

Assessment of Public Comments on the Proposed Sixth Amendment to 11 NYCRR 20 (Insurance Regulations 9, 18, and 29).

The Department of Financial Services (“DFS”) received comments from trade organizations representing independent insurance agencies (“I-agency trade”), insurance brokers (“broker trade”), and insurance agents (“agent trade”); continuing education (“CE”) course providers; the executive director of a university’s risk management and decision processes center (“executive director”); and insurance producers. The executive director expressed support for the amendment, explaining that the amendment would improve flood risk communication and help ensure that consumers receive the insurance that best fits their needs at an appropriate price.

Comment: The I-agency trade asked whether an insurance producer renewing a license on or after April 1, 2022 must meet the new CE requirements during the CE cycle beginning on or after April 1. It noted that many insurance producers have already earned CE credits toward their 2022 license renewals and suggested that the amendment take effect at least two years after the amendment’s adoption.

A CE course provider suggested that DFS either push back the effective date by three to sixth months or change the effective date so that it applies to all licensees effective April 1, 2022.

The agent trade commented that the April 1, 2022 effective date does not provide enough time to educate insurance producers on the new CE requirements; for CE course providers to develop compliant courses; or for insurance producers to attain the necessary CE credits. The trade asked that DFS change the effective date to January 1, 2023.

Response: A licensed insurance producer or public adjuster (collectively, “licensees”) whose license renews on or after April 1, 2022 must demonstrate that the licensee has met the new CE requirements when renewing the license. DFS first published the regulation on its website for pre-proposed outreach in May 2021 and prior thereto, discussed the draft amendment with industry trade organization representatives. DFS pushed

back the effective date to April 1, 2022 based on comments it received during the May outreach. In addition, courses on ethics, the New York Insurance Law, and flood insurance, for example, are already available and licensees can take these courses currently. As a result, licensees have had sufficient notice that DFS planned to adopt these new CE requirements and an opportunity to take these courses. Trade organizations already should have been educating their members on this proposed amendment and licensees should have started planning accordingly. In addition, DFS does not believe pushing back the effective date to two years after adoption is reasonable.

The amendment's effective date is consistent with the implementation of other New York CE course changes. For example, when the continuing legal education program rules were revised to require New York attorneys to take a course on diversity, inclusion, and the elimination of bias, the change applied to all attorneys due to re-register on or after July 1, 2018.

Therefore, DFS did not make any changes in response to these comments.

Comment: The I-agency trade asked whether the definition of "Insurance Law instruction" includes 23 NYCRR 500, which pertains to cybersecurity.

Response: The amendment defines "Insurance Law instruction" in relevant part as courses "related to a licensee that include an overview of the provisions of the Insurance Law and regulations promulgated thereunder that are relevant to a licensee...." Therefore, a course on 23 NYCRR 500 would fall under the definition of "Insurance Law instruction" because DFS promulgated Part 500, in part, under the Insurance Law and it is relevant to licensees. The sections listed in the definition are just examples and are not intended to be limiting. Therefore, DFS did not make any changes in response to this comment.

Comment: The I-agency trade questioned whether DFS would approve a CE course on general insurance agency operations that includes topics on diversity, inclusion, and elimination of bias; ethics and professionalism; and the Insurance Law.

Response: Because DFS would approve such a course it did not make any changes in response to this comment.

Comment: The broker trade and agent trade expressed concern about DFS devoting a large percentage of overall CE hours to flood insurance. The broker trade explained that while many insurance brokers can sell flood insurance, only a few do. The agent trade commented that requiring such a large percentage of flood insurance instruction will adversely affect the amount of CE an insurance producer may receive in other areas. The broker trade and agent trade asked DFS to either remove the enhanced flood CE requirement or reduce it to one hour.

Response: An insurance producer licensed to sell property/casualty insurance who does not sell flood insurance through the National Flood Insurance Program (“NFIP”) must take only one credit hour of flood insurance instruction out of the total 15 credit hours the Insurance Law requires, which is not burdensome. It is DFS’s understanding that consumers, particularly in New York City, are undersold flood insurance, often because insurance producers do not fully understand the NFIP or when a consumer may need flood insurance. With flooding becoming more common, such as the flooding that occurred with Tropical Depression Ida, it is especially important that insurance producers licensed to sell property/casualty insurance, including flood insurance through the NFIP, understand the NFIP and when a consumer needs flood insurance. In addition, the mandatory CE requirements are just minimums. Insurance producers may take additional CE courses in other areas of instruction as they want. Therefore, DFS did not make any changes in response to this comment.

Comment: The broker trade commented that many insurance brokers have several designations, including the certified insurance counselor designation, which requires 16 CE hours annually. The broker trade stated that the amendment now would require these brokers to take 39 CE hours every two years.

Response: The amendment does not change the overall number of required CE hours. Rather, it just specifies the areas in which a licensee must take a certain minimum number of CE hours. Neither the Insurance Law nor regulations promulgated thereunder requires an insurance broker to obtain a designation. CE

requirements for the designation are separate and apart from the Insurance Law mandated CE requirements. Therefore, DFS did not make any changes in response to this comment.

Comment: The broker trade stated that it understands the importance of instruction on diversity, inclusion, and elimination of bias; ethics and professionalism; and the Insurance Law, but asked that DFS consolidate the requirements from three hours to two hours or rotate the requirements for these areas of instruction.

Response: DFS believes it is important that licensees receive instruction in these areas. Three credit hours out of a total of 15 credit hours every two years is not burdensome. Therefore, DFS did not make any changes in response to this comment.

Comment: An insurance producer commented that it is “ridiculous” that the amendment requires producers to devote almost one half of the 15 mandatory CE hours to instruction “involving nothing to do with insurance” and took issue with the flood insurance requirements. The insurance producer questioned whether the reference to an insurance producer selling flood insurance through the NFIP was erroneous because almost no producers sell insurance through the NFIP but rather conduct business directly with insurers that handle the insurance business for the NFIP.

Response: DFS disagrees that the areas of instruction in the amendment have nothing to do with insurance. They all pertain to insurance and the duties of a licensee selling, soliciting, or negotiating insurance or investigating or adjusting claims. In addition, DFS disagrees that the reference to the NFIP is erroneous. Whether the producer deals directly with the NFIP or with an insurer handling the insurance for the NFIP, it is still flood insurance through the NFIP and not private flood insurance sold by a private insurer. Therefore, DFS did not make any changes in response to this comment.

Comment: An insurance producer who had taken two CE courses totaling 21 credit hours in 2021, which included at least one hour of Insurance Law instruction, one hour of ethics instruction, one hour of diversity instruction, and one to three hours of flood insurance instruction, commented that it is unfair that these courses

would not count toward license renewal and stated that DFS is trying to make money at the expense of insurance producers.

Another insurance producer who completed a 15-credit course in 2021 pertaining to insurance deception in the COVID age toward the producer's October 2022 license renewal expressed concern that the course will no longer be acceptable for the producer's license renewal. The producer requested that DFS waive the amendment requirements for producers who already completed their CE for their 2022 license renewal.

Another insurance producer asked whether a producer whose license period runs from April 10, 2021 to April 10, 2023 and who has already taken CE courses can apply those courses to the producer's April 10, 2023 license renewal.

Response: If a license renews on or after April 1, 2022 and the licensee took courses in the areas of instruction set forth in the amendment prior to DFS adopting the amendment, then the courses can still count toward the license renewal. If the courses do not fall within the areas of instruction set forth in the amendment, then they will not count for the purpose of satisfying the requirements in the amendment and the licensee will need to take courses in these areas prior to license renewal. As stated above, DFS already pushed back the effective date of this amendment based on comments it received during the pre-proposed outreach. Licensees were on notice that DFS intended to adopt the requirements set forth in the amendment and should have planned accordingly. In addition, DFS does not earn any money by requiring licensees to take CE courses. Therefore, DFS did not make any changes in response to these comments.

Comment: An insurance producer asked whether the amendment applies to all insurance producer licensing lines.

Response: Yes, the amendment applies to all insurance producer licensing lines.

Comment: A CE course provider asked whether a student who has a “BR/PC/LA/LB” license may take a home-study course that provides seven and a half hours in the areas of instruction in the amendment and seven and a half hours in areas of instruction pertaining to life and health insurance for a total of 15 CE hours.

Response: The example set forth in the comment makes certain assumptions that are inaccurate. Insurance Law § 2132(d)(1)(A) requires a licensee to complete courses, programs of instruction, or seminars that are approved for the class of license being renewed. If the licensee holds two or more license classes, then that could mean the licensee must take 30 or more credit hours (15 credit hours per license class). However, DFS has approved courses for multiple or all license classes, allowing a licensee with multiple license classes to meet the requirements for each class without taking more than 15 credit hours. It is likely that many courses developed to comply with this amendment will be approved for multiple or all license classes.

Comment: An insurance producer, in preparation for a 2022 license renewal, took a four-hour flood CE course offered by the Federal Emergency Management Agency. The producer asked whether DFS will allow a producer to repeat flood courses to satisfy the CE requirements.

Response: DFS will not allow insurance producers to repeat flood courses to satisfy the CE requirements unless DFS determines there are not enough flood courses available. However, the four-hour flood course taken prior to final adoption of this amendment can count toward satisfying the requirements of this amendment for a 2022 license renewal.

Comment: An insurance producer asked whether bridge courses will still be available after DFS adopts this amendment.

Response: Yes, bridge courses will still be available and the new requirements, other than the flood requirements, are appropriate subject matter for bridge courses.

Comment: An insurance producer asked whether the amendment applies to non-resident insurance agents and non-resident independent adjusters.

Response: The amendment does not apply to non-resident insurance agents if the reciprocity requirements set forth in Insurance Law § 2136 are met. This amendment does not apply to non-resident independent adjusters because the Insurance Law does not require CE for independent adjusters.

Comment: An insurance agent with an inactive agent's license commented that insurer employees who are not required to have licenses to do their jobs should be exempt from having their licenses revoked after two years of being inactive.

Response: DFS assisted this insurance agent when the agent first contacted DFS about the issue. Since it is outside the scope of this amendment, DFS did not make any changes to the amendment in response thereto.