

JOE LOMBARDO
Governor

STATE OF NEVADA

TERRY REYNOLDS
Director



NICK STOSIC
Interim Commissioner

**DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE**

1818 East College Pkwy., Suite 103
Carson City, Nevada 89706
(775) 687-0700 • Fax (775) 687-0787
Website: doi.nv.gov
E-mail: insinfo@doi.nv.gov

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**Guidance for Insurers and Answers to Frequently Asked Questions:
Implementation of Prohibition on Adverse Credit-Based Re-Scoring and Consumer
Refunds Pursuant to Regulation R087-20¹**

The Nevada Division of Insurance (“Division”) issues the following guidance to property and casualty insurers writing personal lines of business regarding the implementation of Regulation R087-20. This guidance is an effort to provide information to insurers to help them comply with Regulation R087-20 effectively and expeditiously. The Regulation itself is currently effective law and is legally binding.

When was Regulation R087-20 adopted?

Regulation R087-20 was:

- a) Adopted by the Commissioner on November 23, 2020;
- b) Approved by the Legislative Commission on December 28, 2020; and
- c) Filed with the Secretary of State’s Office on December 29, 2020.

Where can the text of the approved Regulation R087-20 be found?

<https://www.leg.state.nv.us/Register/2020Register/R087-20AP.pdf>.

What is the effective period of Regulation R087-20?

From December 29, 2020, until May 20, 2024.

¹ On February 16, 2023, the Nevada Supreme Court affirmed the lower court’s decision regarding Regulation R087-20. The decision in the case of National Association of Mutual Insurance Companies, A Trade Association, Appellant v. State of Nevada Department of Business and Industry, Division of Insurance, can be found at https://doi.nv.gov/uploadedFiles/doi.nv.gov/Content/News_and_Notices/Press_Releases/R087_20_NV_Supreme_Court_Decision.pdf.

What lines of business does Regulation R087-20 affect?

Regulation R087-20 only affects personal lines of property and casualty insurance, and it does not apply to a contract of surety insurance issued pursuant to chapter 691B of NRS or any commercial or business policy.

What are the implications of Regulation R087-20 for insurers?

Until May 20, 2024, insurers are required to cease adverse credit-based re-scoring as a result of any change in the policyholder's consumer credit report or insurance score which occurred on or after March 1, 2020.

If any policyholder received a premium increase at renewal on or after December 29, 2020, due to a change in that policyholder's consumer credit report or insurance score, then the insurer is required to issue a refund of that attributed increase to the policyholder.

Insurers also may not deny, cancel, or fail to renew a policy based on any change in the policyholder's consumer credit report or insurance score that occurred on or after March 1, 2020.

What happens if a policyholder's credit-based insurance score improved since March 1, 2020?

Regulation R087-20 does not prohibit any consumer-friendly treatment—while the Regulation prohibits adverse credit-based re-scoring, it does allow for favorable credit-based re-scoring. The Regulation allows an insurer to consider updated credit information for a policyholder if that information improved since March 1, 2020, and if that information results in a lower premium than would have otherwise been the case.

What do insurers need to do to implement Regulation R087-20?

Using the categories below, every insurer writing personal lines of insurance in Nevada must submit the information requested to confirm compliance with the Regulation. The information must be submitted by e-mail to pcinsinfo@doi.nv.gov no later than **March 15, 2023**.

Category A – Compliance Not Required: The insurer need not comply with Regulation R087-20 because the insurer is not engaged in any activities prohibited by the Regulation. This includes insurers who do not use credit-based insurance scoring in Nevada or who use credit-based insurance scoring but have not recalculated consumers' credit-based insurance scores at renewal at the insurer's initiative, without an affirmative request by a consumer to do so.

Category B – Compliant: The insurer has filed evidence of full compliance with Regulation R087-20. In this category, the insurer has filed via the System for Electronic Rate and Form Filing (“SERFF”) the rule implementing the provisions of Regulation R087-20 and provided evidence of refunds.

Category C – Not Compliant: The insurer has not filed evidence of full compliance with the Regulation. In this category, the insurer has not submitted a rule through the SERFF to implement the provisions of the Regulation or has not provided evidence of refunds to eligible insureds whose premiums were increased on or after December 29, 2020.

Guidance for Category A – Compliance Not Required

Answer the following questions as of the *present time*.

A-1. Does the insurer use credit-based insurance scoring in Nevada? If the answer remains “No”, then no further action is necessary.

A-2. Does the insurer recalculate consumers’ credit-based insurance scores at renewal at the insurer’s initiative, without an affirmative request by a consumer to do so? If the answer remains “No”, then no further action is necessary.

If the answers to Questions A-1 and A-2 above have become “Yes” since February 2021, then the insurer is required to follow the Guidance for Category C below.

Guidance for Category B – Compliant

Answer the following questions as of the *present time*.

B-1. Since February 2021, has the insurer at any time resumed recalculating consumers’ credit-based insurance scores at renewal at the insurer’s initiative, without an affirmative request by a consumer to do so? If the answer is “No”, then no further action is necessary.

If the answer to Question B-1 is or has been “Yes” at any time since February 2021, then the insurer is required to follow the Guidance for Category C below.

Guidance for Category C – Not Compliant

The courses of action below need to be completed as soon as reasonably practicable. They do not necessarily need to be completed by March 15, 2023, but the insurer must provide the date by which the insurer expects to be compliant with the Regulation.

C-1. Submit a rule filing using SERFF to implement the provisions of Regulation R087-20 within 30 days of March 15, 2023. The filing should include rule language that supersedes any rules that may have allowed adverse credit-based re-scoring in the past. Appendix A of this guidance contains sample rule language. Other language that achieves the same substantive effect may be submitted as an alternative. The cessation of adverse credit-based re-scoring should be implemented *immediately* or *as soon as possible* given the insurer’s ability to modify its IT systems. The Division understands that a reasonable amount of time may be needed to implement such modifications in practice; however, the longer the insurer takes to do so, the more consumers will need to receive refunds and the larger some refunds may need to be.

Exception: If the insurer previously submitted a rule filing to comply with Regulation R087-20 and the rule filing was approved, then the insurer does not need to submit another rule filing. *However*, if the rule filing was not implemented in entirety since being approved, the insurer does need to practically comply with the provisions of that rule filing, including the issuance of refunds to policyholders who received premium increases prohibited by Regulation R087-20 on or after December 29, 2020.

C-2. Identify all policyholders whose premiums were increased at renewal on or after December 29, 2020, because of changes to any consumer credit information that occurred on or after March 1, 2020.

C-3. Provide refunds to all such policyholders identified in item C-2 above. Insurers are encouraged to begin providing refunds to affected policyholders as soon as those policyholders are identified. Insurers are reminded that NRS 686A.710 requires a notice of adverse action to be sent to a consumer if the insurer has taken an adverse action based on credit information. These notices can be used to help identify affected consumers.

C-4. Provide monthly updates to the Division by the first day of each month regarding the progress of identification of any affected consumers and the progress of the carrier's refund issuance. Monthly updates can be provided via e-mail to pcinsinfo@doi.nv.gov, and should continue until *all* refunds have been issued. The Division will work with each insurer to support implementation of any consumer refunds within a reasonable timeframe, not to extend beyond August 1, 2023. In each monthly update, the insurer should provide a date by which the insurer expects to achieve full compliance with Regulation R087-20 in refunding all affected consumers.

If there are any issues with providing refunds to any segment of the insurer's book of business, then more detailed information regarding the affected policyholders and the plan for achieving refund issuance at the earliest opportunity should also be submitted via e-mail to pcinsinfo@doi.nv.gov.

C-5. Provide the following information to the Division at the conclusion of the refund process: (i) Total number of policyholders who received refunds; and (ii) The total dollar amount of refunds issued. This information should be sent via e-mail to pcinsinfo@doi.nv.gov once it is available.

How soon do insurers need to come into compliance with Regulation R087-20?

The Division emphasizes that the priority in implementing Regulation R087-20 is to achieve necessary financial relief for Nevada consumers during a time of unprecedented economic and personal hardship. Accordingly, the Division considers it imperative for all insurers to cease adverse credit-based re-scoring and implement any applicable consumer refunds as expeditiously as possible if this has not already been achieved. Regulation R087-20 is effective now, and insurers may begin issuing refunds even prior to submitting any filing or notification to the Division if that is practicable.

Does Regulation R087-20 affect any other refunds that insurers have issued in the past or may issue in the future?

No. Regulation R087-20 is entirely independent of any other insurer refund initiatives and does not limit, relate to, or interact with those other refund initiatives in any way.

May insurers raise premiums to counteract the aggregate impact of any consumer refunds pursuant to Regulation R087-20?

No. Any change in the policyholder's consumer credit report or insurance score which occurred during the effective period of the regulation has been determined to be unrelated to expected

losses and expenses for all lines of insurance. As such, it would not be appropriate for insurers to raise premiums for any consumer to offset any revenue lost from the inability to use this non-loss-related information. The Division will not approve any filing containing an insurer proposal to offset any refunds issued pursuant to Regulation R087-20.

Appendix A: Sample Rule Language Regarding Compliance with Regulation R087-20

Insurers may file the following rule language or substantively equivalent variations thereof within SERFF:

The following rule supersedes any other information to the contrary.

To comply with Nevada Regulation R087-20, [Name of Insurer] shall not increase any policyholder's premium or make an adverse underwriting decision as a result of any change in the policyholder's consumer credit report or insurance score which occurred on or after March 1, 2020, and on or before May 20, 2024. Any consumer who has already experienced such a premium increase at a previous renewal on December 29, 2020, or on a later date, will be refunded the amount of the increase attributable to changes in that consumer's credit information.

[Name of Insurer] may continue to consider updated consumer credit information if that updated consumer credit information results in a lower premium than would have otherwise applied.

If, pursuant to subsection 2 of NRS 686A.680, a policyholder or a policyholder's agent requests [Name of Insurer] to re-underwrite and re-rate the policyholder's policy based on a current consumer credit report or insurance score, then [Name of Insurer] may utilize an updated consumer credit report and/or recalculate the insurance score of the policyholder, if and only if the updated consumer credit report or recalculation results in the policyholder paying a lower premium than the policyholder would have paid absent the updated consumer credit report or recalculation.