NEW YORK STATE OF OPPORTUNITY. | Department of Financial Services

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Governor

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VIA EMAIL
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January 12, 2021

Jane Hamm
State Register/Office of Information Services
New York State Department of State
One Commerce Plaza
99 Washington Avenue, Suite 650
Albany, NY 12231

Re: State Administrative Procedure Act Section 207
Three and Five-year Review of Agency Rulemakings

Dear Ms. Hamm:

Attached is the Department of Financial Services' initial three-year review and five-year review of rulemakings, prepared pursuant to Section 207 of the State Administrative Procedure Act, for publication in the January 27, 2021 State Register. The attached document is divided into four sections: (1) introduction; (2) Insurance rulemakings promulgated in 2018, 2016, 2011, 2006, and 2001; (3) Banking rulemakings promulgated in 2018, 2016, 2011, 2006, and 2001; and (4) Financial Services rulemakings promulgated in 2018 and 2016.

Sincerely yours,

Sally Geisel

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cc: Camielle Barclay
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Eamon Rock

1. INTRODUCTION

Pursuant to Section 207 of the State Administrative Procedure Act, Review of Existing Rules, the Department (as defined below) must review, after five years and at five-year intervals thereafter, rulemakings adopted on or after January 1, 1998. In addition, effective January 1, 2013, for any rule that requires a regulatory flexibility analysis, rural area flexibility analysis, or job impact statement, the Department must initially review that rule in the third calendar year after the year the rule first was adopted. The purpose of the review is to analyze the need for and legal basis of the adopted rulemakings. Please note that all references to the "Department" and the "Superintendent" regarding rules adopted prior to October 3, 2011 mean, respectively, the former Insurance Department or Banking Department and the former Superintendent of Insurance or Superintendent of Banking, as appropriate to the context, and that the references to laws cited are as of the date of the amendment to the rules. For references to rules adopted thereafter, "Department" and "Superintendent" mean, respectively, the Department of Financial Services and the Superintendent of Financial Services.

Notice is hereby given of the following rules that the Department will review this year to determine whether they should be continued or modified. These rules were adopted in 2018, 2016, 2011, 2006, and 2001. These rules, as published in the State Register, contain a regulatory flexibility analysis, a rural area flexibility analysis or a job impact statement. If one or more of those analyses was not filed, a statement setting forth why one or all those analyses was unnecessary was published in the State Register. Public comment on the continuation or modification of the following rules is invited. Comments must be received within 60 days of the date of publication of this notice.

Unless otherwise noted, the Superintendent intends to continue the rules discussed herein without modification, while continually monitoring the rules to ensure that the provisions remain consistent with related statutory and regulatory requirements.

2. INSURANCE RULEMAKINGS

The following Insurance rulemakings were adopted in 2018:

- Amendment to Part 16 (Insurance Regulation 86) (Special Risk Insurance) of Title 11 NYCRR (May 16, 2018 State Register).

Statutory Authority: Financial Services Law Sections 202 and 302 and Insurance Law Sections 301, 307 and 308 and Article 63.

The amendment incorporated the Class 2 Risk changes that were introduced by Public Notice, as published in the May 10, 2017 State Register. In addition, Class Code 2-04002 (Federal Crime Program-Excess on Commercial Risks) was deleted because the program was defunct.

- Amendment to Part 361 (Insurance Regulation 146) (Establishment and Operation of Market Stabilization Mechanisms for Certain Health Insurance Markets) of Title 11 NYCRR (State Register August 15, 2018).

Statutory Authority: Financial Services Law Sections 202 and 302 and Insurance Law Sections 301, 1109, and 3233.

The amendment authorized the Superintendent to implement a market stabilization pool for the individual and small group health insurance markets if, after reviewing the impact of the federal risk adjustment program on this market, the Superintendent determined that a market stabilization mechanism is a necessary amelioration. This rule ameliorated a possible disproportionate impact that federal risk adjustment could have on insurers and health maintenance organizations, addressed the needs of the individual and small group health insurance markets in New York, and prevented unnecessary instability in the overall health insurance market.

- Amendment to Part 52 (Insurance Regulation 62) (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) of Title 11 NYCRR (State Register October 3, 2018).

Statutory authority: Financial Services Law Sections 202 and 302 and Insurance Law Sections 301, 2606, 2607, 2608, 3201, 3221(h), 3231(a), 3232(g) and (h), 3240(b) and (d), 4303(ll), 4317(a), 4318(g) and (h), and 4328(b)(1).

The amendment required every individual and small group accident and health insurance policy or contract (other than a grandfathered health plan) delivered or issued for delivery in New York that provides hospital, surgical, or medical expense coverage and every student accident and health insurance policy or contract delivered or issued for delivery in New York to provide coverage of at least the enumerated ten categories of essential health benefits ("EHB") if the EHB provisions in 42 U.S.C. Section 18022 and 45 C.F.R. 156.100 *et seq*. are no longer in effect or are modified to ensure that people covered under individual, small group, and student accident and health insurance policies and contracts will continue to have coverage for these benefits, as determined by the Superintendent. The rule also reiterated that no issuer of a small or large group or individual accident and health insurance policy that provides hospital, surgical, or medical expense coverage or a student accident and health insurance policy or contract delivered or issued for delivery in New York State may discriminate because of race, color, creed, national origin, sex, age, marital status, disability, or a preexisting condition, and clarified the scope of such prohibitions.

- Amendment to Part 52 (Insurance Regulation 62) (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) of Title 11 NYCRR (State Register October 31, 2018).

Statutory Authority: Financial Services Law Sections 202 and 302; Insurance Law Sections 301, 3201, 3217, 3221 and 4237; and General Municipal Law ("GML") Section 205-cc.

The amendment established minimum standards for volunteer firefighter enhanced cancer insurance policies that, pursuant to GML Section 205-cc, every legally organized fire district, department or company in the State must provide and maintain for each eligible volunteer firefighter unless the fire district, department or company self-funds the benefits.

- Amendment to Part 52 (Insurance Regulation 62) (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) of Title 11 NYCRR (State Register September 26, 2018).

Statutory authority: Financial Services Law Sections 202 and 302; Insurance Law Sections 301, 3201, 3216(l), 3217, 3221(h), 3221(l)(7-a), 4303(l-1) and (ll), 4304(l), 4308(a), and 4328(b)(1), and Article 49; Public Health Law Article 49; and 45 C.F.R. section 156.122(c).

The amendment provided that every insurer that delivers or issues for delivery in the State an accident and health insurance policy that provides hospital, surgical, or medical expense coverage and provides coverage for medication for the detoxification or maintenance treatment of a substance use disorder shall include in the policy processes that allow a formulary exception and access to clinically appropriate medication for the detoxification or maintenance treatment of a substance use disorder not otherwise covered by the policy.

Part 52 was amended in 2019 (State Register June 12, 2019) to require an insurance policy or contract, including a child health insurance plan policy or contract, that provides coverage for direct access to maternal depression screening and referral performed by a provider of obstetrical, gynecologic, or pediatric services of the mother's choice, to provide coverage for the screening and referral under the mother's policy and also under the infant's policy if the infant is covered under a different policy than the mother and a pediatric provider performs the screening and referral.

Part 52 was amended again in 2019 (State Register November 6, 2019), to require every policy or contract that provides medical, major medical, or similar comprehensive type coverage to provide broad contraceptive coverage, including coverage for all United States ("U.S.") Food and Drug Administration-approved contraceptive drugs, devices, and other products and to establish a process, including time-frames, for an insured, an insured's designee, or an insured's health care provider to request coverage of a non-covered contraceptive drug, device, or product in conformity with Chapter 25 of the Laws of 2019 and Part M of Chapter 57 of the Laws of 2019.

Part 52 was amended in 2020 (State Register April 29, 2020) to clarify that discrimination prohibited by Insurance Law Sections 2607, 3243, and 4330 includes certain activities, such as including a policy clause that purports to deny, limit, or exclude coverage based on an insured's sexual orientation, gender identity or expression, or transgender status or designating an insured's sexual orientation, gender identity or expression, or transgender status as a pre-existing condition for the purpose of denying, limiting, or excluding coverage, and to implement Insurance Law Sections 3216(i)(17)(E), 3221(l)(8)(E) and (F), and 4303(j)(3) by clarifying that coverage for preexposure prophylaxis with effective antiretroviral therapy to persons who are at high risk of HIV acquisition is included within preventive care and screenings and specifying the timing for coverage of preventive care and screenings.

Part 52 was amended again in 2020 (State Register December 23, 2020) to set forth minimum standards for the content of health insurance identification cards to ensure greater disclosure of information relating to an insured's health plan, and to provide easier access to such information, by standardizing the content of health insurance identification cards.

- Amendment to Part 60-2 (Insurance Regulation 35-D) (Supplementary Uninsured/Underinsured Motorists Insurance) of Title 11 NYCRR (State Register November 28, 2018).

Statutory Authority: Financial Services Law Sections 202 and 302 and Insurance Law Sections 301 and 3420(f)(2-a).

Chapter 490 of the Laws of 2017 added a new Insurance Law Section 3420(f)(2-a) and Chapter 15 of the Laws of 2018 made amendments thereto. Insurance Law Section 3420(f)(2-a) requires an insurer that issues a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, to provide Supplementary Uninsured/Underinsured Motorist ("SUM") insurance coverage for bodily injury in an amount equal to the bodily injury liability insurance limits of coverage provided under the motor vehicle liability insurance policy, unless the first named insured declines the SUM insurance or selects a lower amount of coverage through a written, signed waiver. The rule amended Subpart 60-2 to comply with Insurance Law Section 3420(f)(2-a). The rule

also clarified which policies are commercial risk policies and which are not, as well as how the law applies to transportation network company policies.

Part 60-2 was amended in 2020 (State Register March 25, 2020) to conform to the legislative amendment to Insurance Law Section 3420(f) by Chapter 59, Part III, Section 19 of the Laws of 2019 by requiring any policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any natural person arising out of the ownership, maintenance, or use of an altered motor vehicle or stretch limousine, having a seating capacity of eight or more passengers and used in the business of carrying or transporting passengers for hire, provide SUM insurance for bodily injury in an amount of a combined single limit of $1.5MM for bodily injury or death of one or more persons in any one accident.

- Amendment to Part 60-3 (Insurance Regulation 35-E) (Transportation Network Companies: Minimum Provisions for Policies and Other Requirements) of Title 11 NYCRR (State Register December 19, 2020).

Statutory Authority: Financial Services Law Sections 202 and 302; Insurance Law Sections 301 and 3455; and Vehicle and Traffic Law ("VTL") Section 1693(10).

The rulemaking amended 11 NYCRR 60-3.7(b) to extend, until July 1, 2019, the requirement that a group policy provide that the group policy is primary over a policy issued in satisfaction of VTL Article 6 to give insurers additional time to revise and implement their new policy forms. The amendment also changed an incorrect citation from 11 NYCRR Section 60-3.3(g)(2) to 11 NYCRR Section 60-3.3(h)(2).

- Amendment to Part 224 (Insurance Regulation 187) (Suitability in Life Insurance and Annuity Transactions) of Title 11 NYCRR (State Register August 1, 2018).

Statutory Authority: Financial Services Law Sections 202 and 302; Insurance Law Sections 301, 308, 309, 2103, 2104, 2110, 2123, 2208, 3209, 4224, 4226, 4525, and Article 24.

The amendment defined "suitability" and specified a best interest standard of care that applies to all annuity and life insurance transactions in New York State, regardless of the product type or source of funds, to ensure fair treatment of consumers purchasing both retirement and non-retirement annuity and

life insurance products. The amendment also clarified the duties and obligations of insurance producers, or insurers when no producer is involved, by ensuring that recently proposed national standards for certain annuity contracts and life insurance transactions apply to all transactions in New York State regardless of the source of funds. In addition, the amendment added consumer protections by requiring an insurance producer to have a reasonable basis to believe that the consumer has the financial ability to enter into a transaction and prohibiting the producer from implying that any recommendation is part of an investment plan unless the producer has a specific certification or professional designation in that area. The amendment also added certain consumer disclosure requirements designed to increase awareness and prevent financial abuse.

The following Insurance rulemakings were adopted in 2016:

- Amendment to Part 52 (Insurance Regulation 62) (Minimum Standards for Form, Content, and Sale of Health Insurance, Including Standards for Full and Fair Disclosure) of Title 11 NYCRR (State Register July 20, 2016).

Statutory Authority: Financial Services Law Sections 202 and 302 and Insurance Law Sections 301 and 3201(c).

The amendment added a new subdivision (n) to Section 52.16 to prohibit any insurer from providing coverage in any insurance policy or contract delivered or issued for delivery in New York for conversion therapy for any individual under the age of 18 years. Conversion therapy refers to any practice by a mental health professional that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions, or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same sex.

- Amendment to Part 52 (Insurance Regulation 62) (Minimum Standards for Form, Content, and Sale of Health Insurance, Including Standards for Full and Fair Disclosure) of Title 11 NYCRR (State Register November 16, 2016).

Statutory Authority: Financial Services Law Sections 202 and 302, and Insurance Law Sections 301, 3201, 3217, 3221, and 4237.

The amendment allowed a blanket accident insurance policy that is issued in accordance with N.Y. General Business Law ("GBL") Section 1015.11 to contain a provision that its benefits are excess or always secondary to any plan. GBL Section 1015.11 requires every licensed promoter of authorized combative sports and professional wrestling to provide accident insurance for the protection of licensed professionals and wrestlers appearing in authorized combative sports matches or professional wrestling exhibitions on and after September 1, 2016, and authorizes the State Athletic Commission ("SAC") to promulgate regulations necessary to implement this legislation. In 2016, the SAC repealed and promulgated a new 19 NYCRR 208, which, among other things, provided that the accident insurance policy may be either primary or secondary to any other applicable insurance coverage held by the licensed professional or wrestler participant.

Part 52 was amended in 2017 (State Register June 21, 2017) to make explicit that individual, group and blanket insurance policies and contracts that provide hospital, surgical, or medical expense coverage delivered or issued for delivery in New York may not exclude coverage for medically necessary abortions and must provide such coverage at no cost sharing. The amendment also provided for an optional, limited exemption for religious employers and qualified religious organization employers while ensuring that medically necessary abortion coverage is maintained for all insureds at no premium to be charged to the certificate holder, religious employer, or qualified religious organization employer.

Part 52 was amended again in 2017 (State Register June 21, 2017) to require an insurer to allow, when the prescription so provides, for the dispensing of an initial three-month supply of a contraceptive to an insured and up to a 12-month prescribed supply for any subsequent dispensing of the same contraceptive prescribed by the same health care provider and covered under the same policy or contract or renewal thereof.

See rulemakings adopted in 2018, above, for additional amendments to Part 52.

- Addition of new Subpart 151-7 (Insurance Regulation 119) (Workers' Compensation Safe Patient Handling Program) of Title 11 NYCRR (State Register November 23, 2016).

Statutory Authority: Financial Services Law Sections 202 and 302 and Insurance Law Sections 301 and 2304(j).

The new Subpart fulfilled statutory mandates by requiring an insurer to provide a credit on each workers' compensation insurance policy issued or renewed in New York State to a health care facility that implements and maintains a safe patient handling program pursuant to the requirements prescribed in the Public Health Law. The rule also required every workers' compensation rate service organization to file certain information with the Superintendent by June 1 of each year so that the Superintendent may collect information for the reports due to the Legislature in 2018 and 2020.

- Addition of new Part 76 (Insurance Regulation 209) (Commercial Crime Coverage Exclusions) of Title 11 NYCRR (State Register December 21, 2016).

Statutory Authority: Financial Services Law Sections 202 and 302, and Insurance Law Sections 301 and 2307 and Articles 23, 24, and 34.

The new Part 76 advanced New York State's public policy by prohibiting commercial crime policy exclusions for loss or damage caused by an employee who had been convicted of a criminal offense prior to employment by the employer when the employer hired such employee using the factors set forth in Correction Law Article 23-A. Correction Law Article 23-A establishes New York State's public policy encouraging licensure and employment of persons previously convicted of a criminal offense. The law prohibits discrimination against such persons, unless there is a direct relationship between the previous offense and the employment sought or held, or if the granting or continuation of employment would involve an unreasonable risk to property or personal safety or welfare. However, commercial crime insurance policies often exclude coverage for loss or damage caused by an employee who was previously convicted of a criminal offense if the employer knew about the conviction prior to the loss or damage. This placed an employer in the position of either being unable to obtain insurance or violating the Correction Law by

not hiring the individual, even though a review of the Correction Law factors weighs in favor of employment.

- Amendment to Part 83 (Insurance Regulation 172) (Financial Statement Filings and Accounting Practices and Procedures) of Title 11 NYCRR (State Register November 9, 2016).

Statutory Authority: Financial Services Law Sections 202 and 302; Insurance Law Sections 107(a)(2), 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1407, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404; Public Health Law Sections 4403, 4403-a, 4403-c(12) and 4408-a; Chapter 599 of the Laws of 2002 and Chapter 311 of the Laws of 2008

All states require insurers to comply with the Accounting Practices and Procedures Manual ("AP&P Manual") published each year by the National Association of Insurance Commissioners ("NAIC"), which establishes uniform practices and procedures for U.S.-licensed insurers. The amendment adopted the 2016 edition of the AP&P Manual As of March 2016, replacing the rule's prior reference to the March 2015 edition. Adoption of the rule was necessary for the Department to maintain its accreditation status with the NAIC. The NAIC-accreditation standards require that state insurance regulators have adequate statutory and administrative authority to regulate insurers' corporate and financial affairs, and that they have the necessary resources to carry out that authority.

Part 83 was amended in 2017 (State Register August 9, 2017) to update citations in Part 83 to the AP&P Manual as of March 2017, replacing the rule's former reference to the March 2016 edition.

Part 83 was amended in 2020 (State Register December 30, 2020) to make technical corrections and adopt the AP&P Manual as of March 2020 with certain exceptions and modifications. Of note, Section 83.4 was amended by adding new subdivisions (t) and (u). Subdivision (t) takes an exception from the AP&P Manual's treatment of certain investments in exchange traded funds ("ETFs") and mutual funds as bonds instead of common stock. The Department has determined that bond treatment is not appropriate for all ETFs and bond mutual funds designated by the AP&P Manual for such treatment. However, the Department recognizes that certain investments in ETFs and mutual funds may warrant treatment that is

different from the common stock treatment currently required by 11 NYCRR 83 for those investments. Accordingly, the Department is analyzing investments in ETFs and mutual funds to determine what subset of those investments may warrant treatment that is different from common stock and what that treatment should be. The Department expects a further amendment to 11 NYCRR 83 to be promulgated to implement appropriate changes to the treatment of investments in ETFs and mutual funds resulting from this analysis.

Subdivision (u) takes an exception from the AP&P Manual's characterization of dividends and returns of capital. The Insurance Law permits a parent company to remove funds from its insurer-subsidiary by the taking of a dividend (either as an ordinary dividend, which is limited to the insurer-subsidiary meeting certain financial benchmarks and does not require Department approval, or as an extraordinary dividend, which is subject to Department approval) and by the return of capital (either as a stock redemption and retirement or as a reorganization, both of which require Department approval). A core Department function is to ensure insurer solvency for the benefit of policyholders. The AP&P Manual's revision, in effect, blends the definitions of dividends and returns of capital, thus enabling an insurer-subsidiary to effect a return of capital without the Department's approval. Additionally, the accounting for certain non-dividend returns of capital would not reduce the availability of funds for the parent company to take a further ordinary dividend (without Department approval), thereby allowing double-dipping (i.e., first taking a return of capital and then, after adding reinsurance, taking an ordinary dividend).

- Amendment to Part 94 (Insurance Regulation 56) (Valuation of Individual and Group Accident and Health Insurance Reserves) of Title 11 NYCRR (State Register February 24, 2016).

Statutory Authority: Financial Services Law Sections 202 and 302 and Insurance Law Sections 301, 1303, 1304, 1305, 1308, 4117, 4217, 4310, and 4517.

The rule was amended to adopt the 2012 Group Long-Term Disability Valuation Table for group long-term disability income claims incurred on or after January 1, 2017, or if optionally elected, on or after October 1, 2014, replacing the 1987 Commissioners Group Disability Table (87CGDT).

The rule was amended in 2017 (State Register July 19, 2017) to adopt the 2013 Individual Disability Income Valuation Table that was adopted by the NAIC in 2016. Adoption of the table resulted in the same reserve requirements for both domestic and non-domestic insurers doing business in New York.

The rule was amended in 2019 (State Register November 27, 2019) to adopt the 2016 Cancer Claim Cost Valuation Tables for first occurrence and hospitalization cancer expense benefit contracts issued on or after January 1, 2019, or if optionally elected, on or after January 1, 2018, replacing the 1985 NAIC Cancer Claim Cost Tables.

The following Insurance rulemakings were adopted in 2011:

- Amendment of Part 169 (Insurance Regulation 100) (Noncommercial Private Passenger Automobile Insurance Merit Rating Plans) of Title 11 NYCRR (State Register January 19, 2011).

Statutory Authority: Insurance Law Sections 201, 301, 2334, 2335, 2345, and 3425.

Part 169 was amended to comply with Chapter 277 of the Laws of 2010. Chapter 277 of the Laws of 2010 amended Insurance Law Section 2335 to raise from $1,000 to $2,000 the minimum threshold amount of property damage which, if exceeded in a motor vehicle accident, would allow an insurer to impose a policy premium charge. The minimum threshold amount of property damage for which insurers may impose a premium surcharge was based on the amount set forth in VTL Section 605 ($1,000).

- Amendment of Part 151-4 (Insurance Regulation 119) (Workers' Compensation Insurance Rates: Reserves for Special Disability Fund Claims) of Title 11 NYCRR (State Register January 19, 2011).

Statutory Authority: Insurance Law Sections 201, 301, 1303 and 4117, and Workers' Compensation Law ("WCL") Section 32.

WCL Section 32 permits the chair of the Workers' Compensation Board to procure one or more private entities to assume the liability for, and the management, administration or settlement of, all or a

portion of the claims in the Special Disability Fund ("SDF"). No insurer, self-insured employer, or the State Insurance Fund ("SIF") may assume liability for, management, administration or settlement of any claims on which it holds reserves, beyond such reserves as are permitted by regulation of the Superintendent.

The law mandates the Superintendent to set a reserve standard specific to transactions authorized by WCL Section 32. The amendment established the required reserve standards, including the amount of reserves that an insurer, self-insured employer, or the SIF may hold for claims for which an entity has waived its right to reimbursement from the SDF and for which it has assumed the liability, management, administration or settlement.

See rulemakings adopted in 2016, above, for additional amendment to Part 151-4.

- Amendment of Part 151-5 (Insurance Regulation 119) (Workers' Compensation Insurance – Independent Livery Driver Benefit Fund) of Title 11 NYCRR (State Register January 19, 2011).

Statutory Authority: Insurance Law Sections 201, 301 and 3451.

Chapter 392 of the Laws of 2008 enacted Executive Law Article 6-G, establishing clear rules for determining when livery drivers in New York City, Westchester County and Nassau County are employees or independent contractors of livery bases, and establishing the Independent Livery Driver Benefit Fund (the "Fund") to provide independent contractor livery drivers workers' compensation benefits under certain circumstances when no-fault automobile insurance does not provide sufficient coverage. Before passage of this law, the only recourse for independent contractor livery drivers was no-fault automobile insurance, which resulted in delays in payment while no-fault insurers ascertained whether livery drivers were independent contractors and eligible for coverage.

Insurance Law Section 3451 permits the Superintendent to promulgate regulations authorizing an insurer licensed to write workers' compensation and employers' liability to provide coverage as authorized pursuant to Executive Law Article 6-G. The amendment was promulgated to ensure that the Fund has a

choice of procuring coverage either from the SIF or an authorized insurer, which may provide savings to the Fund and ultimately the livery bases that pay for the coverage.

- Amendment to Part 100 (Insurance Regulation 179) (Determining Minimum Reserve Liabilities and Non-forfeiture Benefits) of Title 11 NYCRR (State Register March 16, 2011).

Statutory Authority: Insurance Law Sections 201, 301, 1304, 4217, 4218, 4221, 4224, 4240 and 4517, and Articles 24 and 26.

The amendment extended the use of the 2001 CSO Preferred Class Structure Mortality Table to policies issued on or after January 1, 2004 with the Superintendent's approval, and if certain conditions were met by the insurer related to policies or portions of policies that were co-insured. Previously, the table only was permitted to be used for policies issued on or after January 1, 2007. The use of the table allowed for the reserves to better match the risks associated with different underwriting classifications. Also, the rule should result in lower reserve requirements for those insurers that elected to use the table for policies issued on or after January 1, 2004, and therefore, decrease the cost of doing business in New York. This standard had already been adopted in the AP&P Manual.

Part 100 was adopted as part of a consolidated rulemaking with 11 NYCRR 98 (Insurance Regulation 147), (State Register December 10, 2014) to modernize the current regulatory scheme for term life insurance reserves, as discussed in the Superintendent's March 27, 2014 letter to state commissioners.

Part 100 was amended as part of a consolidated rulemaking with 11 NYCRR 98 (Insurance Regulation 147) (State Register April 1, 2015) to modernize the current regulatory scheme for universal life insurance with secondary guarantee reserves.

Part 100 was amended as part of a consolidated rulemaking with 11 NYCRR 98 (Insurance Regulation 147) (State Register May 17, 2017) to adopt the 2017 CSO Mortality Table as the minimum valuation standard for applicable life insurance policies issued on or after January 1, 2020, or if optionally elected, on or after January 1, 2017, replacing the 2001 CSO Mortality Table. The amendments specified that the Fifth and Sixth Amendments to Part 98 and the Third and Fourth Amendments to Part 100 only

would apply to policies issued on or after January 1, 2015 and prior to January 1, 2017, or on or after January 1, 2015 and prior to January 1, 2018 with written notification provided to the Superintendent by June 30, 2017.

Part 100 was amended as part of a consolidated rulemaking with 11 NYCRR 98 (Insurance Regulation 147) (State Register January 2, 2019) to modify Parts 98 and 100 to specify that two prior amendments to the rules (i.e., the Fifth and Sixth Amendments to Part 98 and the Third and Fourth Amendments to Part 100) only would apply to policies issued on or after January 1, 2015 and prior to January 1, 2017, or on or after January 1, 2015 and prior to January 1, 2019 with written notification provided to the Superintendent by December 31, 2018. The concurrent amendments to Parts 98 and 100 would allow insurers to apply the two prior amendments, if optionally elected, for one additional year of issuing policies.

Part 100 was amended as part of a consolidated rulemaking with 11 NYCRR 98 (Insurance Regulation 147) (State Register April 22, 2020) to allow insurers that choose to continue using the 2015 reserve relief procedures to use them for one more year of issuing policies, until they must update their reserve procedures to comply with new Insurance Law Section 4217(g).

- Amendment to Part 98 (Insurance Regulation 147) (Valuation of Life Insurance Reserves) to Title 11 NYCRR (State Register March 16, 2011).

Statutory Authority: Insurance Law Sections 201, 301, 1304, 1308, 4217, 4218, 4240 and 4517.

The amendment removed restrictions on the mortality adjustment factors (known as "X" factors) in the deficiency reserve calculation. The former restrictions on the X factors prevented some insurers from using mortality rates with a slope similar to insureds' expected mortality. The purpose of the X factor in the deficiency reserve calculation is to allow insurers to adjust the valuation mortality assumptions so that the mortality rates better reflect the experience mortality rates; removal of the former restrictions allows that to occur. The amendment also provided clarification in the calculation of the

segment length and addressed whether recalculation is required when valuation mortality changes. These standards already had been adopted in the AP&P Manual.

Part 98 was amended as part of a consolidated rulemaking with 11 NYCRR 100 (Insurance Regulation 179) (State Register December 10, 2014) to modernize the current regulatory scheme for term life insurance reserves.

Part 98 was amended as part of a consolidated rulemaking with 11 NYCRR 100 (Insurance Regulation 179) (State Register April 1, 2015) to modernize the current regulatory scheme for universal life insurance with secondary guarantee reserves.

Part 98 was amended as part of a consolidated rulemaking with 11 NYCRR 100 (Insurance Regulation 179) (State Register May 17, 2017) to adopt the 2017 CSO Mortality Table as the minimum valuation standard for applicable life insurance policies issued on or after January 1, 2020, or if optionally elected, on or after January 1, 2017, replacing the 2001 CSO Mortality Table. The amendments specified that the Fifth and Sixth Amendments to Part 98 and the Third and Fourth Amendments to Part 100 would only apply to policies issued on or after January 1, 2015 and prior to January 1, 2017, or on or after January 1, 2015 and prior to January 1, 2018 with written notification provided to the Superintendent by June 30, 2017.

Part 98 was amended as part of a consolidated rulemaking with 11 NYCRR 100 (Insurance Regulation 179) (State Register January 2, 2019) to modify Parts 98 and 100 to specify that two prior amendments to the rules (i.e., the Fifth and Sixth Amendments to Part 98 and the Third and Fourth Amendments to Part 100) would only apply to policies issued on or after January 1, 2015 and prior to January 1, 2017, or on or after January 1, 2015 and prior to January 1, 2019 with written notification provided to the Superintendent by December 31, 2018. The concurrent amendments to Parts 98 and 100 allow insurers to apply the two prior amendments, if optionally elected, for one additional year of issuing policies.

Part 98 was amended as part of a consolidated rulemaking with 11 NYCRR 100 (Insurance Regulation 179) (State Register April 22, 2020) to allow insurers that choose to continue using the 2015 reserve relief procedures to use them for one more year of issuing policies, until they are required to update their reserve procedures to comply with new Insurance Law Section 4217(g).

- Amendment to Part 83 (Insurance Regulation 172) (Financial Statement Filings and Accounting Practices and Procedures) of Title 11 NYCRR (State Register March 16, 2011).

Statutory Authority: Insurance Law Sections 107(a)(2), 201, 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404; Public Health Law Sections 4403, 4403-a, 4403-c and 4408-a; and Chapter 599, Laws of 2002, and Chapter 311, Laws of 2008.

The purpose of the rule is to enhance the consistency of the accounting treatment of assets, liabilities, reserves, income, and expenses by regulated insurers, by clearly setting forth the accounting practices and procedures to be followed in completing annual and quarterly financial statements that must be filed with the Department. The NAIC had adopted a new AP&P Manual as of March 2010. The amendment updated the rule to conform to NAIC guidelines and statutory amendments and to clarify existing provisions. The amendment updated citations in Part 83 to the AP&P Manual as of March 2010.

Part 83 was amended (State Register May 2, 2012) to update citations in Part 83 to the AP&P Manual as of March 2011, replacing the rule's former reference to the March 2010 edition.

Part 83 was amended (State Register December 4, 2013) to update the reference to the AP&P Manual published by the NAIC as of March 2012, replacing the rule's former reference to the March 2011 edition.

Part 83 was amended (State Register April 2, 2014) to update citations in Part 83 to the AP&P Manual as of March 2013, replacing the rule's former reference to the March 2012 edition.

Part 83 was amended (State Register November 19, 2014) to update citations in Part 83 to the AP&P Manual as of March 2014, replacing the rule's former reference to the March 2013 edition.

Part 83 was amended (State Register September 23, 2015) to update citations in Part 83 to the AP&P Manual as of March 2015, replacing the rule's former reference to the March 2014 edition.

See rulemakings adopted in 2016, above, for additional amendments to Part 83.

- Repeal and Addition of new Part 89 (Insurance Regulation 118) (Audited Financial Statements) to Title 11 NYCRR (State Register March 16, 2011).

Statutory Authority: Insurance Law, sections 201, 301, 307(b), 1109, 4710(a)(2) and 5904(b).

Part 89 was originally promulgated in 1984 to implement the provisions of Insurance Law Section 307(b). The rule was repealed, and a new rule was promulgated to continue to implement the provisions of Insurance Law Section 307(b), which requires all but specified small insurers to file annual statements with the Superintendent for review and oversight. The new rule added provisions modeled on those required pursuant to the Sarbanes-Oxley Act of 2002, 15 U.S.C. Section 7201 et seq., which imposes on publicly held companies a comprehensive regime of audits and internal management controls and reports designed to ensure greater transparency and accountability.

The new rule was closely patterned upon the NAIC model regulation that reflects a consensus of the insurance regulators of all states and territories of the United States as to scope, detail, needs and benefits. The new rule was promulgated to ensure that regulated companies engage in best practices related to auditor independence, corporate governance, and internal controls over financial reporting.

Part 89 was amended in 2020 (State Register May 13, 2020) to require authorized insurers, fraternal benefit societies, and managed care organizations that meet a certain premium threshold to establish and maintain an internal audit function. The internal audit function requirement became an NAIC accreditation standard as of January 1, 2020.

- Amendment to Part 52 (Insurance Regulation 62) (Minimum Standards for the Form, Content and Sale of Health Insurance, Including Full and Fair Disclosure) of Title 11 NYCRR (State Register March 30, 2011).

Statutory Authority: Insurance Law Sections 201, 301, 1109, 1117, 2601, 3217, 3234 and 4512.

Insurance Law Sections 1117 and 3217 grant the Superintendent the authority to promulgate regulations that establish minimum standards for the form, content and sale of health insurance, including long-term care insurance. The amendment adopted current best practices as the minimum standards applying to internal appeals for long-term care insurance across the industry. Specifically, the amendment established minimum standards for internal appeal procedures for long-term care insurance, nursing home and home care insurance, nursing home insurance only, and home care insurance only.

See rulemakings adopted in 2016 and 2018, above, for additional amendments to Part 52.

- Amendment to Part 27 (Insurance Regulation 41) (Excess Line Placements Governing Standards) of Title 11 NYCRR (State Register May 4, 2011).

Statutory Authority: Insurance Law Sections 201, 301, 2105, 2118 and Article 21.

Part 27 enables consumers who are unable to obtain insurance from authorized insurers to obtain coverage from unauthorized insurers if the unauthorized insurers are "eligible" and an excess line broker places the insurance. Although the Superintendent does not directly regulate excess line insurers and excess line insurers are not subject to the minimum capital surplus requirements applicable to authorized insurers, the Superintendent is responsible for ensuring that adequately and appropriately capitalized insurers provide coverage to consumers. The amendment established certain minimum financial standards and surplus to policyholders vis-à-vis excess line insurers to ensure the claims-paying viability of excess line insurers. Specifically, the rule increased the minimum surplus to policyholders that new and current excess line insurers are required to maintain.

The rule was amended in 2013 (State Register April 10, 2013) to update the export list of coverages set forth in 11 NYCRR 27 and to implement Chapter 61 of the Laws of 2011, which revised the Insurance Law to conform to the federal Nonadmitted and Reinsurance Reform Act of 2010.

The rule was amended in 2014 (State Register October 8, 2014) to further implement Chapter 61 of the Laws of 2011.

- Amendment to Part 65-1 (Insurance Regulation 68-A) and Part 65-2 (Insurance Regulation 68-B) (Regulations Implementing the Comprehensive Motor Vehicle Insurance Reparations Act) of Title 11 NYCRR (State Register May 11, 2011).

Statutory Authority: Insurance Law, Sections 201, 301, 2307, 5103 and 5221.

Chapter 303 of the Laws of 2010 amended Insurance Law Section 5103(b)(2) to prohibit a no-fault insurer from excluding from coverage necessary emergency health services rendered in a general hospital, including ambulance services attendant thereto and related to medical screening, for any person who is injured as a result of operating a motor vehicle while in an intoxicated condition or while the person's ability to operate the vehicle is impaired by the use of a drug within the meaning of the VTL Section 1192. Chapter 303 also permits a no-fault insurer to maintain a cause of action against the covered person for the amount of first party benefits paid or payable on behalf of the covered person if such person is found to have violated VTL Section 1192.

The Mandatory Personal Injury Protection Endorsement (New York), Additional Personal Injury Protection Endorsement (New York) and the rights and liabilities of self-insurers provisions of Parts 65-1 and 65-2 were amended to comply with Chapter 303 of the Laws of 2010.

The following Insurance rulemakings were adopted in 2006:

- Amendment to Part 261 (Insurance Regulation 161) (Prepaid Legal Services Plans) of Title 11 NYCRR (State Register February 15, 2006).

Statutory Authority: Insurance Law Sections 201, 301, 1113(a)(29), 1116 and Article 23.

Part 261 establishes requirements for Prepaid Legal Service Plans authorized pursuant to Insurance Law Section 1116, including the recognition of groups to whom policies and certificates may be issued on a group basis. The amendment established that a group policy may be issued to a college, school or other institution of learning, or to the head or principal thereof (which or who shall be deemed the policyholder), covering the students of such college, school or other institution of learning.

- Amendment to Part 27 (Insurance Regulation 41) (Excess Lines Placements Governing Standards*)* of Title 11 NYCRR (State Register March 8, 2006).

Statutory Authority: Insurance Law Sections 201, 301, 2105, 2118 and Article 21.

Part 27 establishes excess line placement governing standards. The amendment restated Insurance Law Section 2118(b)(6) regarding the duty of an excess line broker to deliver a stamped declarations page or cover note evidencing insurance that is stamped by the excess line association. The amendment also updated the language on the notice that is required to be prominently displayed on written confirmations of placement of coverage with excess line insurers and the notice that is required on insurance policies issued by excess line insurers in this state. The two notices used previously were different. Such changes were necessary to facilitate the eventual conversion of the affidavit system of the Excess Line Association of New York to an electronic filing system.

In 2007, the rule was amended (State Register December 19, 2007) to change the amount of funds required to be held in trust by alien excess line insurers and an association of insurance underwriters.

In 2009, the rule was amended (State Register September 9, 2009) to add coverages to the export list and reduce the requisite declinations for several other coverages.

See rulemakings adopted in 2011, above, for additional amendments to Part 27.

- Amendment to Part 219 (Insurance Regulation 34-A) (Rulemakings Governing Advertisements of Life Insurance & Annuity Contracts) of Title 11 NYCRR (State Register October 11, 2006).

Statutory Authority: Insurance Law Sections 201, 301, 308, 1313, 2122, 2123, 2402, 4224, 4226 and 4240(d).

Insurance Law Section 2122(a)(2) prohibits any person from calling attention to an unauthorized insurer by any advertisement or public announcement in this state. Part 219 establishes requirements regarding advertisements, statements and representations of licensees used in the solicitation of life insurance, annuities and the reporting of financial information.

The amendment to the rule permitted "joint advertisements" in New York, which are advertisements that contain the names of, or references to, insurance policies sold by a New York authorized insurer and an affiliated insurer that is not authorized in New York. The amendment construed the terms "advertisement" and "public announcement" as used in the Insurance Law and prescribed, for the protection of New York consumers, rules and guidelines that require the truthful and adequate disclosure of all material and relevant information in joint advertisements.

- Adoption of Part 221 (Insurance Regulation 182) (Limitations upon and Requirements for the use of Credit Information for Personal Lines Insurance) of Title 11 NYCRR (State Register October 25, 2006).

Statutory Authority: Insurance Law Sections 201, 301, Article 28.

The Legislature, in enacting Chapter 215 of the Laws of 2004, codified as Insurance Law Article 28, sought to afford consumers certain protections regarding the use of credit information for personal lines insurance. To this end, the Legislature directed the Superintendent to promulgate a regulation that establishes limitations on, and requirements for, the permissible use of credit information by insurers doing business in this state to underwrite and rate risks for personal lines insurance business. The amendment clarified the prohibited and permitted uses of credit information in the underwriting and rating of personal lines insurance.

- Amendment to Part 68 (Insurance Regulation 83) (Charges for Professional Health Services) of Title 11 NYCRR (State Register November 15, 2006).

Statutory Authority: Insurance Law Sections 201, 301, 2601, 5221, Article 52.

Part 68 establishes maximum permissible charges for medical, hospital and other professional health services payable as no-fault insurance benefits. The amendment updated the addresses of the New York State Department of Health and the New York State Education Department for the purpose of reporting patterns of health provider overcharges, excessive treatment, or any other improper actions. The amendment also updated the name of the New York State Insurance Department bureau that was collecting the data.

In 2008, the rule was amended (State Register April 16, 2008) to repeal the fee schedules previously established by the Insurance Department for prescription drugs, durable medical equipment, medical/surgical supplies, orthopedic footwear, and orthotic and prosthetic appliances that were covered by the two fee schedules established by the Workers' Compensation Board, and clarified that a pharmacy is deemed to be a provider of health services for purposes of eligibility of direct payments pursuant to Subpart 68-C.

In 2010, the rule was amended (State Register September 22, 2010) to adopt a new Workers' Compensation Board Dental Fee Schedule.

In 2017, the rule was amended (State Register October 25, 2017) to limit insurers' reimbursement of no-fault health care services provided outside the State at the election of a New York State eligible injured person to the lowest of: (1) the amount of the fee in the region in New York State that has the highest applicable amount in the fee schedule for that service; (2) the amount the provider charged; and (3) the prevailing fee in the geographic location of the provider. If the jurisdiction where the out-of-state provider rendered treatment had established a fee schedule for services rendered in connection with motor vehicle-related injuries, the prevailing fee would be the amount prescribed in that fee schedule for the respective service. The limit on reimbursement did not apply to services provided out-of-state that would constitute emergency care provided to a non-resident of this State or a resident of this State who, at the time of treatment, was residing in the jurisdiction where the treatment was being rendered for reasons unrelated to the treatment. The amendment was necessary because, under the former rule, there had been a marked increase in the submission of over-inflated claims from out-of-state providers, largely because of the lack of a uniform interpretation of the prevailing fees outside the State, and no-fault benefits available to injured persons were being depleted more quickly, to their detriment.

In 2019, the rule was amended (State Register August 7, 2019) to delay for 18 months the adoption of the workers' compensation fee schedules for use pursuant to Insurance Law Section 5108.

In 2020, the rule was amended (State Register April 22, 2020) to delay until October 1, 2020 the adoption of workers' compensation fee schedules for use in the no-fault system pursuant to Insurance Law Section 5108.

- Amendment to Part 218 (Insurance Regulation 90) (Prohibition Against Geographical Redlining and Discriminating in Certain Property/Casualty Policies) of Title 11 NYCRR (State Register November 29, 2006).

Statutory Authority: Insurance Law Sections 201, 301, 307, 308, 3429, 3429-a, 3430, 3433 and Article 34.

Part 218 is intended to make certain types of property/casualty coverage readily available in the voluntary market by implementing statutory prohibitions against companies engaging in geographical redlining practices and discrimination.

In enacting Chapter 259 of the Laws of 2005, the Legislature sought to prohibit insurance companies from canceling, refusing to issue, or refusing to renew a homeowner's insurance policy, including fire insurance or fire and extended coverage insurance, based solely on the insured residing in an area that is serviced by a volunteer fire department, unless such action is based on sound underwriting and actuarial principles.

The amendment established procedures for notifying applicants or insureds of the insurer's specific reasons for canceling or refusing to issue or renew such policies. The amendment advised that an applicant or insured may contact the insurance company with any questions and may file a complaint with the Department.

In 2013, the rule was revised twice as part of two consolidated amendments (State Registers April 10, 2013 and June 5, 2013) to correct out-of-date references resulting from the consolidation of the New York State Banking and Insurance Departments into the Department of Financial Services.

- Amendment to Part 217 (Insurance Regulation 178) (Prompt Payment of Health Insurance Claims) of Title 11 NYCRR (State Register December 27, 2006).

Statutory Authority: Insurance Law Sections 201, 301, 1109, 2403, 3224, and 3224-a.

Part 217 establishes minimum data element requirements for the submission of claims for payment of medical or hospital services that are submitted on paper. The amendment updated the fields required for the submission of health care claims in a paper format. The information was required by Medicare and was inadvertently omitted from the original promulgation of the rule.

As part of a consolidated rulemaking with 11 NYCRR 52 (Insurance Regulation 62) (State Register April 1, 2009) the rule was amended to establish guidelines for the processing of health care claims when the claimant is covered by more than one health insurance policy.

The following Insurance rulemakings were adopted in 2001:

- Amendment of Part 160 (Insurance Regulation 57) (Responsibilities in Construction and Application of Rates) of Title 11 NYCRR (State Register January 17, 2001.

Statutory Authority: Insurance Law Sections 201, 301, and 2336(h).

Insurance Law Section 2336(h) provides for premium reductions for certain commercial motor vehicles when such vehicles are equipped with factory-installed auxiliary running lamps. The statutory provision requires the Superintendent, after consultation with the Department of Motor Vehicles and the Department of Transportation, to promulgate regulations that establish the qualifications and standards for the approval, utilization and installation of such lamps. Chapter 475 of the Laws of 1998 added subsection (h) to Section 2336 to induce commercial risk insureds to reduce risk levels to their commercial motor vehicles. The amendment implemented the legislative objective of Chapter 475.

In 2002, the rule was amended (State Register June 26, 2002) to update it and to eliminate obsolete provisions.

- Adoption of Part 390 (Insurance Regulation 155) (Service Contracts) of Title 11 NYCRR, (State Register February 7, 2001).

Statutory Authority: Insurance Law Sections 201, 301, 1101, 7911 and Article 79.

Chapter 614 of the Laws of 1997 added a new Article 79 to the Insurance Law governing the making of service contracts by service contract providers, and service contract reimbursement insurance, which was added as a new kind of insurance under Section 1113(a)(28). Section 7911 specifically authorizes the Superintendent to promulgate regulations necessary to effectuate Article 79. Chapter 198 of the Laws of 1999 amended Insurance Law Section 1113(a)(28) to add indemnification coverage to the definition of service contract reimbursement insurance. Article 79 created a framework for regulating service contract providers. The new law also authorized service contract reimbursement insurance, which is intended to provide one of the three forms of financial security required to ensure that a provider will meet its obligations.

The rule established rules governing and regulating the service contract business and accomplished several goals. It established a procedure for the registration of providers, including the specification of minimum information necessary for the Superintendent to determine whether to register the provider. It established minimum provisions and requirements regarding service contract reimbursement insurance and service contracts. It also clarified the relationship of mechanical breakdown insurance to service contracts.

In 2003, the rule was amended (State Register March 5, 2003) to update two references to the address of the Department's Albany office.

- Adoption of Part 410 (Insurance Regulation 166) (External Appeals of Adverse Determinations of Health Care Plans) of Title 11 NYCRR (State Register February 14, 2001).

Statutory Authority: Insurance Law Sections 201, 301, 1109, 3201, 3216, 3217, 3217-a, 3221, 4235, 4303, 4304, 4305, 4321, 4322, 4324, Articles 47 and 49, and Chapter 586 of the Laws of 1998.

Chapter 586 of the Laws of 1998 provided enrollees of managed care plans and insureds the right to an objective, independent external appeal of a final adverse determination made by their health care plan. The law was intended to provide consumers with the right to obtain a review of their health plans' decisions through an objective body of medical experts, at the health plans' expense.

In 2008, the rule was amended (State Register December 3, 2008) to provide that external appeal agents shall not be subject to legal proceedings to review their determinations.

- Repeal of Part 58 (Insurance Regulation 117) (Mortality Tables) and Adoption of Part 99 (Insurance Regulation 151) (Valuation of Annuity, Single Premium Life Insurance, Guaranteed Interest Contract and Other Deposit Reserves) of Title 11 NYCRR (State Register February 28, 2001).

Statutory Authority: Insurance Law Sections 201, 301, 1304, 4217, 4240 and 4517.

The adoption of 11 NYCRR 99 established an appropriate methodology to calculate and determine adequate reserves to help ensure the solvency of life insurers doing business in New York. The Insurance Law specifies mortality and interest standards but does not specify an explicit method to value annuities, single premium life insurance policies, or guaranteed interest contracts, and relies on the Superintendent to specify the method. Without this rule, there would be no standard method for valuing such products. This could result in inadequate reserves for some insurers, which would jeopardize the security of policyholder funds.

With the adoption of Part 99 (Regulation 151), Part 58 of 11 NYCRR (Regulation 117) was repealed. Part 58 was repealed because its mortality tables for determining liabilities for annuities and pure endowments had been updated for new business and included in new Part 99.

In 2009, Part 99 was amended (State Register December 9, 2009) to provide that external appeal agents shall not be subject to legal proceedings to review their determinations.

In 2012, Part 99 was amended (State Register April 11, 2012) to allow the use of substandard annuity mortality tables in valuing impaired lives under individual single premium immediate annuities, enabling insurers to keep costs at a lower level because they will not need to hold standard reserves for impaired lives and thus offer these annuities at a more competitive price to annuitants.

In 2014, Part 99 was amended (State Register August 27, 2014) to incorporate a new individual annuity mortality table, which had been adopted by the NAIC, that insurers are required to use to calculate reserves on individual annuities and pure endowments issued or purchased on or after January 1, 2015.

Use of the new table's mortality rates and projection scales are expected to result in increased reserves because mortality rates will be lower due to the expectation that lifetime annuitants will receive their income for longer periods of time.

- Adoption of Part 430 (Insurance Regulation 170) (Mechanism for the Equitable Distribution of Insureds Unable to Obtain Medical Malpractice Insurance) of Title 11 NYCRR (State Register March 7, 2001).

Statutory Authority: Insurance Law Sections 201, 301, and 5502, as amended by Chapter 147 of the Laws of 2000.

Pursuant to Insurance Law Section 5502, as amended by Chapter 147 of the Laws of 2000, the Superintendent dissolved the Medical Malpractice Insurance Association ("Association"). The Association had written medical malpractice insurance for health care providers who were unable to secure such coverage in the voluntary market. The amendment established the New York Medical Malpractice Insurance Plan ("Plan") to provide for the equitable distribution required by the Legislature. Through the Plan, an eligible health care provider, as defined in the rule, that is unable to obtain insurance in the voluntary market, is assigned to an insurer writing the appropriate coverage in the insured's geographical territory.

- Amendment of Part 52 (Insurance Regulation 62) (Minimum Standards for Form, Content, and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) of Title 11 NYCRR (State Register March 21,2001).

Statutory authority: Insurance Law Sections 201, 301, 3201, 3216, 3217, 3218, 3221, 3231, 3232, 4235, 4237, Article 43 and Federal Social Security Act (42 U.S.C. Section 1395ss).

The enactment of the Federal Omnibus Budget Reconciliation Act of 1990 ("the Act") required the mandatory standardization and federal certification of policies of Medicare supplement insurance. As a result of the Act, states were required to amend their laws and regulations to conform to the federal standards for Medicare supplement insurance. The revisions contained in this amendment made technical

corrections to New York's Medicare supplement regulation to ensure continued compliance with federal standards.

In 2002, an amendment to Section 52.22 of the rule was adopted (State Register March 5, 2003) to make minor revisions to certain mandatory practices to be followed by insurers issuing Medicare supplement insurance policies that bring company practices into conformance with the Act.

In 2010, the rule was amended as part of a consolidated regulatory action (State Register May 5, 2010) to conform to the requirements of federal law. States were required to have a Medicare supplement insurance regulatory program that provided a minimum level of coverage as established by federal law, 42 U.S.C. Section 1395ss. The applicable federal laws were amended in 2008.

See rulemakings adopted in 2011, 2016 and 2018, above, for additional amendments to Part 52.

- Amendment of Part 89 (Insurance Regulation 118) (Audited Financial Statements) of Title 11 NYCRR (State Register May 9, 2001).

Statutory authority: Insurance Law Sections 201, 301, 307(b) and 4710(a)(2).

Insurance Law Section 307(b) provides for the audited financial statement of every licensed insurer, with certain exceptions, and of any subsidiary described therein, together with an opinion of an independent certified public accountant on the financial statement of the insurer and any subsidiary, to be filed on or before May 31 of each year. Section 307(b) was amended by Chapter 324 of the Laws of 1992 and necessitated an amendment to Part 89.

Part 89 was originally promulgated in 1984 to implement the provisions of Insurance Law Section 307(b). This amendment further implemented the provisions of Section 307(b), as amended by Chapter 324 of the Laws of 1992. It enabled the Department to continue to monitor the financial solvency of insurers licensed to do business in New York State.

See rulemakings adopted in 2011, above, for additional amendment to Part 89.

- Adoption of Part 83 (Insurance Regulation 172) (Financial Statement Filings and Accounting Practices and Procedures) of Title 11 NYCRR (State Register May 23, 2001).

Statutory Authority: Insurance Law Sections 107(a)(2), 201, 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1407, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404; Public Health Law Sections 4403, 4403-a, 4403-(c)(12) and 4408-a.

The purpose of the rule is to enhance the consistency of the accounting treatment of assets, liabilities, reserves, income and expenses by entities subject thereto, by setting forth the accounting practices and procedures to be followed in completing annual and quarterly financial statements required by law. Certain provisions of the Insurance Law provide that authorized insurers and other entities shall file financial statements annually and quarterly with the Superintendent, on forms prescribed by the Superintendent. Except for filings made by Underwriters at Lloyd's, London, the Superintendent prescribed forms and Annual and Quarterly Statement Instructions that are adopted from time to time by the NAIC, as supplemented by additional New York forms and instructions. To assist in the completion of the Financial Statements, the NAIC also adopts and publishes from time to time certain policy, procedure and instruction manuals. One of these manuals, the AP&P Manual As of March 2000, includes a body of accounting guidelines referred to as Statements of Statutory Accounting Principles. The AP&P Manual was incorporated by reference into Part 83.

The AP&P Manual as of March 2000 was effective January 1, 2001. The AP&P Manual represents a compilation of current insurance statutory accounting principles. The AP&P Manual is designed as a comprehensive guide to statutory accounting principles for regulators, insurers and auditors. The AP&P Manual does not preempt state legislative or regulatory authority. Statutory financial statements continue to be prepared on the basis of accounting practices prescribed or permitted by the states. Auditors are permitted to continue to provide audit opinions on practices permitted by the insurance regulator of the state of domicile, even if those practices diverge from the AP&P Manual. In certain instances, a New York statute or regulation may preclude incorporation of particular provisions of the AP&P Manual. In a few instances, for various reasons, the Department has not incorporated provisions of, or revisions to, the AP&P Manual.

In 2003, the rule was amended (State Register March 26, 2003) to update citations in Part 83 to the AP&P Manual as of March 2002.

The rule again was amended in 2003 (State Register September 24, 2003) to update citations in Part 83 to the AP&P Manual as of March 2003, make a technical correction, and delete an obsolete provision regarding accident and health benefits in life insurance policies and annuities.

In 2004, the rule was amended (State Register May 19, 2004) to delete obsolete references to certain web sites.

The rule again was amended in 2004 (State Register September 15, 2004) to update citations in Part 83 to the AP&P Manual as of March 2004.

In 2007, the rule was amended (State Register January 10, 2007) to update citations in Part 83 to the AP&P Manual as of March 2005 and to make minor modifications to the rule regarding accounting treatment of certain insurer assets.

The rule again was amended in 2007 (State Register April 25, 2007) to update citations in Part 83 to the AP&P Manual as of March 2006.

See rulemakings adopted in 2011 and 2016, above, for additional amendments to Part 83.

- Amendment of Part 185 (Insurance Regulation 27A) (Credit Life Insurance and Credit Accident and Health Insurance) of Title 11 NYCRR (State Register May 30, 2001).

Statutory Authority: Insurance Law Sections 201, 301, 3201, 4216 and 4235.

Insurance Law Sections 4216 and 4235 authorize the issuance of credit life insurance and credit accident and health insurance as permitted coverages in this state. One portion of the amendment removed a restriction on the use of termination based on age.

The rule, prior to the amendment, specified the rates for vendor business. The most common examples of vendor business are automobile dealerships. The rates specified in the rule for some blocks of vendor business were inadequate. Thus, part of the amendment allowed for the rates for blocks of

vendor business to be based on their actual experience. Prior to this change, coverage was not available at some vendors.

Insurance Law Sections 4216 and 4235 also require that the premium not be unreasonable in relation to the benefits provided. Another part of the amendment balanced the legislative objective of making the product available with the legislative objective that insureds receive fair value for their premium dollar.

In 2002, the rule was amended (State Register December 11, 2002) to conform to Chapter 505 of the Laws of 2000 and Chapter 13 of the Laws of 2002, which created a new type of broker license, defined in Insurance Law Section 2104(b)(1)(A), allowing brokers to write the coverages set forth in the rule.

- Amendment of Part 70 (Insurance Regulation 101) (Medical Malpractice Insurance Rate Modifications, Provisional Rates, Required Policy Provisions and Availability of Additional Coverages) of Title 11 NYCRR (State Register June 20, 2001).

Statutory Authority: Insurance Law Sections 201, 301, 1113(a)(13) and (14), 3426, 3436, 5504, 5907, 6302, 6303 and Article 23, and Chapter 147 of the Laws of 1999 as amended by Part JJ of Chapter 407 of the Laws of 1999.

The amendment established medical malpractice insurance rates and appropriate surcharges for physicians and surgeons effective July 1, 2000, and established rules to collect and allocate surcharges to recover deficits based on loss experience. While the Superintendent continues to establish medical malpractice rates, the Superintendent no longer amends the rule to do so, and the old rates are no longer current. The Department reviews the rule each year to ensure that the provisions remain consistent with other related statutory and regulatory requirements.

- Amendment of Part 27 (Insurance Regulation 41) (Excess Line Placements Governing Standards) of Title 11 NYCRR (State Register July 11, 2001).

Statutory Authority: Insurance Law Sections 201, 301, 1101, 2105, 2117; Chapter 294 of the Laws of 1997, Chapter 597 of the Laws of 1999 and Chapter 578 of the Laws of 2000.

Insurance Law Section 1101(b) was amended by Chapter 597 of the Laws of 1999 to provide for a new paragraph (5). It permits an unauthorized insurer that is affiliated with an insurer licensed in this state to have an office in this state to provide services to support its insurance business. Insurance Law Section 2117 was also amended by Chapter 597 of the Laws of 1999 to provide for a new subsection (i) that allows an authorized insurer to provide support services from its office in New York to unauthorized affiliates, provided that the unauthorized insurer has satisfied all applicable requirements for placement by excess line brokers. Both sections of law require that any documents issued by an unauthorized insurer from an office in this state contain a prominent notice that the insurer is not licensed in New York, in accordance with regulations promulgated by the Superintendent.

The amendment revised the rule by establishing a mandatory and uniform notice instead of permitting each insurer to establish its own notice, to ensure that consumers receive the appropriate information. The amendment also required insurers to provide notice to the Superintendent of the existence of the New York office of an unauthorized insurer to allow the Superintendent to properly regulate their activities.

In 2003, the rule was amended (State Register February 19, 2003) to clarify the duties and responsibilities of excess line brokers, unauthorized insurers and the Excess Line Association of New York regarding excess line business placed in New York State.

See rulemakings adopted in 2006 and 2011, above, for additional amendments to Part 27.

- Adoption of Part 362 (Insurance Regulation 171) (The Healthy New York Program & the Direct Payment Stop Loss Relief Program) of Title 11 NYCRR (State Register July 18, 2001).

Statutory Authority: Insurance Law Sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305, 4318, 4321, 4321-a, 4322, 4322-a, 4326 and 4327.

The Legislature enacted Chapter 1 of the Laws of 1999 to provide for the Healthy New York Program, an initiative that was designed to encourage small employers that did not provide health insurance coverage to their employees to offer such coverage and to make coverage available to uninsured

employees whose employers did not provide group health insurance coverage. By creating a standardized health insurance benefit package to be offered by all health maintenance organizations, which is made more affordable through the availability of state funded stop loss reimbursement, more small employers and uninsured employed individuals were encouraged to purchase health insurance coverage. The rule was necessary to clarify eligibility for, and establish procedures for enrolling in, the Healthy New York Program.

In 2004, the rule was amended (State Register February 11, 2004) to encourage small employers that did not currently provide health insurance coverage to their employees to offer such coverage, and to make coverage available to uninsured employees whose employers did not provide group health insurance. To encourage the goals stated above, the amendment clarified eligibility for the Healthy New York Program and simplified the application and administrative process for both enrollees and providers.

In 2007, the rule was amended (State Register January 31,2007) to reduce Healthy New York premium rates to enable more uninsured businesses and individuals to afford health insurance and generally improve the Healthy New York Program. The rule was amended again in 2007 to offer high deductible health plans in conjunction with the Healthy New York Program and to add benefits to the program.

In 2012, the rule was amended (State Register November 18, 2012) to mitigate large premium increases for current enrollees in Healthy New York by limiting new enrollees to the high deductible plan.

- Adoption of Part 101 (Insurance Regulation 164) (Standards for Financial Risk Transfer Agreements between Insurers and Health Care Providers) of Title 11 NYCRR (State Register August 22, 2001).

Statutory Authority: Insurance Law Sections 201, 301, 1102, 1109 and Articles 32, 41, 42 and 43; Public Health Law, Section 4403(1)(c).

Section 45 of Chapter 586 of the Laws of 1998 (“the Law”), commonly referred to as the external review law, gave the Commissioner of Health and the Superintendent of Insurance the authority to

promulgate regulations to implement, *inter alia*, the financial risk transfer sections of the legislation. In particular, Sections 41-d and 41-e of the Law amended Insurance Law Sections 3217-b and 4325 to add a new paragraph (f) to each of those statutes. The amendments broadly discuss the requirement that no contract entered into between an insurer and a health care provider shall be enforceable if it includes terms that transfer financial risk to providers in a manner inconsistent with the provisions of Public Health Law Section 4403(1)(c).

Chapter 586 of the Laws of 1998 gave the Superintendent of Insurance and the Commissioner of Health broad powers to promulgate regulations regarding all aspects of the Law, including provisions that apply to the transfer of financial risk in contracts between an insurer and a health care provider. Based on this grant of authority, the Superintendent developed a rule, in consultation with the Commissioner of Health, to ensure that contractual arrangements between an insurer and a health care provider were consistent with Public Health Law Section 4403(1)(c).

Part 101 established minimum requirements by which an insurer, as defined in the rule, can assess the financial responsibility of a health care provider to ensure that such provider can fulfill its obligations under the financial risk transfer agreement. Previously, there were no regulatory requirements specifically addressing the method by which an insurer could determine the financial responsibility of the health care provider, and adequately protect itself and its subscribers against the risk of default by a health care provider and ensure fulfillment of the health care provider's obligations under the financial risk transfer agreement.

In 2002, the rule was amended (State Register January 30, 2002) to provide mechanisms to assess the financial responsibility and capability of health care providers to perform their obligations under certain financial risk sharing agreements and set forth standards pursuant to which providers may adequately demonstrate such responsibility and capability to insurers.

- Amendment of Subpart 64-2 (Insurance Regulation 35-C) (Liability Insurance Covering All-Terrain Vehicles) of Title 11 NYCRR (State Register August 22, 2001).

Statutory Authority: Insurance Law Sections 201, 301 and 5103; VTL, Section 2407.

VTL Section 2407 requires that an all-terrain vehicle ("ATV") be covered by a policy of liability insurance, which includes no-fault coverage for the pedestrian victims of ATV accidents. The amendment incorporated the applicable no-fault insurance forms into 11 NYCRR 65 (Insurance Regulation 68), which was adopted simultaneously.

In 2002, the rule was amended (State Register September 11, 2002) to update certain references in accordance with statutory amendments.

In 2004, the rule was amended (State Register May 19, 2004) to conform the fraud warning statement in the required no-fault claim forms with the text (as revised in the Fourth Amendment to 11 NYCRR 86 (Insurance Regulation 95)) as then written in Part 86 of 11 NYCRR, to correct any incorrect references, addresses and typographical errors, and to present the forms in a more easily readable format.

- Repeal of Part 65 (Insurance Regulation 68) and Adoption of New Part 65 (Insurance Regulation 68) (Regulations Implementing the Comprehensive Motor Vehicle Insurance Reparations Act) of Title 11 NYCRR (State Register August 22, 2001).

Statutory Authority: Insurance Law Sections 201, 301 2601, 5521 and Article 51; VTL Section 2407.

Part 65 contains provisions implementing Insurance Law Article 51, known as the Comprehensive Motor Vehicle Insurance Reparations Act and popularly referred to as the "no-fault" law. No-fault insurance was introduced to rectify many problems that were inherent in the existing tort system that were utilized to settle claims, and to provide for prompt payment of health care and loss of earnings benefits. The no-fault insurance coverage endorsement contained in Subpart 64-2, which was incorporated into Part 65 by the 2001 amendment, implemented VTL Section 2407, which affords no-fault coverage to the pedestrian victims of ATV accidents.

The adopted rule reduced the time periods from 90 days to 30 days for notice of claim by claimants and from 180 days to 45 days for submission of health care claims, respectively. The Superintendent

recognized that in rare circumstances, a claimant will not be able to provide notice, or a medical provider may not be able to submit a claim, within the new time periods. In light of such recognition, the Superintendent repealed the former requirement that a provider or claimant show that compliance was impossible in order to file a claim outside of the time requirements, and replaced it with a more flexible "reasonableness" standard that allows additional time for notice or submission of a claim if reasonable justification is provided.

The adopted rule also reflected the transfer of the no-fault conciliation function from the Department to an organization designated by the Superintendent. By this amendment of the conciliation procedures, rather than diminishing its role in the process, the Department strengthened its regulatory function regarding compliance with the no-fault insurance statutes. The Department continues to monitor conciliation activity and analyzes trends via reports generated regularly by the designated organization on all aspects of the conciliation function, such as provider overcharges, dilatory claims handling by insurers and over-utilization of the arbitration system by claimants' representatives.

Prior to the effective date of the rule (September 1, 2001), a lawsuit was filed in the New York State Supreme Court seeking a stay of enforcement of the revised rule. Ultimately, the new Part 65 became effective as of April 5, 2002.

In 2003, the Superintendent adopted consolidated amendments to Subparts 65-3 (Insurance Regulation 68-C) and 65-4 (Insurance Regulation 68-D) (State Register February 5, 2003) to update certain references in accordance with statutory amendments. Recognizing that disputes involving the responsibility for payment of no-fault benefits would occur, the Legislature included in Insurance Law Section 5106 the authority for the Superintendent to promulgate or approve simplified arbitration procedures in order to expedite the payment of those benefits. Pursuant to that authority, the Superintendent implemented a financial assessment system in Part 65, which provides that insurers bear the operating costs of the arbitration system. Further, pursuant to statutory authority, the Superintendent

revised the financial allocation process so that arbitrators may apportion costs to applicants in those cases when applicants have submitted frivolous claims without any factual or legal merit.

The amendment to Subpart 65-3 updated provisions relating to Personal Injury Protection Benefits ("PIP") in conformance with changes to requirements regarding forms to be used by insureds, claimants and providers. The amendment to Subpart 65-4 revised the rulemakings and requirements applicable to the arbitration of no-fault claims. It was intended to make the system more efficient for all participants.

In 2004, Subpart 65-4 was amended (State Register February 4, 2004) to correct an erroneous cross reference and insert a requirement that inadvertently was omitted from the previously revised rule: the long-standing administrative procedure that the designated administrator of the no-fault administration system will consult with the Department before making final determinations on requests to recuse an arbitrator for conflict of interest reasons. The rulemaking also required that determinations shall be in writing and in a format approved by the Department.

Also in 2004, Subpart 65-3 was amended (State Register May 19, 2004) to conform the fraud warning statement contained in no-fault claim forms with the statutory language contained in 11 NYCRR 86 (Insurance Regulation 95), amend any incorrect references and typographical errors, and present the forms in a more easily readable format.

In 2007, Subparts 65-3 and 65-4 were amended (State Register March 14, 2007) to conform the rules to Chapter 452 of the Laws of 2005. The legislation codified the rulemakings contained within Part 65 that are applicable when multiple insurers may be responsible to the claimant for the processing of the claim for first party benefits. It also enhanced the current arbitration procedures to include an expedited eligibility hearing option, when required, to designate the insurer for first party benefits.

In 2013, the Superintendent adopted an amendment to Part 65 (State Register November 13, 2013) that added Subpart 65-5 (Insurance Regulation 68-E) that established standards and procedures for investigating and suspending, or removing the authorization for, health service providers to demand or request payment for health services under Article 51 of the Insurance Law upon findings of certain

unlawful conduct reached after investigation, notice, and a hearing pursuant to Insurance Law Section 5109.

Also in 2013, Subpart 65-3 was amended (State Register February 20, 2013) to reduce the number of automobile personal injury protection claims that would have remained open indefinitely by: (i) requiring an applicant for benefits to either submit any requested verification within the applicant's control or possession, or provide reasonable justification for failing to do so within 120 calendar days from the date of the initial verification request; (ii) reducing litigation and arbitration by providing that a technical defect in an insurer's verification request, notice, or claim denial does not discharge the recipient's obligation to comply with the request or notice or invalidate an otherwise proper claim denial; and (iii) preventing an injured person's policy limit from being unjustly depleted by providing that no payment is due for services to the extent the charges exceed the applicable fee schedules or when the services for which payment is requested were not rendered.

In 2015, Subpart 65-4 was amended (State Register February 4, 2015) to revise the fee structure awarded to attorneys who prevail in no-fault disputes on behalf of applicants.

- Amendment of Part 20 (Insurance Regulations 9, 18 and 29) (Brokers and Agents - General) of Title 11 NYCRR (State Register November 7, 2001).

Statutory Authority: Insurance Law Sections 201, 301, 1109, 2103, 2104, 2109, 2112, 2119, 2120 and 2121.

Insurance Law Sections 2119 and 2120 require that an agent or broker keep records that reasonably demonstrate moneys collected from insureds and that those records demonstrate that the portion of those funds that are held on behalf of insurers represent net premiums (premiums paid less commissions earned). Insurance Law Section 2121 acknowledges that a broker, who traditionally represents the insured, will be an agent of the insurer who delivers a contract, for purposes of premium collection.

The amendment underscored the requirement that an insured's payments to a Department licensee must be clearly identified in the agent's or broker's records and that those premiums, when so identified,

will be deemed paid to the insurer for the protection of the insured. The amendment clarified the records that are necessary to keep the regulated parties in compliance with the law. This allows the licensee, the insurer, and the consumer to readily resolve questions and complaints without regulatory intervention.

- Adoption of Part 420 (Insurance Regulation 169) (Privacy of Consumer Financial and Health Information) of Title 11 NYCRR (State Register November 21, 2001).

Statutory Authority: Insurance Law Sections 201, 301, 308, 1505, 1608, 1712, 3217 and Article 24.

Title V of the Gramm-Leach-Bliley Act ("GLBA"), enacted into law by Congress as P.L. 106-102, required all "financial institutions" (including persons engaged in the insurance business) to comply with the privacy requirements contained therein. Pursuant to Section 505, Title V and regulations prescribed thereunder "shall be enforced . . . by the applicable State insurance authority . . . ." Failure by a state to establish rulemakings for privacy of consumer and customer financial information precludes the state from overriding the consumer protection regulations prescribed by a Federal banking agency under Section 45(a) of the Federal Deposit Insurance Act.

Section 501 of GLBA states that it "is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information." The GLBA requires financial institutions to comply with certain obligations regarding disclosure of nonpublic personal information. State insurance authorities retain primary responsibility to regulate the activities of persons engaging in the business of insurance.

The rule assured that individual consumers and customers have an opportunity to prevent unwarranted disclosure of non-public personal financial and health information. Absent this rule, licensees of the Department would remain subject to the provisions of GLBA, but they would not have sufficient guidance to protect them from litigation challenging their attempts at compliance. In addition,

consumers would not be adequately protected, because the Department would be unable to take action against licensees based upon violations of GLBA's provisions.

Comments on Insurance rulemakings may be submitted to Camielle Barclay, Associate Attorney – Camielle.Barclay@dfs.ny.gov; (212) 480-5299; New York State Department of Financial Services, One State Street, New York, NY 10002.

3. BANKING RULEMAKINGS

The following Banking rulemakings were adopted in 2018:

There were no new Banking regulation amendments or adoptions in 2018.

The following Banking rulemakings were adopted in 2016:

- New Part 422 (Inspecting, Securing and Maintaining Vacant and Abandoned Residential Real Property)

    a. Description of rule: This rule establishes rules necessary to implement Real Property Actions and Proceedings Law Section 1308.

    b. Legal basis for the rule: Real Property Actions and Proceedings Law §§ 1306, 1308 and 1310.

    c. Need for the rule: The rule is necessary to outline the informational and timing requirements for vacant and abandoned property reports required by Real Property Actions and Proceedings Law Sections 1308.

The following Banking rulemakings were adopted in 2011:

There were no new Banking regulation amendments or adoptions in 2011.

The following Banking rulemakings were adopted in 2006:

- Amendment of Part 6.8 of the General Regulations of the Superintendent (Superintendent's Regulations: Additional Authority of Banks, Trust Companies, Savings Banks and Savings and Loan Associations Pursuant to Banking Law, Sections 14-g and 14-h: Overdraft Protection Charges)

    a. Description of rule: This rule authorizes New York state-chartered banks, trust companies and thrift institutions to charge a daily overdraft or bounce protection fee on checks, other payment

orders, or electronic transactions accepted or honored for which there are insufficient funds when an account does not have an overdraft line of credit pursuant to Section 108(5) of the Banking law or is not a linked account. .

b. Legal Basis for the rule: Banking Law §§ 13.4, 14, 14-g and 14-h.

c. Need for rule: This rule is necessary to give New York state-chartered banks, trust companies and thrift institutions parity with national banks by providing them the ability to charge overdraft or bounce protection fees.

- Amendment of Part 6.9 of the General Regulations of the Superintendent (Superintendent's Regulations: Additional Authority of Banks, Trust Companies, Savings Banks and Savings and Loan Associations Pursuant to Banking Law, Sections 14-g and 14-h: Merger of a Bank or Trust Company with a Nonbank Affiliate)

a. Description of rule: This rule permits New York state-chartered banks and trust companies to merge with non-bank affiliates with the bank or trust company as the surviving entity, to the same extent as national banks.

b. Legal Basis for the rule: Banking Law §§ 13.4, 14, 14-g and 14-h.

c. Need for rule: This rule is necessary to give New York state-chartered banks and trust companies parity with national banks by providing them the ability to merge with non-bank affiliates.

- Amendment of Part 6.10 of the General Regulations of the Superintendent (Superintendent's Regulations: Additional Authority of Banks, Trust Companies, Savings Banks and Savings and Loan Associations Pursuant to Banking Law, Sections 14-g and 14-h: Investment in a Public Deposit Bank Subsidiary by a Savings Bank or Savings and Loan Association)

a. Description of rule: This rule permits New York state-chartered savings banks and savings and loan associations to invest in public deposit bank subsidiaries to same extent as federal thrift institutions.

b. Legal Basis for the rule: Banking Law §§ 13.4, 14, 14-g and 14-h.

c. Need for rule: This rule is necessary to give New York state-chartered savings banks and savings and loan associations parity with federal thrift institutions by providing them with the ability to charge overdraft or bounce protection fees.

- Amendment of Part 31 of the General Regulations of the Superintendent (Investments of Banks or Trust Companies in Certain Corporations: Atlantic Central Bankers Bank)

a. Description of rule: This rule permits New York state-chartered banks and trust companies to invest in the common stock of Atlantic Central Bankers Bank.

b. Legal Basis for the rule: Banking Law §§ 14.1(d) and 97.5.

c. Need for rule: This rule is necessary to give New York state-chartered banks and trust companies the ability to invest in the common stock of Atlantic Central Bankers Bank.

- Amendment of Part 32.1 of the General Regulations of the Superintendent (Maximum Charges for Payments Made Against Insufficient Funds, Uncollected Balances and Return Items: Certain Disclosures: Maximum Charges)

a. Description of rule: This rule provides New York state-chartered financial institutions guidance and limits regarding the charges that it may impose with respect to insufficient funds and return items.

b. Legal Basis for the rule: Banking Law §§ 14.1, 108.8, 202, 235-c and 383.13.

c. Need for rule: This rule is necessary to give New York state-chartered financial institutions clarity that the provisions pertaining to charges for checks subject to non-sufficient funds, return, and overdraft charges permit different charges to be imposed based on the type of the account, (e.g., consumer accounts, commercial accounts, etc.), to permit variation of the amount of such charges depending on whether the checks are paid, accepted or returned and to clarify that such charges all apply to electronic transactions and checks.

- Amendment of Part 32.1 of the General Regulations of the Superintendent (Maximum Charges for Payments Made Against Insufficient Funds, Uncollected Balances and Return Items: Certain Disclosures: Required Disclosures)

    a. Description of rule: This rule states that New York state-chartered financial institutions must provide their depositors in writing the order in which it pays items drawn against a depositor's account.

    b. Legal Basis for the rule: Banking Law §§ 14.1, 108.8, 202, 235-c and 383.13.

    c. Need for rule: This rule is necessary because it requires New York state-chartered financial institutions to provide notice to their depositors in writing the order in which it pays items drawn against a depositor's account.

- Amendments of Part 41 of the General Regulations of the Superintendent (Restrictions and Limitations on High Cost Home Loans)

    a. Description of rule: This rule outlines the restrictions and limitations imposed on lenders making high cost home loans pursuant to Banking 6-l.

    b. Legal Basis for the rule: Banking Law §§ 6-i, 6-l,13 and 14.

    c. Need for rule: This rule is necessary to conform the regulation to, and make it consistent, with Banking Law § 6-I which regulates the making of high cost home loans and establishes new penalties for violations of the law and certain remedies for homeowners who are affected by such violations.

- Amendments to Part 114 of the General Regulations of the Superintendent (Supervision and Regulation of Article XII Investment Company Holding Companies and Their Subsidiaries for Purposes of the European Union Financial Conglomerates Directive)

    a. Description of rule: This rule sets forth the superintendent's examination, supervision, regulation, and enforcement authority over certain financial conglomerates.

    b. Legal Basis for the rule: Banking Law § 14, Article XII.

c. Need for rule: This rule clarifies the superintendent's examination, supervision, regulation, and enforcement authority over certain financial conglomerates for purpose of carrying out equivalent supervision under the European Union Financial Conglomerates Directive.

- Amendments to Part 400 of the General Regulations of the Superintendent (Licensed Cashers of Checks)

a. Description of rule: This rule outlines the licensing requirements and business conduct of New York state licensed check cashers.

b. Legal Basis for the rule: Banking Law §§ 12, 37.3, 367, 371 and 372.

c. Need for rule: This rule implements and conforms Part 400 to changes in the Banking Law in relation to the cashing of checks for payees who are other than natural persons, additionally the rule incorporates the provisions of an earlier emergency regulation regarding the disclosure of check cashing fees.

- New Part 404 of the General Regulations of the Superintendent (Budget Planners/Delegation of Certain Activities)

a. Description of rule: This rule implements Article 12-C of the Banking Law regarding the licensing of Budget Planners in New York state and the Superintendent's authorization to examine such licensees.

b. Legal Basis for the rule: Banking Law §§ 12 and 587.

c. Need for rule: This rule is needed to provide protection to debtors when a licensed budget planner utilizes a third party "outsourcer" in the process of paying debtor funds to creditors of the debtors.

The following Banking rulemakings were adopted in 2001:

There were no new Banking regulation amendments or adoptions in 2001.

Comments on Banking Rulemakings may be submitted to Christine Tomczak, Assistant Counsel – Christine.Tomczak@dfs.ny.gov; (212) 709-1642; New York State Department of Financial Services, One State Street, New York, NY 10002.

4. FINANCIAL SERVICES RULEMAKINGS

The following Financial Services rulemakings were adopted in 2018:

- Adoption of new Part 201 (Registration Requirements & Prohibited Practices for Credit Reporting Agencies) of Title 23 NYCRR (State Register July 3, 2018).

Statutory Authority: Financial Services Law Section 102, 201, 202, 301, 302 and 408

The rule was adopted to ensure that consumers and markets would be protected from unsafe and unsound practices of consumer credit reporting agencies and to ensure that those agencies would effectively address the ever-growing cybersecurity risks.

Comments on this rulemaking may be submitted to Eamon Rock, Assistant Counsel – Eamon.Rock@dfs.ny.gov; (518) 402-3386; New York State Department of Financial Services, One Commerce Plaza, Albany, NY 12257.

There were no new or amended Financial Services rulemakings adopted in 2016 or 2011.