

CORONAVIRUS RESOURCE CENTER**DFS Data Requests**

May 14, 2020

Throughout the course of the pandemic so far, we have seen a number of insurance regulators requesting detailed information from insurance companies about their plans and preparedness for COVID-19-related loss experience, in a process aimed at collecting as much information as possible before taking any regulatory action. The first of the state insurance regulators to make such a request was the New York Department of Financial Services (“DFS”) which in mid-March issued a number of data calls to insurance companies, followed closely by other state insurance regulators with similar requests.

DFS has now issued additional important data requests to both life and property-casualty insurers, described below. As with previous information requests, we at Debevoise are prepared to help clients in interpreting the new data requests, assist in coordinating responses and act as a confidential clearinghouse for client questions.

DFS issued a Section 308 letter (the “Life 308 Letter”) yesterday to all authorized life insurers seeking detailed information about their New York life insurance products, including changes to risk and changes to available products and their pricing expected as a result of the impact on COVID-19 on mortality and capital markets, responses to which are due on or before May 19. The DFS also seeks extensive information on insurers’ use of accelerated underwriting and external data sources, which harkens back to its landmark 2019 circular letter on this topic, responses to which are due on or before May 29.

DFS also issued yesterday another Section 308 letter (the “P&C 308 Letter”) to all authorized property-casualty insurers seeking detailed information about their New York commercial liability policies, including any relevant exclusions or conditions to coverage thereunder. The P&C 308 Letter requires each insurer to submit a response to

DFS describing the benefits under its policies and the protections provided in connection with COVID-19 as the state begins the process of reopening. Responses are due on or before May 21.

The following is a description of the substance of each of the Life 308 Letter and the P&C 308 Letter:

The Life 308 Letter focuses on two broad areas of concern: (1) business, sales, and underwriting practices related to recent changes in the capital markets and the impact of COVID-19 and (2) the use of accelerated or algorithmic underwriting.

The Life 308 Letter requires companies to provide DFS with a description of the following with respect to business, sales and underwriting practices:

- the company's current practices and experience, including changes due to mortality risk, morbidity risk, interest rates, default risk and risk of financial loss due to recent changes in equity and other financial markets;
- the primary products that the company is currently offering, as well as how many life insurance policies and annuity contracts the company issued and declined in each of the first 4 months of 2020 and whether these products are targeted to specific groups (e.g. age, other demographics);
- whether the company is seeing an uptick, a flattening or a decrease in sales during this period, including replacement transactions, and whether any one month was notable with respect to volume of applications received or policies or contracts issued;
- whether there are any products or policies that have recently been temporarily suspended or discontinued, or are not being sold, in New York;
- whether there have been changes made to maximum face amounts or benefits, or to age or health limits on new life insurance and annuity sales, as well as an explanation of when any such changes were made and the reasoning behind them;
- any changes the company has made in life insurance and annuity product pricing for new sales;
- any changes the company has made in life insurance and annuity pricing for existing customers;
- the role, if any, the company's reinsurance partners played in changes made to product offerings or benefits, and any changes the company has experienced and

expects to experience in the future with respect to reinsurance pricing and availability;

- any changes the company has made in the underwriting of life insurance and annuity products, including changes in the use of accelerated underwriting ;
- any new life insurance and annuity product offerings and filings of policy forms the company plans on making and the business and consumer needs any such new products are intended to address, along with a projected timeframe of such changes and a description of whether any new offerings are a direct response to the current economic climate or if they were already being planned prior to the downturn; and
- how much notice the company is providing to its sales force before implementation of new products or changes to existing products.

The Life 308 Letter requires companies to provide DFS with a description of the following with respect to the use of accelerated or algorithmic underwriting:

- whether the company offers an accelerated or algorithmic underwriting program; and
- whether the company uses external consumer data or information sources to supplement medical underwriting, other than certain enumerated sources.

If the company does offer such an underwriting program or use such external sources, the company should also provide DFS with a description of the following:

- which products the external data or information sources are used for, including all form numbers;
- whether there are any limitations on the use of such external data or information sources in making an underwriting determination and if so, a description of the limitations;
- the specific external data or information about life insurance applicants being obtained;
- a specific explanation of how the company is using the external data or information about life insurance applicants and if the information is being input into an algorithm or underwriting software, a specific breakdown of the program and any weights or scales assigned to any external data or information;

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- how the company obtains any external data or information used and if it is obtained from an outside vendor, the name of the vendor and the specific services provided;
 - how the company is disclosing to life insurance applicants what and how external information is being used in underwriting;
 - the process or recourse provided for applicants that receive an adverse underwriting decision as a result of the external data or information; and
 - how any external data or information about life insurance applicants is being utilized, stored and destroyed after the completion of the underwriting process, including instances in which a policy is and is not ultimately purchased.

The P&C 308 Letter requires companies to provide DFS with the following:

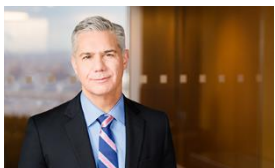
- an explanation of the existence of communicable disease or similar exclusions in commercial liability insurance and other policies that might be relied upon to deny coverage for claims alleging negligence or other wrongdoing in connection with COVID-19, whether due to transmission or exposure in a workplace or business environment or otherwise. Examples of standard language should be provided for each type of policy;
- an explanation of any addition or planned addition of a COVID-19-related exclusion to any policy in New York and a projection of timeframes for any such changes;
- an explanation of any decision or plan to stop offering any products, or make any new product filings in New York, in any way due to COVID-19-related risks or existing adverse economic conditions and a projection of timeframes for any such changes; and
- a list of the types of current policies for which the pricing included recognition for potential coverage exposure for COVID-19-like losses, along with an estimation of the portion of the premium charged for such exposure for each type of policy.

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For more information regarding the legal impacts of the coronavirus, please visit our [Coronavirus Resource Center](#).

Please do not hesitate to contact us with any questions.

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