court order directing payment of state income tax;

(b) Before revoking or suspending the registration of any consumer credit reporting agency pursuant to the provisions of this Part, the superintendent shall give notice to the registrant and shall hold, or cause to be held, a hearing not less than ten days after the giving of such notice.

(c) If a registration pursuant to the provisions of this Part is revoked or suspended by the superintendent, then the superintendent shall forthwith give notice to the registrant.

(d) The revocation or suspension of any registration pursuant to the provisions of this Part shall terminate forthwith such registration.

Section 201.06 Prohibited Practices.

No consumer credit reporting agency that assembles, evaluates, or maintains a consumer credit report on any consumers located in New York State shall:

1. Directly or indirectly employ any scheme, device or artifice to defraud or mislead a consumer.
2. Engage in any unfair, deceptive or predatory act or practice toward any consumer or misrepresent or omit any material information in connection with the assembly, evaluation, or maintenance of a credit report for a consumer located in New York State.
3. Engage in any unfair, deceptive, or abusive act or practice in violation of section 1036 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.
4. Include inaccurate information in any consumer report relating to a consumer located in New York State.
5. Refuse to communicate with an authorized representative of a consumer located in New York State who provides a written authorization signed by the consumer, provided that the consumer credit reporting agency may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the consumer.
6. Make any false statement or make any omission of a material fact in connection with any information or reports filed with a governmental agency or in connection with any investigation conducted by the superintendent or another governmental agency.

Section 201.07 Cybersecurity.

(a) Every consumer credit reporting agency that assembles, evaluates, or maintains a consumer credit report on any consumers located in New York State shall be deemed to be a Covered Entity and shall comply with the following provisions in Part 500 of this Title: 500.02, 500.03, 500.04, 500.05, 500.06, 500.07, 500.08, 500.09, 500.10, 500.11, 500.12, 500.13, 500.14, 500.15, 500.16, 500.17, 500.18, 500.20.

(b) Except as provided in subsection (c), a consumer credit reporting agency shall have until April 4, 2018 to comply with this section.

(c) A consumer credit reporting agency shall have:

- (1) Until October 4, 2018 to comply with the requirements of sections 500.04(b), 500.05, 500.09, 500.12, and 500.14(a)(2) of this Part.

(2) Until April 4, 2019 to comply with the requirements of sections 500.06, 500.08, 500.13, 500.14 (a)(1) and 500.15 of this Part.

(3) Until October 4, 2019 to comply with the requirements of section 500.11 of this Part.

Section 201.08 Authority of the Superintendent Preserved.

Nothing in this Part shall be construed to limit or affect the Superintendent's authority under to the banking law, the insurance law, the financial services law, or any other statute or regulation.

Section 201.09 Severability.

If any provision of this Part or the application thereof to any Person or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons or circumstances.