



JOINT STATEMENT OF NAIFA – NYS, NAIFA & AALU ON

NEW YORK INSURANCE REGULATION 194 & CIRCULAR LETTER NO. 18:

PRODUCER COMPENSATION TRANSPARENCY

The New York State Insurance Department (“NYSID”) recently released its Circular Letter, “Circular Letter No. 18: Implementation of and Compliance with 11 NYCRR 30 (Regulation 194 – Producer Compensation Transparency)”. The purpose of the Circular Letter is to set forth the Department’s expectations regarding compliance by insurance producers and authorized insurers with Regulation 194 scheduled to go into effect on January 1, 2011. In general, when effective, NYSID Regulation 194 applies only upon the issuance of an insurance policy or contract in the state of New York. (Please refer to note # 1 in the section below entitled “Additional Comments”).

This Joint Statement on behalf of the NAIFA-NYS, the NAIFA and the AALU will highlight some of the key provisions of the Regulation and the Circular Letter. All three professional trade advocacy associations have been fully engaged in discussions with the Department since they announced their intent to regulate producer compensation transparency in the insurance sales process.

Our goal from the inception was to ensure that the promulgation of this Regulation (and its accompanying Circular Letter) did not have a chilling effect on insurance professionals’ ability to provide much needed financial security to their clients, and that further recognized the important financial security benefits provided by insurance professionals and the life insurance (and ancillary) products that they offer.

We have attached the actual NYSID Regulation 194 and its accompanying Circular Letter. It is important that both of these documents be read carefully in their entirety. By familiarizing yourself with these documents, you will be able to differentiate between what the Regulation requires and those options outlined in the Circular Letter, with any other printed material which might be provided in an attempt to further interpret/summarize and/or give guidance with respect to this Regulation.

Additionally, insurers in New York State will, in all likelihood, be providing their own interpretation/guidance on implementation of Regulation 194. You should consult with the company that you are affiliated with, and/or with the carrier of the relevant product that you are considering offering to a client, regarding the insurer/carrier’s specific and particular requirements surrounding this Regulation, BEFORE you proceed with the sales process.

SUBSECTION 30.3(A) – MANDATORY INITIAL DISCLOSURE:

This subsection of the Regulation states that unless the purchaser asks for additional information, only the following types of information must be disclosed by the insurance producer at or prior to application for an insurance contract:

- A description of the role the producer plays in the sale (e.g., at the time of sale, I am an agent of the company);
- Whether the producer will receive compensation from the insurer or other third party;
- That the producer's compensation may vary depending upon a number of factors (please refer to the actual Regulation and the Circular Letter); and
- That the purchaser may obtain additional information by requesting it from the producer regarding the compensation expected to be received by the producer in conjunction with the sale of the contract and similar information regarding alternative contracts presented to the purchaser.

Please Note: The above is the only type of information required to be provided unless further prompted by the purchaser.

Please Note: The Circular Letter clarifies that “No particular format is required” for the initial disclosure described above, and a “boilerplate” form may be used and may be “a statement a few sentences long”.

Please Note: The Circular Letter also provides that a producer may incorporate any disclosure required by this subsection into other written materials provided to the purchaser, as long as the disclosure is prominent.

Please Note: A producer may disclose other information (if applicable) such as:

- That the producer is prohibited by law from rebating commission;
- That compensation is limited by New York law and a general description of those limits; and
- That compensation received for various sales may not be readily comparable due to differences in insurers' distribution systems and compensation structures.

Please Note: The above are the examples specifically listed in the Circular Letter of additional information which may be disclosed beyond what is required by subsection 30.3(a). Other additional disclosures may also be permissible. (Please refer to note # 2 in the section below entitled “Additional Comments”).

SUBSECTION 30.3(B) – DISCLOSURE UPON REQUEST:

In general, this subsection of the Regulation provides that enumerated information required by the Regulation to be disclosed upon request, shall be disclosed to the purchaser in a prominent writing at or prior to the issuance of the insurance contract for the contract purchased and for any alternative contract that the producer presented to the purchaser.

Please Note: The Circular Letter adds that the disclosure of the amount of compensation expected to be received by the producer may be stated in a number of different ways and lists examples.

Please Note: Under the Circular Letter, a producer can amortize the compensation either on a dollar or percentage basis by using an “expected duration” of the contract — taking into account appropriate mortality and termination rates for the type of policy being sold — and indicating, if and as applicable, when most of the producer compensation is paid (i.e. that most of the compensation is paid in the first year, first two years, etc., whichever is factually correct and accurate). The language in the Circular Letter specifically references “in the first year, if such is the case” or “in the first five years.” The following example is provided in the Circular Letter: “I expect to receive from the insurer 8% of the total premium you pay on this policy if you keep the policy in place for 13 years which is the expected average duration of this type of policy. Most of that compensation will be paid in the first year.”

Please Note: The Circular Letter provides that the producer may provide information about the producer’s compensation orally and in an abbreviated form when the purchaser requests such information as long as the required information is subsequently provided in a prominent writing at or prior to time of issuance of the contract.

SUBSECTION 30.3(D) – DISCLOSURE OF REASONABLE ESTIMATE OF COMPENSATION:

This subsection addresses disclosures when the nature, amount or value of compensation is not known by the producer when the purchaser requests more information about the producer’s compensation. The subsection requires a description of the circumstances that may determine the unknown compensation and a reasonable estimate. The Circular Letter provides examples of a number of ways the estimates may be determined.

Please Note: A producer can amortize this compensation either on a dollar or percentage basis by using an estimate which is either based on compensation received by the producer in prior years for sales of similar policies or an estimate provided by the insurer and based on the average amount of such compensation paid to producers per dollar of premium for similar policies in prior years.

Please Note: The definition of “compensation” is very broad, including “anything of value” and explicitly excepting only “tangible goods with the insurer name, logo, or other advertisement and having an aggregate value of less than \$100 per year per insurer.” Specifically mentioned as “compensation” — whether paid as commission or otherwise — are “money, credits, loans, interest on premium, forgiveness of principal or interest, trips, prizes, or gifts.”

SECTION 30.6 – OBLIGATIONS OF AN AUTHORIZED INSURER:

This section of the Regulation requires insurers to maintain the information on compensation amounts in accordance with Part 243 of Regulation 152.

Please Note: Although the Circular Letter explains that an insurer may delegate to a licensed insurance agent the maintenance of records regarding compensation amounts, the actual Regulation confirms that the ultimate responsibility of record keeping rests with the insurer.

ADDITIONAL COMMENTS:

While it is not stated in the documents, it is our belief that a producer can reasonably rely on information/data given to him/her by an insurer that attempts to satisfy section 30.3 of this Regulation, including but not limited to, that information required by either subsection 30.3(a) (the initial disclosure requirement) or subsection 30.3(b) (disclosure following a request by the purchaser).

The Circular Letter encourages producers “to provide the Department information or evidence of any adverse effects of Regulation 194”. NAIFA-NYS, the NAIFA and the AALU will continue their scrutiny of the Regulation and the Department’s enforcement, keeping in mind the Department’s stated commitment “to achieve the appropriate balance between informing purchasers as to the role and compensation of producers, while not unduly burdening licensees, hindering the sales process, or imposing significant, additional costs on the sale and distribution of (insurance) products.”

We welcome additional feedback, questions and other areas you can identify which will help the NAIFA-NYS, the NAIFA and the AALU as we continue to monitor the implementation and interpretation of the Regulation, seek further regulatory guidance and/or clarification, and provide more information that will be helpful to you:

1. While, in general, New York Insurance Regulation 194 applies only upon the issuance of an insurance policy or contract, under subsection 30.5 (e), if the purchaser requests more information about the producer’s compensation less than 30 days after a renewal, the producer is required to disclose to the purchaser in a prominent writing the information required by subsection 30.5(b) within five business days.
2. The Circular Letter provides specific examples of additional information which may be disclosed beyond what is required by subsection 30.3(a). Other disclosures may also be permissible, but guidance as to what other kinds of information may be disclosed was not provided.
3. The Circular Letter does not provide guidance to further clarify the meaning of “expected duration” or “expected average duration” for purposes of disclosing, on an amortized basis, the expected producer compensation under subsection 30.3(b) or subsection 30.3(d) if such information is requested by the purchaser.

TO PROVIDE INPUT OR RAISE QUESTIONS FOR US TO CONSIDER PLEASE CONTACT:

- David Dreifuss of the NAIFA-NYS at ddreifuss@taifp.com
- Ron Panneton of the NAIFA at rpanneton@naifa.org
- Tom Korb of the AALU at korb@aalu.org

THIS JOINT STATEMENT SHOULD NOT BE RELIED ON FOR COMPLIANCE WITH NYSID REGULATION 194 — PLEASE CONSULT WITH REGULATORY COUNSEL BEFORE YOU PROCEED WITH THE SALES PROCESS

You should not rely on the information herein for determining what is necessary for you to comply with New York Insurance Regulation 194. You should also strongly consider consulting your own regulatory counsel in making such a determination.

The National Association of Insurance and Financial Advisors – New York State (NAIFA – New York State) represents the interests of tens of thousands of agents and their associates throughout New York State. Our members are continuing a 91 year tradition of upholding the highest ethics of their profession, and take pride in assisting their clients in making important financial decisions on issues ranging from asset management, growth of net worth, employee benefits, retirement and elder planning, life, health, long term care and disability insurance planning, college funding, and business, succession and legacy planning. Visit the NAIFA-NYS website at www.naifanys.org.

The National Association of Insurance and Financial Advisors (NAIFA) comprises more than 700 state and local associations representing the interests of approximately 200,000 agents and their associates nationwide. NAIFA members focus their practices on one or more of the following: life insurance and annuities, health insurance and employee benefits, multiline, and financial advising and investments. The Association's mission is to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of its members. Visit NAIFA's website at www.naifa.org.

The Association for Advanced Life Underwriting (AALU) represents more than 2,000 leading life insurance professionals who are engaged in the sale of life insurance as part of business continuation planning, estate planning, charitable planning, retirement planning, deferred compensation and employee benefit planning. AALU members engage in legislative and regulatory advocacy to protect and promote their ability to assist individuals, families and businesses who rely on life insurance products for their financial security. AALU's public website can be accessed at www.aalu.org.

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