

July 1, 2024

RE: AFFORDABLE HOUSING UNDERWRITING AND RATING

The New York State Department of Financial Services (“DFS”) has issued [Circular Letter No. 6 \(2024\)](#) imposing restrictions on affordable housing underwriting and rating. The Circular Letter explicitly applies to excess line insurers and is intended to address the requirements contained in [Insurance Law §3462](#), which was enacted this past spring. The Circular Letter informs insurers, including excess line insurers, that they cannot:

1. Inquire about on an application, or
2. Cancel, refuse to issue, refuse to renew or increase the premium of a policy, or
3. Exclude, limit, restrict, or reduce coverage under a policy

based on the following:

- A. The residential building contains dwelling units that must be affordable to residents at a specific income level pursuant to a statute, regulation, restrictive declaration, or regulatory agreement with a local, state, or federal government entity,
- B. The real property owner or tenants of such residential building, or the shareholders of a cooperative housing corporation receive rental assistance provided by a local, state, or federal government entity, including, but not limited to, the receipt of federal vouchers issued under [Section 8 of the United States Housing Act of 1937](#) (42 U.S.C. § 1437f),
- C. The level or source of income of the tenants of the residential building or the shareholders of a cooperative housing corporation; or
- D. Whether such residential building is owned by a limited-equity cooperative, owned by a public housing authority, or owned by a cooperative housing corporation subject to [Private Housing Finance Law](#) Article 2, 4, 5, or 11.

If an excess line insurer’s rates are based on the insured real property being an affordable housing development or containing affordable housing units, it must revise its rates to conform to the change in law.

Please note that excess line insurers are not prohibited from canceling, refusing to issue, refusing to renew, or increasing the premium of an insurance policy, or excluding, limiting, restricting, or reducing coverage under such policy due to other factors that are permitted, or not prohibited by any other section of the Insurance Law.

If you have any questions, please email ElanyInfo@elany.org. Please ensure the domain @elany.org is not blocked by your spam filter.