

**INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE**

Producer Licensing

Adopted Amendments: N.J.A.C. 11:17, 11:17A, 11:17B, 11:17C, 11:17D and 11:17E

Proposed: July 1, 2002 at 34 N.J.R. 2286(a) (see also 34 N.J.R. 2459(b))

Adopted: October 10, 2002 by Holly C. Bakke, Commissioner, Department of Banking and Insurance.

Filed: October 10, 2002 as R. 2002 d. 354, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3)

Authority: N.J.S.A. 17:1-8.1 and 15(e) and 17:22A-26 et seq.

Effective Date: November 4, 2002

Expiration Date: April 15, 2003, N.J.A.C. 11:17
December 30, 2004, N.J.A.C. 11:17A, 11:17B, 11:17C and 11:17D
December 3, 2006, N.J.A.C. 11:17E

Summary of Public Comments and Agency Responses:

The Department received 25 written comments on the proposed amendments during the comment period. Comments were received from 11 carriers (New Jersey Manufacturers, Allstate of New Jersey Insurance Company, AmeriHealth, Horizon Blue Cross Blue Shield of New Jersey, Lexington National Insurance Corporation, Assurant Group, CUNA Mutual Group, American Health and Life and Triton Insurance, American International Group, Philanthropic Mutual Fire Insurance Company, Household Insurance Services); three insurance education providers (The Professional School of Business, New Jersey Citizens United Reciprocal Exchange and New Jersey Land Title Institute); and ten trade associations (Alliance of American Insurers, Insurance Council of New Jersey, Independent Insurance Agents of New Jersey, New Jersey Financial Services Association, Professional Insurance Agents of New York, New Jersey, Connecticut and New Hampshire, New Jersey Auto Agents Alliance, New Jersey Association of

Real Estate Attorneys, Consumer Credit Insurance Association, New Jersey Land Title Association and American Council of Life Insurers).

COMMENT: Several commenters expressed their overall support of the New Jersey Insurance Producer Licensing Act of 2001 (the Act), the National Association of Insurance Commissioners' (NAIC) Model Act, the proposed amendments and the reciprocity provisions of the Gramm-Leach-Bliley Financial Services Modernization Act of 1999 (GLB). One commenter commended the Department for organizing the regulations to improve efficiency, permit the use of new technology and reduce the associated costs with the issuance and renewal of licenses.

RESPONSE: The Department appreciates the commenters' support.

COMMENT: There were numerous comments regarding when new requirements would become operative and requesting some time to enable a smooth transition to the new requirements.

RESPONSE: The Department acknowledges that some of the requirements under the regulations will require time to implement and assure a smooth transition. While new procedures such as submissions of fingerprint cards for new applicants and imposition of late renewal fees will be effective immediately upon adoption of these rules, others, such as the expiration of limited insurance registrations in favor of limited line insurance producer licenses and changes regarding the number of credit hours awarded for previously approved continuing education courses, will be phased in to allow limited insurance representatives, producers, insurers and insurance education providers the time necessary to adhere to these changes. To ensure a smooth transition, the Department will issue an Order establishing the transition procedures. In addition,

information regarding the new procedures will be posted on the Department's website at <http://www.njdobi.org>.

COMMENT: Several commenters objected to the deletion of the term "effectuate" from N.J.A.C. 11:17A-1.2, and the substitution of the term "sells" for "effectuates" in the proposal.

RESPONSE: The Department disagrees with the commenters. Consistent with the NAIC Model Act, the requirements for insurance producer licensure under the Act are for those who sell, solicit or negotiate insurance in this State. In order to achieve the nonresident producer reciprocity provisions of GLB, the Department has deleted the term "effectuate."

COMMENT: One commenter believed that the Department has not correctly defined "nonresident" in N.J.A.C. 11:17-1.2 and 11:17-6.2. They noted that now a producer may be licensed as a nonresident producer if another state has been designated as their home state. They believed that the proposed language "did not accomplish" this purpose and they suggested alternative language.

RESPONSE: The Department acknowledges that the proposed language could be confusing and has clarified the language on adoption to read: "Nonresident (of New Jersey) means a person for whom a state other than New Jersey has been designated the home state for purposes of licensure."

COMMENT: One commenter inquired if "non-dealer GAP" was included in "automobile dealer GAP" in the definition of "credit insurance" in N.J.A.C. 11:17-1.2.

RESPONSE: By definition, “non-dealer GAP” is not included in “automobile dealer GAP” in the definition of “credit insurance” in N.J.A.C. 11:17-1.2. However, if “non-dealer GAP” is “insurance offered in connection with the extension of credit that is limited wholly or partially to reducing or extinguishing that credit obligation,” it is included in the definition of “credit insurance.”

COMMENT: One comment suggested adding the language “including all binders and endorsements” to the definition of “negotiate.” The same commenter recommended adding the definition of “sell” to N.J.A.C. 11:17B-2.1(e).

RESPONSE: Upon review, the Department has decided not to add the suggested language. The language as proposed is consistent with the statute and the definition of “negotiate” in the Act and the NAIC Model Act. In order to achieve the nonresident producer reciprocity provisions of GLB, the Department wishes to retain uniform definitions of sell, solicit and negotiate. Defining the term “sell” is unnecessary since the Act defines the term.

COMMENT: One commenter stated that, although the definition of “business entity” included limited liability companies (LLCs), the proposal omits references to LLC members and managers.

RESPONSE: The Department has reviewed the comment, and will add a provision at N.J.A.C. 11:17-1.2(c) clarifying that for purposes of that chapter, the terms “officer or partner” will include limited liability company members or managers.

COMMENT: Several commenters sought clarification on the new division of authorities for property and casualty, and the addition of the new authority for personal lines authority, with some stating that they did not understand the distinctions between these authorities, and that the “translations” from old authorities to the new needed to be clearly stated. They questioned whether a producer presently authorized for property/casualty could continue to write property, casualty and personal lines. Further, they sought clarification on how a newly licensed producer who applied for one authority (such as property) would go about adding an additional line of authority (such as casualty).

RESPONSE: To be consistent with the Act, the NAIC Model Act and the nonresident producer reciprocity provisions of GLB, the rules split property and casualty into two separate authorities and add the new personal lines only authority. A producer who currently has property/casualty authority would retain authority for both property and casualty lines, including personal lines products. If a newly licensed producer requests only one of these lines, and later wishes to request additional lines of authority, he or she would have to satisfy any prelicensing education and testing requirements for the additional line(s) of authority as specified in the regulation.

COMMENT: One commenter expressed serious concerns with the addition of the personal lines authority, stating that the less comprehensive requirements for such an authority could result in a producer who was less aware of the full range of exposures and coverages, and therefore may be a disservice to the consumer. The commenter suggested eliminating the personal lines authority and requiring the producer to obtain the standard property and/or casualty authority.

RESPONSE: The Department disagrees with the commenter. The addition of the new personal lines authority is consistent with the Act, the Model Act, and the reciprocity provisions of GLB.

In addition, a producer with authority only for personal lines products would only be licensed to sell those products and not the full line of property and casualty products, including commercial lines.

COMMENT: One commenter questioned why worker's compensation and mortgage guaranty insurance was associated with property authority in N.J.A.C. 11:17-2.2(a), stating they have always been associated with casualty insurance.

RESPONSE: The Department has reviewed the rules in light of the comment, and will amend the regulation to include worker's compensation and mortgage guaranty insurance with casualty insurance upon adoption.

COMMENT: One commenter stated that currently, "health authority is automatically included as an authority within the Property/Casualty license," and asked if this provision will continue under the new regulations.

RESPONSE: Health authority, which was a separate authority from property/casualty in the current regulations, will be clarified in the new rules as "accident and health or sickness authority," and will remain a separate authority from either property or casualty authority. Health authority granted under the current rules was primarily for medical coverages included within property and casualty products, such as Personal Injury Protection (PIP) coverage. Under the rules, such coverages are considered part of the casualty and personal lines authorities. Producers who currently are licensed for Property and Casualty may request Health authority under the new lines of authority without additional prelicensing education or examination.

COMMENT: Several comments were received concerning fingerprint cards required in proposed N.J.A.C 11:17-2.3(a)5 and 2.11(a). Some commenters called the use of the cards expensive, time consuming and overly burdensome. One commenter felt the requirement should be eliminated for all limited lines except bail bonds. Another commenter stated that large businesses would have a difficult time supplying fingerprints for every director and corporate officer, and that the State should require licensure only for the individual responsible for the oversight of the business entity's insurance program. The commenters believed that the Department was adding a fingerprint requirement at a time when other states were eliminating it; that the requirement did not seem to have a basis in statute; and that the requirement is not in keeping with the stated purposes of the Act. Other comments pointed out that the requirement places an undue burden on State residents as there is no such requirement for non-resident producers. One commenter stated that to be effective, fingerprinting must be uniform throughout the country. While several commenters urged deletion of the requirement or at the least a transition period for its implementation, another commenter stated its support for the change to fingerprint verification in place of a full-scale criminal background check.

RESPONSE: The Department does not believe that the use of fingerprint cards creates an undue burden on producers or insurers. The use of fingerprint cards is a necessary consumer protection since it allows for a review of the applicant's criminal history both in this State and throughout the country. Any expenses associated with this process are a reasonable and necessary cost of doing business. The Department does not believe that there is a national movement away from the use of fingerprint cards. On the contrary, several other states require the submission of fingerprint cards as a part of the application process. Moreover, the requirement for

fingerprinting is for new applicants only and not for currently licensed producers. Notably, the NAIC is currently exploring the viability of a national system for electronic fingerprinting.

COMMENT: One commenter urged caution concerning social security number requirements, stating that pending Federal and State legislation seeks to prohibit the use of social security numbers as identifiers. The commenter also believed that the use of social security numbers triggers security rules under Federal privacy legislation.

RESPONSE: The Department thanks the commenter for its concern. However, the use of social security numbers as contemplated by these rules is a permitted use under current law. If any New Jersey or Federal legislation is passed in the future that prohibits such use, the Department will respond accordingly.

COMMENT: One commenter requested that it be made clear that no individual who has been previously convicted of a disqualifying crime shall be permitted to become licensed as a limited authority for writing bail bonds, unless the person has obtained a waiver in accordance with 18 U.S.C. § 1033(e)(2), and in accordance with New Jersey statutes and regulations.

RESPONSE: N.J.A.C. 11:17E-1.1(a) makes clear that no person who has been convicted of a felony involving breach of trust or dishonesty, or has been convicted under 18 U.S.C. § 1033, shall be employed in the business of insurance in this State in any capacity without having first obtained a waiver from the Commissioner or his or her designee in accordance with the provisions of 18 U.S.C. § 1033(e)(2) and N.J.A.C. 17E.

COMMENT: One commenter stated that N.J.A.C. 11:17-2.4(b), which addresses temporary work authority, should reference N.J.A.C. 11:17-3.5(d) that describes how a licensed nonresident can apply to become a resident producer.

RESPONSE: The Department does not believe it is necessary to add the reference to N.J.A.C. 11:17-3.5(d) in the provision relating to temporary work authority. The Department believes that N.J.A.C. 11:17-2.4(b) is clear on its face.

COMMENT: One commenter requested that the Department modify N.J.A.C. 11:17-2.6(a)3 and (b)2 to provide that nonresident producers need only certify that they currently hold a valid license for the comparable authority and not require that they provide a certificate from the home state.

RESPONSE: The Department agrees with the commenter, and will modify the language of N.J.A.C. 11:17-2.6(a)3 upon adoption to be consistent with the language in proposed N.J.A.C. 11:17-2.6(b)2.

COMMENT: One commenter expressed support for the deletion of the requirement in N.J.A.C. 11:17-2.8(e) that a producer be permanently and exclusively assigned to a branch office.

RESPONSE: The Department appreciates the commenter's support.

COMMENT: One commenter believes that N.J.A.C. 11:17-2.9(b)2 is inconsistent with N.J.A.C. 11:17-2.9(b)5 as N.J.A.C. 11:17-2.9(b)5 requires the notification of termination of an employee contract, while N.J.A.C. 11:17-2.9(b)2 removes the requirement to notify the Department of entering into an employment agreement.

RESPONSE: The Department agrees with the commenter that an inconsistency exists and will clarify this inconsistency by removing the reference to the notification requirement “of this provision” from N.J.A.C. 11:17-2.9(b)5 upon adoption. However, the Department points out that N.J.A.C. 11:17-2.9(b)5 does not and did not previously require notification of termination of an employee contract, as the commenter states. N.J.A.C. 11:17-2.9(b)5 refers to a business relationship between two licensed producers, with each acting as independent contractors, and specifically exempts these producers from the notice requirements of N.J.A.C. 11:27-2.9(b)2.

COMMENT: Several commenters believed that the increase in limited license fees for limited lines, including credit insurance, is excessive. One commenter requested that the fee should be modified to more closely reflect the actual administrative costs. Other commenters pointed out that credit insurance was a limited line and the fee for credit insurers would be disproportionate to the average policy size. In addition, no examination was required for credit insurers.

RESPONSE: The Department disagrees that the new limited license fees are excessive. The Department believes that the \$150.00 fee, which is half the amount required from other authorities, is reasonable and takes into account the differentiation between the administrative costs of the limited lines authority and other full line authorities.

The increase in the fees reflects the change from a fee to input a registration to a fee for reviewing and processing a license. The licensing process is more costly and has greater administrative overhead. The average size of a policy has no bearing on licensing fees for limited lines or any other authority.

COMMENT: One commenter sought clarification regarding the prelicensing, examination and continuing education requirements for insurance consultants, stating that insurance consultants are defined as limited lines insurance producers.

RESPONSE: The Department believes the commenter has misconstrued the definition found in the Act. Insurance consultants are not defined in the proposal as limited lines producers. Instead proposed N.J.A.C. 11:17B-1.3 relies on the definition of “insurance consultant” contained in the Act at N.J.S.A. 17:22A-28. As a result, insurance consultants who consult on limited lines are limited lines producers, just as insurance consultants who consult on property lines are property insurance producers. Insurance consultants must satisfy all the requirements for their particular authority, including any education and examination requirements specified in the rules.

COMMENT: Several commenters sought clarification on the applicability of certain educational requirements. One commenter sought clarification on whether or not pre-licensing course work will be permitted in the on-line self-study formats, stating that this issue was not addressed in the rules. Yet another requested confirmation that N.J.A.C. 11:17-3.1 applies only to new and renewing applications for approval of insurance education providers and that currently approved providers have no additional obligations until they are subject to renewal.

RESPONSE: On-line study format is allowed for continuing education, and is addressed in N.J.A.C. 11:17-3.6, Continuing education. On-line study for prelicensing is not permitted, as outlined in N.J.A.C. 11:17-3.4, Prelicensing education. Insurance education providers currently approved by the Department will not need to file amended applications; rather, any additional information required by the Department for authorization of the insurance education provider

and program will be requested at the time of renewal. Further information on these transitional procedures will be included in the Order the Department will be issuing.

COMMENT: One commenter suggested that N.J.A.C. 11:17-3.1(c)1 be rephrased as follows (deletion in brackets; additions in boldface): “certify that the [producers] **prelicensing instructors** have completed the prelicensing program” because the term prelicensing instructors is broader than producers.

RESPONSE: The Department believes that the language is accurate as proposed. Insurance education providers are required to provide the names of instructors whom they have hired to teach and certify that their students have completed their prelicensing program. The certification is made by the prelicensing instructor and attests to the completion of the required prelicensing education program by the student.

COMMENT: Several comments were received pertaining to N.J.A.C. 11:17-3.2(a)3 which requires that instructors possess at least five years experience in insurance practice, insurance education or the equivalent. It was suggested that the requirement be deleted, or that a formula be used that results in a more flexible combination of relevant education, professional credentials and experience. Further suggestions included reducing the required number of years of experience from five years to three years, or allowing experience in an equivalent field, such as using an attorney for employment practice liability, to meet the experience requirement. Lastly, a commenter felt that it should be clearly stated that the insurance practice, experience and/or education is in the same field as the course offering that the instructor will teach.

RESPONSE: The Department has reviewed the comments concerning the amount and type of experience that an instructor must possess. The Department acknowledges that many commenters believe that five years specific experience is an unnecessary amount of experience. However, the Department believes that the requirement that instructors possess adequate experience is a necessary addition and that the requirement should not be deleted. Further, any reduction in the amount of experience or the implementation of a formula recognizing experience in an equivalent field cannot occur upon adoption, as it would constitute a substantive change from what was proposed that requires a new notice and comment period. The Department intends to revisit this issue when the readoption of the chapter, which is due to expire in April 2003, is proposed.

COMMENT: One commenter felt that in N.J.A.C. 11:17-3.2 (a)1, there is an extra comma in the first sentence, and that this provision should duplicate and be consistent with N.J.A.C. 11:17-3.1.

RESPONSE: The Department thanks the commenter for identifying this typographical error. A change on adoption is not necessary, as the typographical error did not appear in the New Jersey Register, but only on the Department website. The Department believes that N.J.A.C. 11:17-3.2 sets forth the duties and requirements for insurance education providers, while N.J.A.C. 11:17-3.1 establishes the requirements for approval of the insurance education program.

COMMENT: One commenter stated that N.J.A.C. 11:17-3.2(a)6, requiring an approved instructor to be present in the classroom during testing, limits the frequency and flexibility of retesting, and adds to expenses and costs.

RESPONSE: The Department disagrees, and believes that any additional expense or inconvenience is outweighed by the importance of guaranteeing the integrity of the examination.

COMMENT: One commenter requested an amendment to N.J.A.C. 11:17-3.2(a)8 to read (addition in boldface): “If approved to teach prelicensing courses **and if it charges tuition therefor**” because the added language provides consistency with the paragraph that follows it.

RESPONSE: The Department does not agree with the commenter’s suggested language. The Department believes that all education providers –not only those who charge tuition- should provide options for students who have failed the State licensing examination.

COMMENT: Several commenters suggested a transition period delaying implementation of N.J.A.C. 11:17-3.2(b), which requires insurance education providers to provide information on their upcoming quarter’s programs. Suggested delays were until the quarter immediately following implementation, or to tie the period to the insurance education provider’s renewal date for courses already approved and in use.

RESPONSE: The Department agrees that the requirement for submission of quarterly insurance education program schedules be delayed until the quarter following the adoption of this regulation.

COMMENT: One commenter suggested that N.J.A.C. 11:17-3.3(c)6 and 7 should be amended to add a time limit to the provisions which gives the Commissioner discretion to suspend, terminate, or revoke the approval of an insurance education provider, director or authorized

personnel who has violated or aided and abetted any person in violating the insurance laws of this State, limiting the provision to acts within the last ten years.

RESPONSE: The Department does not believe that the Commissioner's discretion should be so limited. The Commissioner should be able to exercise discretion based on individual circumstances to protect the insurance consumer.

COMMENT: There were numerous comments on the repeal of the attorney exemption from the title insurance producer continuing education requirements. One commenter felt that attorneys previously exempted need transitional rules that phase in the continuing education requirements. Several commenters voiced objections to the repeal of the attorney exemption, pointing out that attorneys are exempt from real estate education requirements at the time of application, and that the education for an admitted attorney should serve to fulfill the objective of the educational background of a professional nature. The commenters felt that the expertise of the attorney far exceeds that of the normal title producer and that the attorney's educational background far exceeds that of the typical producer. They stated that, although attorneys in this State do not have continuing legal education requirements, attorneys are required to keep up with current law, legal papers, legal periodicals and case law, and are contacted for their expertise by other title producers.

RESPONSE: The Department has reviewed the comments concerning the attorney exemption and has concluded that both producers and insurance consumers benefit from continuing education. The Department acknowledges that attorneys may keep current on legal issues; however, attorneys in New Jersey are not subject to any continuing legal education requirements, so there is no formal mechanism for attorneys to ensure continuing education. Therefore, the

attorney exemption will not be reinstated. The topic of transition was discussed in the second Comment and Response.

COMMENT: The Department received numerous comments on N.J.A.C. 11:17-3.4(l) which includes suitability as a topic in limited line credit insurance education. The commenters argued that there are no existing standards for suitability in New Jersey law and that the NAIC is excluding credit insurance from the current draft of its Suitability Model Act. Other commenters stated that the concept of suitability of credit insurance was incompatible with other credit or group insurance regulations.

RESPONSE: The Department has reviewed the numerous and varied comments regarding the inclusion of suitability as an educational requirement for group insurance and, in light of the unsettled issues and the current review of suitability standards by the NAIC, has decided not to adopt the suitability requirement at this time.

COMMENT: One commenter recommended removing health insurance education requirements from proposed N.J.A.C. 11:17-3.4(c)4, 5, 6 and 8, stating that health insurance education is not needed for property casualty or personal lines, and that the added burden prevents personal lines producers from using the telephone to assist customers with property/casualty questions. They further pointed out that removing health insurance education requirements would reduce the number of credit hours required for property, casualty and personal lines authorities.

RESPONSE: Requirements pertaining to general health insurance concepts are not new for property and casualty prelicensing education. The Department believes that general health

insurance concepts are necessary for producers to understand medical coverages included within property and casualty products, such as Personal Injury Protection (PIP) coverage.

COMMENT: One commenter commended the Department for exempting limited credit insurance from prelicensing examination and continuing education.

RESPONSE: The Department appreciates the commenter's support.

COMMENT: One commenter stated that the educational requirements set forth in N.J.A.C. 11:17-3.4(d) for an individual to obtain the new limited lines authority producer's license for bail bonds provides insufficient training and education. The commenter suggested 40 hours classroom instruction, rather than 16 hours, and felt that State administered tests will enhance professionalism. In the alternative, the commenter suggested that a full lines producer license be required.

The same commenter stated that the proposal failed to include a continuing education requirement in order to maintain the limited lines authority producer's license for bail bonds. The commenter claimed that continuing education is essential to keep abreast of changes and developments for all insurance professionals, and that the continuing education requirement serves to cull out those not actively engaged in the business. The commenter suggested eight to 16 hours of continuing education every two years.

RESPONSE: The Department acknowledges the value of education. However, the existing regulation has no educational requirements at all for those seeking bail bonds authority. Nor are there currently any educational requirements for other limited lines producers. Therefore, the Department believes the introduction of 16 hours prelicensing education proposed for limited

lines producers seeking authority in bail bonds is a reasonable requirement at this time. The Department will evaluate the need for modification of educational requirements on a periodic basis. Nothing in the regulation prohibits an insurer from requiring additional education and training as a contractual condition for an appointed producer.

COMMENT: One commenter stated that N.J.A.C. 11:17-3.6 requiring insurance anti-fraud education duplicates N.J.A.C. 11:16-6 for an insurer's employees. The commenter requests that the hours of yearly fraud training required under current law apply, when appropriate, to the continuing education requirements of N.J.A.C. 11:17-3.6(a). The commenter requests a grandfather provision to benefit those who have completed the existing anti-fraud education requirement through their employment, or who are currently attending classes and will soon complete the existing requirement.

RESPONSE: Any insurer may apply to become an insurance education provider and submit its courses, including yearly fraud training, for evaluation and approval as continuing education courses. The topic of transition is discussed in the second Comment and Response.

COMMENT: There were numerous comments on the rule change regarding actual class hours for credit received for continuing education. Several commenters requested a transitional period for the change. Other commenters objected to the removal of the provision allowing for more credit for advanced courses than for basic courses. They argued that removal of this provision would increase the actual hours required by those taking advanced courses and would remove any incentive to take those courses as opposed to "easier" basic courses. They also argued that a transition period was necessary, stating that compliance would be difficult for those who have

already taken enough or nearly enough advanced classes to fulfill the obligation under the existing rule. Others argued that additional class hours increase costs and time away from serving the public.

RESPONSE: The Department believes that the change to awarding credit based upon the number of hours for each course will create a uniform system consistent with the requirements of other states. In addition, the changes to the credit hours provide opportunities for producers to attend lengthier, more in-depth courses and seminars and receive additional credits. Under the current regulations, regardless of the length of a classroom course, a producer could only obtain eight credits. The subject of a transition period is discussed in the second comment, however, it should be noted that producers who have already completed approved courses will receive the credit hours that were awarded at the time the course was approved. The Department will allow for an appropriate time period to reevaluate courses previously approved under the existing system and until such time as the Department changes the course approval number and awards the revised credits, the producers will continue to receive the credits originally awarded.

COMMENT: One commenter believed that a reasonable allowance should be provided for class time missed in attending prelicensing education courses.

RESPONSE: The Department believes that allowances for reasonable class time missed in attending a prelicensing education course is a policy that may be established and implemented by the insurance education provider, subject to the Department's review as part of its program.

COMMENT: Several comments were received concerning self-study and interactive online education provisions at N.J.A.C. 11:17-3.6(b), (c) and (f)2iv and v. Two commenters sought

clarification on the basic guidelines for determining sufficient internal testing for online course testing including how the provider will show that the integrity of the examination is maintained and how the examination will be monitored to assure that the actual enrollee takes the test.

Another commenter stated that interactive online continuing education courses and self-study continuing education courses should not be allowed. The commenter believed that the present system is adequate; the use of interactive online education would subject the industry to abuses that will be hard to monitor; that study material could be printed out prior to the licensee taking the examination; and that allowing interactive online education would have a serious negative effect on New Jersey insurance education providers by opening the doors to national providers with no state ties.

RESPONSE: The Department believes that providing internal testing and examination integrity and presenting proof of its sufficiency is a matter to be decided by insurance education providers, subject to the Department's approval as part of its program. The Department does not believe that specific testing guidelines should be part of these rules.

The Department disagrees with the comment that interactive online courses for continuing education should not be allowed. The Department believes that online education will benefit the licensed producers by allowing ease of accessibility and the ability to pursue continuing education at the individual's own pace. The Department further believes that the regulations provide sufficient supervision and oversight to prevent abuses. Finally, insurance education providers who only offer classroom instruction are free to expand their own business by offering online education or self study programs.

COMMENT: Several comments were received pertaining to N.J.A.C. 11:17-3.6(f), which requires insurance education providers to submit their courses to the Department 30 days prior to

the date the course is to commence. One commenter suggested that a 30-day time limit for approval of the courses be added to the regulation, in order to streamline the approval process and allow companies to revise curricula as needed. Several commenters believed that the request for course approval should not include the name and qualifications of the instructor. They stated that such a requirement was impractical, as the names of instructors would change over time and would undermine the proper responsibility and more detailed knowledge of the school director. They believed that the requirement would create additional paperwork and a time-consuming review process for the Department. It was suggested that the current regulation, which allows the provider to determine the individuals capable of teaching courses, remain in effect.

RESPONSE: The Department, upon review of the comments, will amend the rule to eliminate the requirement that insurance education providers' requests for approval of courses include the name and qualifications of the instructor. The Department does not believe that an amendment adding a thirty-day time limit for Department approval is necessary. The Department will continue to review and, as appropriate, approve the applications on a timely basis.

COMMENT: Several comments were received regarding the credit that instructors are allowed for courses that they teach. One commenter stated that the provision at N.J.A.C. 11:17-3.6(g) that an instructor "may only receive credit once for teaching any one approved course" is ambiguous. The commenter suggested that the provision should read (addition in boldface): "Instructors may receive credit **for each approved course he or she actually teaches in each of the instructor's licensing cycles.**" Several commenters stated that instructors should be able to receive credit for the course they are teaching once every four years, with one commenter suggesting the language (addition in boldface): "Instructors may receive credit for teaching any

one approved course **once during each four-year license cycle**". Another commenter suggested that, if continuing education instructors receive credit for teaching, prelicensing instructors should also receive credit.

RESPONSE: The Department agrees with the commenters that this provision needs clarification and will amend the provision to read: "Instructors may receive credit for teaching any one approved course once during each four-year license cycle."

COMMENT: Several commenters advocated the use of guest lecturers in insurance education and objected to the preclusion of non-licensed producers as instructors. They suggested requiring the submission of the name and qualifications of guest lecturers; or including a definition of the term "instructor," which does not include guest lecturers, and thereby not submitting them to the same qualifications as instructors. One commenter stated that allowing guest lecturers adds depth and quality to insurance education and allows for the inclusion of individuals with special talents and knowledge. Another commenter suggested that special lecturers or guest speakers be allowed so long as they collectively do not teach more than 25 percent of the total course hours.

RESPONSE: Upon review of the comments, the Department has decided to continue the existing provision in N.J.A.C. 11:17-3.1(f)4 to permit guest lecturers for continuing education classes, subject to the 25 percent course hour limit. The Department does not believe, however, that guest lecturers should be allowed to teach prelicensing classes, as prelicensing classes are basic classes, where the use of advanced or special expertise will add value. However, these changes cannot occur upon adoption, as they constitute substantive changes that require a new notice and comment period.

COMMENT: One commenter pointed out that the correct titles for the institutions named in N.J.A.C. 11:17-3.7(a)2 are The American Institute for Chartered Property Casualty Underwriters and The Insurance Institute of America. The commenter also requested that the professional designation of Associate for Insurance Services be considered an acceptable substitute for producer prelicensing education and examination.

RESPONSE: The Department acknowledges that the proposal did not contain the correct titles of the institutions and will update the titles upon adoption. The Department has reviewed the criteria for the professional designation, and does not find the educational requirements to be equal to the other programs considered acceptable substitutes.

COMMENT: One commenter requested that the Department consider changes to N.J.A.C. 11:17-2.2(a)9 and 3.4 to authorize resident producers with life authority to sell fire and allied lines products without separate educational requirements so long as the company appointing the producer provides a program of instruction approved by the Commissioner.

RESPONSE: The Department acknowledges the commenter's suggestion but finds such an amendment to be substantive in nature and beyond the scope of the proposal. The commenter is, in essence, urging the Department to recognize an additional limited line authority beyond those specified in N.J.A.C. 11:17-2.2(a)9 as proposed.

COMMENT: One commenter stated that N.J.A.C. 11:17A-1.3 contains an erroneous statutory reference when it references N.J.S.A. 17:22A-30b(5) instead of N.J.S.A. 17:22A-30b.

RESPONSE: The Department thanks the commenter for its comment and will correct the inadvertent typographical error on adoption.

COMMENT: One comment objected to N.J.A.C. 11:17B-3.2(c), which prohibited bail bonds agencies from charging fugitive fees, banking fees and service-related fees, such as travel fees and after-hours service fees. The commenter felt that the Department had failed to take into account important public policies. It states that thousands of bail bonds are posted in New Jersey by commercial sureties with the right and ability to eliminate and mitigate losses and recover the requisite expenses. The commenter goes on to state that the prohibition will result in greater collateral requirements for those wishing to obtain bail bonds, increasing incarceration costs and impacting the economically disadvantaged. In addition, bail bondsmen will not seek to mitigate or reduce damages; rather, they will simply pursue the indemnitors for the full face amount of the bond. The commenter also objected to the prohibition against charging bank fees, stating that there appears to be no basis for the preclusion of charging “actual” fees charged by one’s bank for returned checks or stop payments. The commenter suggested that N.J.A.C. 11:17B-3.2(c)1 and (c)2 be eliminated in their entirety, or alternatively, amended to provide that no amount greater than the actual fees and expenses incurred by the bail bond producers may be recovered against the surety and the defendant.

RESPONSE: The Department does not believe that N.J.A.C. 11:17B-3.2(c)1 and (c)2 should be eliminated at this time. The intent of these provisions is not to prevent the sureties or bail bonds producers from mitigating damages. The intent of the provision is to prohibit the bail bonds producer from charging the defendant additional extraordinary fees in addition to the premium charged by the surety for the bond. Costs of administration of the bond are included within the premiums charged. Moreover, courts consider the risk of flight in determining the amount of the bail, which ultimately affects the premium for the bond. To allow bail bonds producers to charge

the defendant fees creates a system which is open to abuse and impracticable for the Department to monitor. Sureties may consider the cost of fugitive fees, banking fees and travel expenses in determining the premiums established for the bail bonds they offer and in determining the commission rates to their producers. In addition, it was not the intention of the regulation to exclude reasonable commonly accepted fees such as returned check fees.

Therefore, the Department wishes to learn from the industry the industry's practice, allocation of expenses and any other circumstances affecting this issue and will take those comments into account when reviewing the new regulations.

COMMENT: One commenter requested clarification of the period for which records must be maintained, stating that proposed N.J.A.C. 11:17C-2.6(c)3 deletes a portion of the regulation which provided that records maintained electronically must be printed every 30 days and retained for a period of five years, while N.J.A.C. 11:17C-2.6(a) states that the records must be kept for five years. The commenter believed that the deleted portion of N.J.A.C. 11:17C-2.6(c)3 be maintained to avoid confusion regarding how long electronic records must be maintained.

RESPONSE: Records, including those maintained electronically, must be maintained for five years as stated in N.J.A.C. 11:17C-2.6(a). The deletion in N.J.A.C. 11:17C-2.6(c)3 removed the reference to hard copies because hard copies of electronic records are no longer required so long as the producer maintains the records in the manner stated within this provision. The Department does not believe the recommended change is necessary.

COMMENT: There were several comments made regarding previously recommended changes to these rules that were submitted to the Department.

One commenter pointed out that the Department did not adopt an amendment previously suggested by the commenter with respect to professional employer organizations, which it suggested be added as N.J.A.C. 11:17A-1.4(d).

Another commenter suggested changes it had offered at an earlier time which are not included in the proposed rule. Those changes included holding unlicensed partners, officers and directors and all owners with an ownership interest of five percent or more responsible for insurance related activity; adopting the safe harbors included in the recently enacted federal Financial Services Reform Act; and other changes to N.J.A.C.11:17A-4.2 and 4.3 .

RESPONSE: The Department acknowledges the commenters' suggestions, which are currently under review, but finds such amendments to be substantive in nature and beyond the scope of this adoption. However, the Department wishes to acknowledge that discussions with the industry regarding N.J.A.C. 11:17A-1.4(d) have taken place and suggestions are being reviewed in the context of commercial lines special rules. In addition, the Department recognizes that certain prior exemptions for fraternal benefit society representatives were not addressed in the Act and will be considered as part of the readoption of the existing chapter which is scheduled to expire in April 2003.

COMMENT: There were several comments regarding N.J.A.C. 11:17B and service fees. One commenter urged that with the repeal of N.J.S.A. 17:22A-17(a), the Department should allow agents to charge certain fees they previously could not.

One commenter suggested that fees be allowed for driver abstracts and on commercial accounts designated as special risks.

One commenter suggested that producers be allowed to charge a fee for the writing of new automobile insurance applications, regardless of whether they are acting as an “agent” of the company, or pass along the actual cost of any motor vehicle or CLUE report obtained by a producer in order to secure coverage. The same commenter urged elimination of the words “acting as an insurance broker or consultant” from the current rules, N.J.A.C. 11:17B-3.1 and 3.2.

One commenter recommended that the service fees referred to in N.J.A.C. 11:17B-3.2(a)1 be increased to \$50.00 and an annual renewal fee of \$45.00 be added. The same commenter requested a clarification of the difference in charging a fee and recouping a fee, suggesting that recouping a fee be permitted.

One commenter inquired if it is possible that producers might ask companies to provide them with a “broker’s contract” as opposed to being appointed as agents with an “agency contract”. The commenter argued that if the broker contract did not allow the producer to bind the company, then the producer is acting as a broker, and they argued, could then charge a fee.

RESPONSE: The Department acknowledges the commenters’ suggestions which are currently under review, but finds such amendments to be substantive in nature and beyond the scope of this adoption. As stated in the Summary, the proposal is intended to amend Chapter 17, Producer Licensing. With minor exceptions, all the amendments to Chapters 17A through 17D involved minor modifications to reflect the elimination of references to limited insurance representatives and to correct citations. The only amendments specifically addressing fees were to N.J.A.C. 11:17B-2.1(e), describing under what circumstances insurers and producers may pay fees to insurance agencies or persons who do not sell, solicit, or negotiate insurance in this State, and to N.J.A.C. 11:17B-3.1(c) which proscribes the charging of certain fees by bail bond agencies.

COMMENT: One commenter stated that the Department had inexplicably chosen not to replace “agent” and “broker” in the N.J.A.C. 11:17B-3.1 with “producer” while another commenter stated that the Department retained the terms “agent” and “broker” in N.J.A.C. 11:17B with no statutory or regulatory definition.

RESPONSE: The Department thanks the commenter for pointing out that the proposal resulted in no regulatory definition of agent and broker as used in N.J.A.C. 11:17B-1.1 et seq. The Department will correct the omission by not adopting the deletion of those terms as proposed. Further, the definition will be clarified by adding language consistent with the existing rule and the Act. The primary intent of the proposal is to amend Chapter 17, Producer Licensing. With only minor exceptions, any changes to Chapters 17A through 17D involved minor modifications to reflect the elimination of references to limited insurance representatives and to correct citations. Therefore, the Department did not replace “agent” and “broker” with “producer” at this time.

COMMENT: One commenter believed that proposed amendments to N.J.A.C. 11:17B-2.1(e) violate current law, and, if not, inquired about the circumstances when such payment or assignment could be made.

RESPONSE: N.J.A.C. 11:17b-2.1(e) parallels the statutory provision in the Act at N.J.S.A. 17:22A-41d. As such, the regulation is consistent with, and does not violate, New Jersey law. The statute lists examples where the payment of commissions, fees or other consideration to nonlicensed persons violates State law. An example of a payment which could be made under this provision would be where an employee of a bank who is not a licensed producer (the

“employee”) refers a customer to a licensed producer for the sale of annuities and the employee did not sell, solicit or negotiate that sale, the employee may receive a fee where the referral results in a sale.

COMMENT: One commenter requested a change to N.J.A.C. 11:17C-2.3(e) removing the restriction that trust funds be placed in banks “located within the State.”

RESPONSE: The Department acknowledges the commenter’s suggestion, which is currently under review, but finds such amendment to be substantive in nature and beyond the scope of this proposal. As stated in the Summary, the proposal is intended to amend Chapter 17, Producer Licensing. With minor exceptions, all the amendments to Chapters 17A through 17D involved minor modifications to reflect the elimination of references to limited insurance representatives and to correct citations. The Department invites further industry response and suggestions on this issue.

Summary of Changes Upon Adoption

The following changes will be made on adoption based on the comments received and summarized above:

1. In order to clarify the language, N.J.A.C. 11:17-1.2(b) and 6.2 are adopted to read “Nonresident (of New Jersey) means a person for whom a state other than New Jersey has been designated the home state for the purposes of licensure”;
2. N.J.A.C. 11:17-1.2(c) is added on adoption to clarify that limited liability company members and managers are included for purposes of the subchapter in the terms “officer” or “partner”;

3. N.J.A.C. 11:17-2.2(a)3 and 4 are amended on adoption to associate worker's compensation and mortgage guaranty insurance with the casualty authority, and not with property authority;

4. N.J.A.C. 11:17-2.2(c) is modified to allow producers licensed with life authority prior to November 4, 2002 and who hold a securities license, to continue to sell variable products until December 21, 2003;

5. N.J.A.C. 11:17-2.2(d) is added to allow insurance companies to submit limited insurance representative applications until June 30, 2003, and to allow all those registered as limited insurance representatives until December 31, 2003 to qualify and apply for licenses as limited lines producers;

6. N.J.A.C. 11:17-2.6(a)3 and (c)2 are modified to provide that non-resident producers need only certify that they currently hold a valid license for the comparable authority in their home state and not require that they provide a letter of certification from the home state;

7. The reference to the notification requirement in N.J.A.C. 11:17-2.9(b)5 is deleted upon adoption to clarify the inconsistency with N.J.A.C. 11:17-2.9(b)2;

8. N.J.A.C. 11:17-3.4(a) is modified to make all requirements for classroom hours effective as of December 31, 2002;

9. Prior N.J.A.C. 11:17-3.4(f) is recodified as N.J.A.C. 11:17-3.6(l) and is modified to allow attorneys who are currently licensed only for title insurance until the second renewal after November 4, 2002 to meet their continuing education requirements;

10. N.J.A.C. 11:17-3.4(l) is modified to delete the requirement for suitability education;

11. N.J.A.C. 11:17-3.6(a) is modified to allow producers, licensed as of November 4, 2002, to have until the second renewal following November 4, 2002 to comply with the revised continuing education requirements to obtain 24 credits in authorities for which the producer is licensed and six credits in approved courses related to insurance fraud, professional ethics or any other subject matter required by the Commissioner for the protection of consumers;

12. N.J.A.C. 11:17-3.6(f) is modified to allow new courses, submitted for approval after November 4, 2002, to be processed and approved on a one credit hour per hour of course time basis, and all classes approved prior to November 4, 2002 to retain the number of credits previously approved until such course is submitted by the insurance education provider for reevaluation. In addition, all insurance education providers shall submit all courses for which credit was not computed by class hour for reevaluation by December 31, 2003;

13. N.J.A.C. 11:17-3.6(f)1 vii is modified to delete the requirement that request for continuing education certification include the name and qualifications of the instructor;

14. N.J.A.C. 11:17-3.6(g) is amended to read "Instructors may receive credit for teaching any one approved course once during each four-year license cycle;"

15. The titles for The American Institute for Chartered Property Casualty Underwriters and The Insurance Institute of America in N.J.A.C. 11:17-3.7(a)2 are updated upon adoption;

16. The typographical error in N.J.A.C. 11:17A-1.3(e), which references N.J.S.A. 17:22A-30b(5) instead of N.J.S.A. 17:22A-30b, is corrected upon adoption; and

17. The proposed deletion of the definitions of “agent” and “broker” is not adopted and the language of the definitions is modified in accordance with the existing definition and terminology mandated by the Act.

Federal Standards Statement

No Federal standards analysis is necessary because no Federal standards are in effect. Gramm-Leach-Bliley Financial Services Modernization Act of 1999, Pub. L. 106-102, mandates that standards be implemented by the states. There will be no Federal implementation of standards to protect the public health, safety and welfare unless 29 states do not comply with that mandate by November 12, 2002.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

11:17-1.2 Definitions

(a) (No change.)

(b) The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Nonresident" (of New Jersey) means a person *[who does not maintain his or her principal place of residence or principal place of insurance business in New Jersey, and]* for whom a state other than New Jersey has been designated the home state for the purposes of licensure.

(c) For purposes of this chapter, references to officers or partners shall include limited liability company members or managers.

11:17-2.2 License authorities

(a) Producers licensed in accordance with the Act and this chapter shall be authorized to write the kinds of insurance designated, if qualified by each authority set forth below.

1.-2. (No change from proposal.)

3. Property Authority: All coverages written by authorized insurers for direct and consequential loss or damage to property of any kind including fire and allied lines, earthquake, growing crops, ocean marine, inland marine, *[workers' compensation,]* boiler and machinery, credit property, burglary and theft, glass, sprinkler leakage and water damage, livestock, smoke or smudge, physical loss to buildings, radioactive contamination, mechanical breakdown or power failure, ***and*** other property loss *[and mortgage guaranty insurance]*.

4. Casualty Authority: All coverages written by authorized insurers for coverage against legal liability from death, disability, injury or damage to real or personal property including employers' liability, automobile liability bodily injury, automobile liability property damage, other liability, credit casualty, other casualty loss, fidelity and surety, ***workers' compensation, mortgage guaranty insurance*** and municipal bond insurance.

5. - 9. (No change from proposal.)

(b) (No change from proposal.)

(c) No person shall be authorized to transact business regarding contracts on a variable life basis unless that persons also holds a securities license as required by this State or any other state or Federal law as applicable. ***Producers licensed with life authority prior to November 4, 2002, and who hold a securities license may continue to sell variable products until**

December 31, 2003. These producers shall qualify and apply for licenses as variable life and variable annuity producers by January 1, 2004.

(d) Insurers may continue to submit requests for limited insurance representatives until June 30, 2003. All limited insurance representatives registered with the Department must qualify and apply for licenses as limited insurance producers by January 1, 2004.*

11:17-2.6 Additional authorities

(a) A currently licensed individual producer may obtain additional authorities as described in N.J.A.C. 11:17-2.2 by submitting the following:

1. - 2. (No change.)

3. If a nonresident, *[a recent]* certification *[issued by the licensing authority in the applicant's home state, evidencing that]* **from*** the applicant **that he, she or it*** holds a current license with comparable authority in the home state;

(b) (No change from proposal.)

11:17-2.9 Business relationships

(a) (No change from proposal.)

(b) The employment of another producer by a producer is subject to the following requirements:

1. - 4. (No change from proposal.)

5. Existence of a business relationship between two licensed producers by which each acts as an independent contractor shall not require the filing of any

notice in accordance with this *[provision]* **subchapter**, nor create any responsibility for the acts of the other in the absence of knowledge or concerted action.

11:17- 3.4 Prelicensing education

(a) Except as provided in (e) through (g) below, each applicant for a resident insurance producer's license that is not solely for a limited line product shall pass a course of prelicensing education with the appropriate number of hours of classroom instruction described in (b) and (c) below. ***All changes in the appropriate number of hours for prlicenseing education shall become effective as of December 31, 2002.***

(b) - (k) (No change from proposal)

(l) Each insurer that sells, solicits or negotiates limited line credit insurance shall provide a program of instruction on credit insurance to all limited line credit insurance producers appointed by the insurer. The program of instruction shall *[include instruction on the suitability of credit insurance products and]* be submitted for approval in a format prescribed by the Department. The program of instruction shall be deemed approved if not disapproved within 30 days of receipt by the Department of the submission.

11:17-3.6 Continuing education

(a) No resident individual insurance producer licensed with life, accident and health or sickness, property, casualty, surplus lines, title, variable life and variable annuity or personal lines authority shall be renewed unless the renewal applicant demonstrates that he or

she has completed 48 credit hours of approved continuing education courses during the previous four years, 24 of which shall be in approved courses in the authorities for which the producer is licensed and six of which shall be in approved courses related to insurance fraud, professional ethics or any other subject matter required by the Commissioner for the protection of consumers.

Producers licensed as of November 4, 2002 shall have until the second renewal following November 4, 2002 to comply with the requirement to obtain 24 credits in the authorities for which the producer is licensed and six credits in approved courses related to insurance fraud, professional ethics or any other subject matter required by the Commissioner for the protection of consumers.

(b) – (e) (No change from proposal)

(f) Approved insurance education providers shall submit courses for approval by the Department at least 30 days prior to the date the course is to begin. This 30-day requirement may be waived upon a showing by the program of unusual circumstances that require immediate action:

1. A request for continuing education credit certification shall be made on a form prescribed by the Department which shall contain the following information:

i.-v. (No change from proposal)

vi. The number of hours proposed for the course; ***and***

[vii. The name and qualifications of the instructor; and]

[viii.] ***vii.*** Such other information as may, in the opinion of the Department, be necessary to evaluate the course for certification of continuing education credits.

2. – 4. (No change from proposal.)

5. All new courses submitted for approval after November 4, 2002 shall be processed and, if qualified, approved as conferring one credit hour of course time. Classes approved prior to November 4, 2002 shall retain their previously assigned credit hours until submitted b the insurance education provider for reevaluation. All insurance education providers shall submit all courses for which credit was not computed on a one class hour to one credit hour basis for reevaluation by December 31, 2003.

(g) The insurance education director or authorized personnel for an approved insurance education provider shall report the names and producer license reference number of those persons completing each continuing education course within 30 days of course completion or certification of continuing education credits, whichever is later. The instructor teaching the course may be deemed to have completed it for the purpose of securing continuing education credit. Instructors may only receive credit once for teaching any one approved course ***once during each four-year license cycle***. The report shall be made to the Department, or its designee, on a form prescribed by the Department, and shall include the following information:

1.–3. (No change)

(h) – (k) (No change from proposal.)

***l) Attorneys who are licensed for title insurance only on November 4, 2002, shall submit to the Department, at least three months but not more than one year prior to renewal, a certificate of good standing issued by the Clerk of the Supreme Court of New**

Jersey accompanied by a completed form prescribed by the Department, which provides the attorney's name, producer reference number, date of birth, social security number and license expiration date. Attorneys who as of November 4, 2002, are licensed for title insurance only, shall have until the second renewal following November 4, 2002 to comply with the continuing education requirements of this section*

11:17-3.7 Recognized professional designations

(a) The Department recognizes the following professional designations as acceptable substitutes for the producer education and examination requirements except continuing education:

1. (No change from proposal)

2. For property, casualty, personal lines, bail bonds and surplus lines authorities, a Chartered Property/Casualty Underwriter (CPCU) designation conferred by The American Institute *[of Property and Liability Underwriters]* ***for Chartered Property Casualty Underwriters and The Insurance Institute of America***.

(b) (No change.)

11:17-6.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Nonresident" (of New Jersey) means a person *[who does not maintain his or her principal place of residence or principal place of insurance business in New Jersey, and]* for whom a state other than New Jersey has been designated the home state for the purpose of licensure.

11:17A-1.3 Who must be licensed; exceptions

(a) – (d) (No change from proposal)

(e) Officers or employees of insurers authorized to do business in this State and officers or employees of licensed insurance producers, who solicit, negotiate or sell insurance by communicating directly with the public whether in person or by mail, fax, computer or telephone, in the name of and on behalf of the insurer or the licensed insurance producer, for compensation of any type, shall be licensed as an insurance producer. The requirements of this subsection shall not apply to officers or employees whose participation in the solicitation, negotiation or sale of insurance contracts is in a manner not requiring a license as an insurance producer as described in N.J.S.A. 17:22A-*[30b(5)]* * **30(b)**.*

11:17B-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

...

"Insurance agent" means an insurance producer acting as an insurance agent* authorized, in writing, by any insurance company to act as its agent to solicit, negotiate or sell insurance contracts on its behalf or to collect insurance premiums and who may be authorized to countersign insurance policies on its behalf.

"Insurance broker" means an insurance producer acting as an insurance broker who, for a commission, brokerage fee, or other consideration, acts or aids in any manner concerning negotiation, solicitation or sale of insurance contracts as the representative of an insured or prospective insured; or a person who places insurance in an insurance company that he does not represent as an agent.*

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