



New Additional Insured Endorsement Forms Will Impact Contractors, Project Owners, Lessees



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Coverage enhancements allow insureds to shift risk downstream, a useful tool for construction risk management programs.

THE INSURANCE SERVICES Office, Inc. (ISO), an advisory and rating organization for the property/casualty insurance industry, provides statistical and actuarial services and standardized text for insurance forms for the construction industry. The ISO introduced and revised several endorsement forms on December 1, 2019, which will have an impact on how contractors, owners, and construction stakeholders obtain Additional Insured (AI) status, as well as clarified waivers of subrogation. Provided below is a summary of some of the more notable additions and changes to the ISO offerings.

ADDITIONAL INSURED ENDORSEMENTS FOR OWNERS, LESSEES, AND CONTRACTORS

CG 20 37—Schedule Endorsement for Completed Operations	CG 20 39—Automatic AI Status for Completed Operations	CG 20 40—Automatic Status for Completed Operations
<ul style="list-style-type: none"> Schedule endorsement. Must list each additional insured. 	<ul style="list-style-type: none"> More flexibility than schedule endorsement due to blanket endorsement. 	<ul style="list-style-type: none"> Most flexibility: AI status automatically conferred pursuant to a written contract.
<ul style="list-style-type: none"> Does not contain privity of contract requirement. 	<ul style="list-style-type: none"> Requires privity of contract between AI and named insured. Not suitable for upstream owners/contractors. 	<ul style="list-style-type: none"> Contains a professional services exclusion
<ul style="list-style-type: none"> Does not contain a professional services exclusion. 	<ul style="list-style-type: none"> Contains a professional services exclusion. 	

NEW ISO FORMS

Automatic AI Endorsements for Completed Operations

For contractors, owners, and other construction industry stakeholders, there are two new AI endorsements of note, CG 20 39 12 19, entitled “Additional Insured—Owners, Lessee or Contractors—Automatic Status when Required in Written Construction Agreement with You (Completed Operations),” and CG 20 40 12 19, entitled “Additional Insured—Owners Lessees or Contractors—Automatic Status for Other Parties when Required in Written Construction Agreement (Completed Operations).” AI coverage for Completed Operations has typically been provided under form CG 20 37, which requires each additional insured party to be listed in the form’s schedule. The new ISO forms automatically extend AI coverage for Completed Operations without having to specifically identify each additional insured party, thereby mirroring the existing AI endorsement forms that confer automatic AI status for Ongoing Operations (that is, CG 20 33 and CG 20 38). Thus, the CG 20 39 and CG 20 40 correspond by design with CG 20 33 (ongoing operations) and CG 20 38 (ongoing operations) to extend AI coverage for Completed Operations.

A further comparison of the two automatic AI endorsements demonstrates the superior coverage provided under the CG 20 40 for Owners and Contractors, as there is no privity of contract requirement. Therefore, it can apply to *anyone* required to be named as an additional insured under a written contract that performs operations for the named insured. On the other hand, CG 20 39 conditions AI coverage upon direct contractual privity with the named insured, providing coverage “when you and such person or organization have agreed in writing in a contract or agreement that such person . . . be added as an additional insured on your policy” (emphasis added).

The new Completed Operations endorsements further differ from the existing CG 20 37—Additional Insured Completed Operations endorsement in two important ways. First, AI coverage for both CG 20 39 and CG 20 40 is conditioned upon the named insured having agreed in a written contract or construction agreement to provide such coverage, whereas the existing CG 20 37 Completed Operations endorsement does not require any such written agreement exist. Additionally, both CG 20 39 and CG 20 40 add an exclusion for certain professional services:

Bodily injury or property damage arising out of the rendering of, or the failure to render, any professional architectural, engineering, or surveying services, including:

1. The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, changes orders or drawings and specifications; or
2. Supervisory, inspection, architectural or engineering activities.

In contrast, CG 20 37 does not include such an exclusion for professional services, so upstream additional insureds should be cognizant of this professional services exclusion where these new automatic AI endorsements are being offered.

Automatic AI Endorsements for General Use

CG 20 42—Additional Insured—Automatic Status for Designated Operations	CG 20 43—Additional Insured—Automatic Status When Required In Written Contract or Agreement
<ul style="list-style-type: none"> Schedule AI endorsement for specific operations 	<ul style="list-style-type: none"> Blanket AI endorsement
<ul style="list-style-type: none"> No privity of contract requirement 	<ul style="list-style-type: none"> No privity of contract requirement
<ul style="list-style-type: none"> Contains a professional services exclusion 	<ul style="list-style-type: none"> Contains a professional services exclusion
<ul style="list-style-type: none"> Construction manager/ GC exclusion 	<ul style="list-style-type: none"> Construction manager/ GC exclusion

ISO also introduced two automatic additional insured endorsements for general, non-construction specific use. The first is CG 20 42, entitled “Additional Insured—Automatic Status for Designated Operations,” which makes any person or organization an additional insured with respect to scheduled operations of a named insured that has agreed under any contract or agreement. The second form is the CG 20 43, entitled “Additional Insured—Automatic Status When Required In Written Contact or Agreement,” which provides automatic insured status for any person or organization *for whom* the named insured has agreed, in a written contract, to provide coverage. Neither form requires a direct contract between the named insured and AI, nor do they require the designated or scheduled operations under CG 20 42 and CG 20 43, respectively, be performed for the AI. Although both AI forms offer wide utility, they also include a broad and highly diverse list of exclusions, which must be further considered prior to acceptance of the new endorsements.

ADDITIONAL NOTABLE REVISIONS

Limits Language Modified in AI Endorsements

The 2019 AI endorsements (CG 20 37, CG 20 10, CG 20 12, and CG 20 34) eliminated the “shown in the Declarations” language from the Limits of Insurance section of the forms and inserted “[t]his endorsement shall not increase the applicable limits of insurance.” This revision effectively provides that coverage limits may not be confined to the Declaration page but can be modified by other provisions of the policy.

Waiver of Subrogation

The revised Waiver of Subrogation endorsement, CG 24 04, seeks to resolve the 2009 endorsement’s ambiguity as to whether privity of contract between the AI and the named insured is required, by eliminating the reference to operations performed “under a contract *with that person or organization.*” This revision is important for owners and upstream parties generally who are not in direct contractual privity with a name insured subcontractor and further broadens the scope of the waiver to a broader set of policies. Comparatively, the 2009 version only applied to CGL and PCO coverage parts.

The 2019 endorsement also contains new language that conditions the waiver of subrogation on the insured’s own waiver of claims prior to the loss, thereby limiting the scope of the insurer’s waiver of subrogation to that of the insured’s own waiver against the scheduled entity. In addition, ISO has

issued an automatic waiver endorsement, CG 24 53 Waiver of Transfer of Rights of Recovery Against Others to Us (Waiver of Subrogation)—Automatic. This new form is the functional equivalent of CG 24 04.

Conclusion

The ability to access additional insured coverage and shift risk downstream is heavily relied upon in a broad range of industries, particularly construction, and serves as a major component of most, if not all, risk management programs. The new ISO endorsements outlined herein provide several significant coverage enhancements, but it is equally important that policyholders recognize and consider the limitations to coverage that may not be readily apparent upon initial review and undertake a thorough review of all relevant AI endorsements and downstream policies whenever possible. It should also be noted that ISO issued additional new endorsements and this article is not exhaustive of the entire spectrum of new endorsements that could affect policyholders. ●

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Index to Advertisers

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www.crowe.com
 Grassi & Co. 26
www.grassicpas.com
 McCarthy & Company, PC 22
www.mcc-cpas.com

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www.cicpac.com

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www.ftblaw.com
 Hesse | Martone 19
www.hessemartone.com
 Peckar & Abramson 36
www.pecklaw.com

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JOMAX Recovery Services 53
www.jomaxrecovery.com

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www.bkd.com
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www.greathornfinancial.com
 North American Construction Services, Inc. 58
www.nacsescrow.com

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Selective Insurance Company of America 18
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SOFTWARE

e-SURETY 48, 49
www.e-surety.net

SURETY COMPANIES

Arch Insurance Group 40
www.archinsurance.com
 Chubb 23
www.chubb.com
 The Guarantee Company
 of North America USA 6
www.thegaranteeus.com
 Granite Re, Inc. 37
www.Granitere.Com
 Hudson Insurance 12
www.hudsoninsgroup.com
 Liberty Mutual Surety 4
www.libertymutualsurety.com
 Merchants Bonding Co. 3
www.merchantsbonding.com
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www.mls.nationwideexcessandsurplus.com
 Old Republic
 Surety Company Outside Back Cover
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 OneBeacon Surety Group 20
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 Philadelphia Insurance Companies 38
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 U.S. Small Business Administration 43
www.sba.gov
 United Fire & Casualty Co. 46
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