



Report to Agency on Public Comment Period

Date: February 12, 2021

To: Department of Consumer and Business Services

From: Raven Collins, Policy Analyst

Subject: Oregon Division of Financial Regulation Proposed Bulletin on Consumer Disclosure Requirements for Personal Auto Policies with Step-Down Limits

Comment Period Start: January 22, 2021
Comment Period End: February 5, 2021

Background

Bulletin DFR 2021-2 was developed to provide clarification of consumer disclosure requirements of step-down limits in personal auto insurance policies in accordance with Oregon law. ORS 731.988; ORS 742.005; ORS 742.009; ORS 742.450; ORS 742.454; ORS 742.464; ORS 742.530; ORS 746.110; and ORS 806.080.

Summary of Written Comments

There was a comment period from January 22, 2021 through February 5, 2021 for Bulletin DFR 2021-2 in which no comments were received. This bulletin clarified and replaced Bulletin DFR 2020-19. The comments received for Bulletin DFR 2020-19 are summarized below.

DFR received twenty-five comments during the first comment period (February 19, 2020 through March 19, 2020) from: the American Association of University Women of Oregon; American Property Casualty Insurance Association; National Association of Mutual Insurance Companies and Northwest Insurance Council; Oregon Trial Lawyer's Association; Service Employees International Union Local 503; and twenty individuals. Twenty-two comments from consumers and consumer advocates expressed concern about the use of step-down limits. Three comments from the insurance industry were generally supportive of the clarification provided for notice and acknowledgement of step-down limits.

Several of the comments from individual consumers expressed concern about the use of step-down limits in insurance policies. Specific circumstances were highlighted in these comments as negatively affecting consumers when step-down limits are used. These included circumstances such as caregivers and home healthcare workers who help Oregonians with disabilities, the effects of the

COVID-19 pandemic, emergency drivers, those with learner's permits, those under 18 years old, and those who transport foster children for the state. Several commenters expressed concern that the insurance-buying public would not understand step-down policy changes, and would need to know exactly what is being purchased.

Many comments provided feedback on the notice and acknowledgement if a step-down limit were present in the policy. Proposed solutions included step-down limits being clearly identified and highlighted, including specifications about location of specific dollar amounts and disclosure formats. Other comments expressed that policies should be initialed and signed, and asked for clarification if signatures should be required at issuance, renewal, or when any change is made to the policy. Another comment mentioned the insurer should bear the burden of proving that the consumer knowingly elected reduced coverage.

One comment requested clarification that policies with existing step-down clauses remain valid, and remain in effect until withdrawn by the policyholder in writing. Multiple comments inquired about requiring specific dollar amounts of step-down limits – pointing to increasing complexity of the declaration page; difficulty quantifying specific loss cost savings; and the lengthy process of redrafting and refile all policy forms before the 2021 deadline. Another commenter sought clarification on whether the bulletin was applicable to commercial auto insurance policies.

Discussion

Commenters expressed varying views on step-down limits generally and the effect of the guidance in the proposed bulletin. Personal auto policies that currently utilize step-down limits may do so without clearly notifying the policyholder of this large decrease in coverage. Step-down limits are permitted under ORS 806.070, and could result in consumer harm without proper notice and disclosure of the reduced liability limits in a personal auto policy. The proposed bulletin allows insurers to continue using step-down limits, but it sets minimum consumer notice and disclosure requirements if step-down limits are used.

Some comments expressed concern about caregivers and home healthcare workers having reduced liability limits, especially in light of the coronavirus pandemic. These home healthcare workers would likely either be covered by a commercial auto policy through their employer, or would be deemed a permissive user of their client's vehicle, having the same coverage as the named insured, unless excluded by name in the policy.

Concerns were expressed by industry stakeholders on the ability to quantify specific loss cost savings related to step-down limits through a rate filing. The bulletin addresses this concern by allowing insurers to provide an explanation of how the filed rating plan contemplates the reduction in coverage.

Comments from industry stakeholders recommend that the bulletin be applied only to personal lines policies, because step-down limits have been standard within commercial policies for decades. Commercial policyholders tend to be more sophisticated insurance buyers and do not require the same level of disclosures as consumers. Considering these factors, DFR finds that limiting the scope of the final bulletin to personal lines policies is reasonable.

DFR recognizes that time is needed for development of consumer disclosures and filing changes to

be made. Full implementation is expected within one year after the bulletin is published.

The bulletin was revised in January 2021 to clarify the following (changes noted in italics):

In order to be approved, policy language must clearly state the conditions under which the reduced liability limits apply, list step-down limits in specific dollar amounts, *and state the lower limit in close proximity to the higher limit*. Insurers must also submit a rate filing that reflects the reduction in coverage, and *obtain a written acknowledgement from the policyholder at issuance and provide a separate disclosure document to the policyholder at each renewal*.

Summary

No written comments were received during the second public comment period, therefore I recommend adopting the proposed bulletin with no changes.

Raven Collins
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