

New York DFS Requests Information on Use of External Consumer Data and Information Sources in Life Insurance Underwriting

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On June 29, the New York Department of Financial Services (DFS) initiated an investigation into the use of external (i.e., not provided by the consumer) consumer data or information sources in connection with underwriting by issuing a Section 308 information request to all New York authorized life issuers ("308 Letter"). The outcome of the DFS inquiry may be similar to that of the recent DFS inquiry into data use by property casualty insurers. **The Information Request** The 308 Letter seeks to understand whether life insurers' use "external consumer data or information sources" in connection with either an "accelerated or algorithmic underwriting program" or "to supplement traditional medical underwriting." An accelerated or algorithmic underwriting program is defined in the 308 Letter as any non-medical underwriting program or criteria based on external consumer data or information sources. Attending physicians' statements, MIB reports, motor vehicle reports, inspection reports, and prescription drug database searches are carved out from the request. Following the initial inquiries, the 308 Letter asks:

1. which products this data or information is being used for,
2. whether there are limitations with respect to face amounts,
3. "what specific external data about life insurance applicants is being obtained,"
4. "how exactly is your company using the external data or information" and, if the data is being input into an algorithm or software, "a specific breakdown of the program and any weights or scales assigned to any external data or information,"

5. how the company obtains the data, the name of any vendors used, and the specific services the vendor provides,
6. what disclosures are being made to applicants,
7. "what process or recourse" applicants are provided if they receive an adverse underwriting decision, and
8. how external data or information about applicants is "utilized, stored and destroyed *after* the completion of the underwriting process?"

Insurer responses are due July 25. **Will History Repeat Itself?** Last year, the DFS issued a 308 letter to auto insurers regarding their use of educational level attained and/or occupational status in connection with initial tier placement. In May 2017, the DFS promulgated a proposed amendment to 11 NYCRR 154. The proposed amendment would ban the use of educational and occupational factors in establishing or moving insured tier placements, unless the insurer can demonstrate that the use of these factors does not violate New York Insurance Law, in particular Section 2303, which requires that rates not be excessive, inadequate, or unfairly discriminatory. The proposed amendment's background section, states that, in applying unfair discrimination laws, "accepted actuarial standards and New York law require that a reasonable relationship exist between the characteristics of a class and the hazard insured against." The comment period for the proposed amendment to 11 NYCRR 154 closed on Monday, July 2. If true to form, the DFS will seek to ensure that life insurers' use of external data and information sources in underwriting is based on accepted actuarial standards. This may result in the DFS explicitly prohibiting the use of certain factors, or directing how certain factors may be used, in accelerated or algorithmic underwriting programs or in supplementing medical underwriting. Carlton Fields will continue to monitor this issue as it develops.

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