

Assessment of public comments on the revised proposed Fourth Amendment to 11 NYCRR 28 (Insurance Regulation 42), Third Amendment to 11 NYCRR 33 (Insurance Regulation 120), and Third Amendment to 11 NYCRR 66 (Insurance Regulation 76).

The New York State Department of Financial Services (“DFS”) received comments from an association of bail agents (“agents’ association”) and a coalition of advocate organizations (“advocate coalition”).

The agents’ association and advocate coalition made several comments that they previously submitted and that DFS addressed in its assessment of public comments, which were published in the State Register on July 31, 2019 (the “Assessment”). See the Assessment for detailed responses to those comments. DFS received the following new comments:

Comment: The advocate coalition requested that DFS engage with impacted parties, other advocates, and service providers on both a regular and ongoing basis to ensure enforcement, assess the efficacy of changes, and address evolving industry practices beginning immediately.

Response: DFS looks forward to working with all stakeholders to improve consumer protection and raise the standards of integrity in the bail industry. Since this comment does not directly relate to the language of the revised amendment, DFS did not make any changes to the amendment in response thereto.

Comment: The advocate coalition requested that DFS clearly lay out the process and timeline it is undertaking to create model documents and that DFS permit advocates and impacted people to participate through an open and transparent process.

Response: DFS plans to work with stakeholders to expeditiously promulgate model bail contracts. Since this comment does not directly relate to the language of the revised amendment, DFS did not make any changes to the amendment in response thereto.

Comment: The advocate coalition questioned the elimination of former section 28.8(b), which stated that “[n]o interest, fee, or other financing or service charge shall be permitted for payment of premium by installment unless the bail agent is licensed as a premium finance company pursuant to Banking Law section 555(1).”

Response: Bail agents may not offer interest-free financing and loans to clients because it would constitute an impermissible inducement under Insurance Law section 2324(a). See OGC Opinion 07-06-10 (June 12, 2007).

Comment: The advocate coalition stated that DFS’s Assessment suggest that consumers who have a dispute over the timely return of collateral must engage with the insurer before bringing a complaint to DFS. The advocate coalition believes that it does not make sense for consumers to be told in disclosure forms to make complaints to DFS, except in so far as those complaints relate to collateral return, in which case they should complain to an insurer whose name they might not even know. The advocate coalition stated that, in its experience, insurers litigate these claims, and bail consumers are not typically well-positioned to proceed through costly litigation in civil court.

Response: Under the revised amendment, consumers have a path to recourse through the insurer when a bail agent fails to timely return collateral. Importantly, the revised amendment requires bail agents to provide consumers with standardized forms that contain the name of and contact information for the insurer so the consumer will have the information necessary to contact the insurer and requires the insurer to hold and maintain monetary collateral. However, DFS would like to be notified regarding a bail agent’s failure to timely return collateral as it may reflect on that agent’s competency and trustworthiness.

DFS did not make any changes in response to this comment.

Comment: The advocate coalition requested that in cases where bail agents are currently in possession of collateral exceeding 10% of the bail amount, DFS should require bail agents and insurers to return to consumers all collateral that violates the new “reasonable” standard.

Response: The proposed amendment cannot alter a contract into which the parties entered prior to the amendment being promulgated. As a result, DFS did not make any changes in response to this comment.

Comment: The advocate coalition requested that DFS work closely with the advocates to take action in the areas that DFS believes are outside the scope of this proposed amendment. This includes timeframes for release from custody; records collection; public reporting and accountability, including the adequacy and accessibility of public information; audits; limits on surrender; and enforcement of the law and regulations. The advocate coalition also commented that, given the historic and ongoing failures of compliance with DFS regulations and “unscrupulous activity” by persons in the bail industry, it is important that DFS conducts regular and thorough investigations of the bail industry and carries out proactive enforcement.

Response: DFS looks forward to working with all stakeholders to improve consumer protection and raise the standards of integrity in the bail industry. DFS did not make any changes to the revised amendment in response to this comment.

Comment: The advocate coalition stated that in DFS’s Assessment, DFS refers to 10% as the price of a partially secured bond. The advocate coalition explained that it is actually the maximum rate of a partially secured bond and the rate may be set lower or a deposit may not be required at all.

Response: DFS appreciates the clarification. DFS did not make any changes to the revised amendment in response to this comment.

Comment: The advocate coalition stated that there is a typographical error in section 28.2(a), which strikes the subject from the first sentence.

Response: DFS amended the revised amendment to fix the typographical error.

Comment: The advocate coalition recommended that in section 28.9, DFS add “promptly” before “released.”

Response: Premium is earned upon release of the principal. Therefore, DFS may not condition return of premium on the timeliness of that release. DFS did not make any changes to the revised amendment in response to this comment.

Comment: The agents' association stated that section 28.10, which requires that an agent secure the release of the principal, is designed to prevent the collection of courier fees and not to actually secure the release of the principal.

Release: This section is intended to prevent a bail agent from imposing fees on consumers for effectuating the release of principal (including, but not limited to, fees for courier services) and to effectuate a principal's prompt and actual release from custody.

DFS did not make any changes to the revised amendment in response to this comment.

Comment: The agents' association proposed that DFS permit the deduction from collateral of the fees permitted in section 28.8, specifically, "enforcement fees generated from return to court based on the issuance of a warrant, a warrant and forfeiture, and or the revocations of the bond by the indemnitor, the payment of the balance of any premium owed, and fee incurred for court ordered monitoring, any fees incurred for the filing of and granting of a remission of a forfeiture." The agents' association proposed that if the bond is revoked for any other reason listed in the contract, then fees may not be deducted from the collateral.

Response: As stated in the DFS Assessment, expenses and fees may not be deducted from collateral under any circumstances, including those listed in the comment. A bail agent may seek reimbursement for the out-of-pocket costs expressly permitted in section 28.8 but may not use the collateral as the source of those funds. The collateral is pledged to secure the bond, not to ensure payment for the bail agent or a third party.