

New York DFS proposes to restrict auto insurers' use of education and occupation as rating factors

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The New York Department of Financial Services (DFS) has proposed a regulation restricting the use of education and occupation criteria by private passenger auto insurers in setting rates. The proposed DFS regulation implements a statutory mandate that rates be neither excessive or inequitable, N.Y. Ins. Law § 2303, and can be accessed [here](#).

Based on information compiled from insurers' responses to a mandatory data call showing that some insurers use an individual's education level in placing that policyholder into a relatively unfavorable initial rating tier, DFS Superintendent Maria T. Vullo said: "Under this proposed regulation, auto insurers cannot use educational and occupational status in their insurance underwriting, unless they can clearly demonstrate a plausible relationship to the risk of loss."

The proposed regulation, new 11 N.Y.C.R.R. Section 154.6, prohibits a private passenger automobile insurer from using either educational level or occupational status as a factor in rating, unless the insurer (a) satisfies each of the following conditions and (b) "demonstrates to the [DFS's] satisfaction that its use of the factor complies with Article 23 of the Insurance Law," to wit:

1. The insurer must demonstrate to DFS's satisfaction that each particular occupation grouping "has a reasonable relationship to an insured's driving ability or habits such that an insurer would predictably suffer a greater or lesser risk of loss";
2. An unemployed person who was previously employed, including any retiree, shall remain in the group designated for his or her previous occupation, without regard to current employment status;
3. An insured's income shall never be used as a permissible risk factor;
4. The insurer must designate homemakers and those persons who have never been employed as a separate group, and such designation must be a neutral rating factor;
5. If an insured's occupational status influences the placement, the insurer must address a change in the insured's occupational status at renewal, such that the insured has an opportunity to reduce premiums;
6. Any rate differential based on occupation status must be "commensurate with the related reduction of loss costs and associated premiums";
7. Where insufficient data exists for a particular occupation, the insurer must provide DFS with a reasonable explanation for placing the occupation in a group with a similar one.

Insurers that wish to use education and/or occupation factors for initial tier placement must file, and obtain DFS approval for, a set of underwriting rules which satisfy these requirements. Insurers that currently use such criteria must file an amended set of rules within 90 days of the regulation's effective date. The regulation will take effect 45 days from May 17, 2017 (i.e., July 3, 2017).

New York similarly restricts underwriting based on the geographical location of a fire or automobile insurance risk, but allows insurers to use "sound underwriting and actuarial principles reasonably related to actual or anticipated loss experience." See Ins. L. §3429. A similar restriction applies to using age, sex or mental status, as rating factors

which must be supported by " actuarially sound statistical data." See Ins. L. §2331. New York's proposed regulation restricting use of educational and occupational factors—unless similarly supported— adopts the same approach as these longstanding statutory provisions.

Insurers seeking to rate private passenger auto policies based on education levels or occupational status will need to furnish credible and rigorous actuarial data showing how these factors affect losses. Anecdotal evidence and conclusory assertions will not suffice. It remains to be seen whether DFS will apply the actuarial and statistical proof requirements so stringently that virtually no insurer will be able to utilize education level and occupational status as rating factors for private passenger auto policies in New York.

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