

Regulatory Impact Statement for the Proposed Twentieth Amendment to 11 NYCRR 216 (Insurance Regulation 64)

1. Statutory authority: Financial Services Law sections 202 and 302 and Insurance Law sections 301, 2601, 2618, and 3412.

Financial Services Law section 202 establishes the office of the Superintendent of Financial Services (“Superintendent”).

Financial Services Law section 302 and Insurance Law section 301, in material part, authorize the Superintendent to effectuate any power accorded to the Superintendent by the Financial Services Law, Insurance Law, or any other law, and to prescribe regulations interpreting the Insurance Law.

Insurance Law section 2601 prohibits insurers from engaging in unfair claim settlement practices and requires insurers to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

Insurance Law section 2618 sets forth standards for the prompt investigation and settlement of claims during natural disasters and authorizes the Superintendent to promulgate regulations to implement this section.

Insurance Law section 3412 sets forth requirements for physical damage insurance covering private passenger automobiles, including requirements regarding salvage and total losses.

2. Legislative objectives: To establish standards insurers must observe to settle claims promptly and fairly and to authorize the Superintendent to promulgate regulations implementing these standards.

3. Needs and benefits: The amendment deletes references to the titles of valuation manuals that the Department of Financial Services (“Department”) has approved consistent with amendments to other regulations in which references to the names of specific entities have been replaced with generic references, such as to a designated organization. This amendment eliminates the need to amend the regulation whenever an approved manual has undergone a change in name, edition, or publisher.

The amendment also eliminates the requirement that the Department review the efficacy of the total loss provisions at least every five years as an unnecessary requirement. The requirement is unnecessary because the total loss provisions have been in effect for 25 years and have worked well for consumers and insurers alike, and repealing this requirement does not eliminate the Department's authority to review the efficacy of these provisions when the need arises.

Regarding the right of recourse, an insured has 35 days from the date of the insurer's claim payment within which to invoke such right, which is a remedy for when an insurer's total loss settlement is insufficient to allow an insured to purchase a comparable vehicle. The amendment clarifies that the 35-day period for an insured to invoke the right of recourse is to be viewed as an outside limit and that receipt of the claim payment is not a precondition for the insured to attempt to locate a substantially similar vehicle before invoking the right of recourse. This amendment clarifies that those insureds who conduct a diligent search immediately after receiving the insurer's offer will be able to exercise their right of recourse. The amendment also mandates that an insurer communicate the right of recourse to the insured when a settlement offer is made.

Finally, to avoid any potential confusion, the amendment clarifies how the rule applies in conjunction with new Insurance Law section 2618.

4. Costs: This amendment may impose compliance costs on insurers subject to it because it requires an insurer to include in a settlement offer to an insured a written notice of the insured's right of recourse, and that the insured may exercise this right at any time from the date of the notice up to 35 calendar days after the mailing of the claim payment. The notice also must outline the right of recourse process. However, any costs to an insurer should be minimal since the insurer will merely need to update the settlement offer document or package.

The amendment will not impose any costs on the Department.

5. Local government mandates: This amendment does not impose any program, service, duty, or responsibility upon a county, city, town, village, school district, fire district, or other special district.

6. Paperwork: This amendment may impose additional paperwork on insurers subject to it because it requires an insurer to include in a settlement offer to an insured a written notice of the insured's right of recourse, and that the insured may exercise this right at any time from the date of the notice up to 35 calendar days after the mailing of the claim payment. The notice also must outline the right of recourse process. For insurers who are already providing notice of the right of recourse, the proposed regulation would potentially require a minimal change to the language of the notice. Any insurer that is not currently providing notice of the right of recourse would need to prepare additional language and add it to the standard settlement offer or as a stand-alone document that accompanies the settlement offer. The approach each insurer takes to complying with this requirement would impact the amount of additional paperwork that the proposed amendment entails. Given that insurance companies operate in a highly regulated industry and are routinely required to make and update consumer disclosure documents, the Department assesses that the burden imposed by this requirement will be minimal. The Department further assesses any additional burden imposed by this requirement to be outweighed by the benefit to protecting insured's right of recourse.

7. Duplication: This rule does not duplicate, overlap, or conflict with any existing state or federal rule.

8. Alternatives: The Department considered amending 11 NYCRR 216.7(b)(12) to codify the long-standing position of the Department that if an insurer takes a deduction for previous damage or prior condition of a motor vehicle in settling a claim, the deduction must take into account the age of the motor vehicle at the time of loss, with a maximum deduction calculated according to the model year of the motor vehicle. However, after receiving comments as part of the Department's pre-proposed outreach, the Department decided not to amend Section 216.7(b)(12) because a total loss product that the Department approved and other technological advances in calculating appropriate deductions for previous damage and prior condition since the advent of the Department's position already take into account the factors set forth in the proposed amendment in a way that is more objective. Therefore, the amendment is not necessary.

The Department also considered not amending the other provisions of 11 NYCRR 216 as set forth in the proposed rule. However, the Department decided it was prudent to eliminate specific names of valuation manuals in favor of generic references that can be specified on the Department's website and ensure that an insured's right of recourse is protected if the insured conducts a diligent search after receiving an insurer's offer. The Department also felt it was necessary to clarify how the rule applies in conjunction with new Insurance Law section 2618 to avoid any confusion and to remove the unnecessary requirement that the Department review the efficacy of the total loss provisions at least every five years.

9. Federal standards: The amendment does not exceed any minimum federal standards for the same or similar subject areas.

10. Compliance schedule: Insurers will need to comply with this amendment upon publication of the Notice of Adoption in the State Register.

Regulatory Flexibility Analysis for Small Businesses and Local Governments for the Proposed Twentieth Amendment to 11 NYCRR 216 (Insurance Regulation 64)

1. Effect of the rule: State Administrative Procedure Act (“SAPA”) Section 102(8) defines a small business to mean “any business which is resident in this State, independently owned and operated, and employs one hundred or less individuals.” There may be insurers affected by the amendment that may be small businesses, but the Department of Financial Services (“Department”) does not know how many.

The amendment does not affect local governments because the rule does not apply to any local government.

2. Compliance requirements: This amendment requires an insurer to include in its settlement offer to an insured a written notice of the insured’s right of recourse, and that the insured may exercise this right at any time from the date of the notice up to 35 calendar days after the mailing of the claim payment. The notice also must outline the right of recourse process.

No local government will have to undertake any reporting, recordkeeping, or other affirmative acts to comply with the amendment because the rule does not apply to any local government.

3. Professional services: An insurer that may be a small business should not need any professional services to comply with this amendment.

No local government will need professional services to comply with the amendment because the rule does not apply to any local government.

4. Compliance costs: This amendment may impose compliance costs on insurers that may be small businesses because this amendment requires an insurer to include in its settlement offer to the insured a written notice of the insured’s right of recourse, and that the insured may exercise this right at any time from the date of the notice up to 35 calendar days after the mailing of the claim payment. The notice also must outline the right

of recourse process. However, any costs to an insurer that may be a small business should be minimal since the insurer will merely need to update the settlement offer document or package.

No local government will incur any costs to comply with the amendment because the rule does not apply to any local government.

5. Economic and technological feasibility: Insurers that may be small businesses should not incur any economic or technological impact as a result of the amendment.

The rule does not apply to any local government; therefore, no local government should experience any economic or technological impact as a result of the amendment.

6. Minimizing adverse impact: The amendment uniformly affects all insurers that are subject to it, including any that are small businesses. The amendment should not have an adverse impact on any insurer that is a small business.

No local government should be adversely impacted by the amendment because the rule does not apply to any local government.

7. Small business and local government participation: The Department complied with SAPA section 202-b(6) by posting a draft of the amendment on the Department's website on July 8, 2024 for pre-proposed outreach and directly notifying trade organizations that represent insurers that may be small businesses. After receiving comments, the Department decided to remove the amendments to 11 NYCRR 216(b)(12) regarding deductions for previous damage and prior condition. Interested parties, including those parties that may be small businesses, also will have an opportunity to participate when the Department publishes the proposed amendment in the State Register and posts the proposed amendment on the Department's website.

Rural Area Flexibility Analysis for the Proposed Twentieth Amendment to 11 NYCRR 216 (Insurance Regulation 64)

1. Types and estimated numbers of rural areas: Insurers affected by this amendment do business in every county in this State, including rural areas as defined in State Administrative Procedure Act Section 102(10). The Department of Financial Services (“Department”) does not know the number of insurers located in rural areas.

2. Reporting, recordkeeping, and other compliance requirements; and professional services: This amendment imposes additional paperwork on insurers, including insurers located in rural areas, because it requires an insurer to include in its settlement offer to an insured a written notice of the insured’s right of recourse, and that the insured may exercise this right at any time from the date of the notice up to 35 calendar days after the mailing of the claim payment. The notice also must outline the right of recourse process. Insurers, including insurers in rural areas, should not need to retain professional services to comply with this amendment.

3. Costs: This amendment may impose compliance costs on insurers, including insurers located in rural areas, because the amendment requires an insurer to include in its settlement offer to the insured a written notice of the insured’s right of recourse, and that the insured may exercise this right at any time from the date of the notice up to 35 calendar days after the mailing of the claim payment. The notice also must outline the right of recourse process. However, any costs to an insurer should be minimal since the insurer will merely need to update the settlement offer document or package.

4. Minimizing adverse impact: This amendment uniformly affects insurers that are located in both rural and non-rural areas of New York State. The amendment should not have an adverse impact on rural areas.

5. Rural area participation: The Department posted a draft of the amendment on its website on July 8, 2024 for pre-proposed outreach and directly notified interested parties, including trade associations that represent insurers located in rural areas. After receiving comments, the Department decided to remove the amendments to 11 NYCRR 216(b)(12) regarding deductions for previous damage and prior condition. Interested parties,

including those parties located in rural areas, also will have an opportunity to participate when the Department publishes the proposed amendment in the State Register and posts the proposed amendment on the Department's website.



Statement Setting Forth the Basis for the Finding that the Proposed Twentieth Amendment to 11 NYCRR 216 (Insurance Regulation 64) Will Not Have a Substantial Adverse Impact on Jobs and Employment Opportunities

This amendment should not have a substantial adverse impact on jobs or employment opportunities in New York State. The amendment only amends or deletes outdated provisions and clarifies how the rule applies in conjunction with new Insurance Law section 2618.