



February 13, 2009

Matt Gaul
NYS Insurance Department
25 Beaver Street
New York, NY 10004

RE: Comments on Draft Regulation entitled "Producer Compensation Transparency"

Dear Mr. Gaul:

I am writing on behalf of the New York Insurance Association ("NYIA"), the state trade association that has represented the property/casualty insurance industry in New York for over 125 years. While NYIA was heartened to see that the above-captioned draft regulation did not prohibit or restrict contingent or supplemental commissions, there are still issues raised by this draft that NYIA firmly believes needed to be resolved. In addition to our written comments, please find attached a copy of the draft with suggested modifications.

NYIA is very concerned about the burdensome requirement contained in the draft's section 30.6, Obligations of an authorized insurer. This provision directs insurance carriers to include a record of the compensation paid to each producer for the carrier and the reason(s) for such compensation within the carrier's producer file maintained pursuant to Regulation 152. One question that immediately comes to mind is whether this producer compensation information would be available under the NYS Freedom of Information Law ("FOIL"). Apart from the additional time and expense carriers will incur in maintaining this producer compensation information, having this information available to the public is extremely troublesome for carriers due to the fact that producer compensation is one of their core business practices and used to compete with other carriers. Therefore, NYIA believes that such information should definitely be exempt from disclosure under FOIL because the information is a trade secret and disclosure of producer compensation would result in substantial injury to the competitive position of the carriers.

A broader matter concerns this regulation's application to all insurance agents and brokers placing all types of insurance, regardless of the lines of insurance issued or the insurance amounts involved. One could seriously question whether this should apply to personal lines such as private passenger automobile policies and homeowners' policies and/or to smaller accounts. Perhaps a threshold based on either the type of lines and/or a monetary amount should be spelled out with the regulation not applying to personal insurance lines and/or insurance accounts below a certain monetary amount.

In section 30.3(a) (1), the language “in connection with the sale” appears ambiguous and in need of some clarification regarding the intent of this language. More specifically, how does the language “in connection with the sale” apply within the context of; 1) business meals and entertainment provided by insurers to insurance producers, and 2) service fees paid by insurers to insurance producers. It would seem logical to assume that reasonable and customary business meals and entertainment, which are often not related to any particular account, would not require disclosure whereas service fees for items such as claims handling, engineering surveys, and policy or certificate issuance relating to specific accounts would require disclosure.

Turning to the exceptions outlined in section 30.5, the regulation states it would not apply to “a captive insurance company”. It appears that this provision may have intended to exempt captive insurance agents (those employed solely by one insurance company) from the requirements, but as written it does not carve out captive agents but rather captive insurers. NYIA strongly believes that the regulation should clearly and expressly exclude captive agents from the provisions of this regulation.

Section 30.3(a) (2) and (3) both use the word “material” to describe the ownership interest that an insurance producer has in an insurer issuing a policy to the prospective purchaser and the ownership interest that an insurance carrier issuing a policy has in the producer placing such policy. What constitutes “material?”

NYIA is willing and ready to work with the Department and would be honored to serve on any work group formed to discuss the regulation. If you have any questions, please feel free to contact me. Thank you for the opportunity to review and submit these written comments.

Sincerely,

A handwritten signature in cursive script that reads "Ellen Melchionni".

Ellen D. Melchionni, CAE
President